



MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Jimmy L. Morales, City Manager
VIA: John Woodruff, Office of Budget and Performance Improvement Department Director *JLW*
FROM: James J. Sutter, Internal Auditor

DATE: November 6, 2013
AUDIT: The Market Company, Inc. Management and Operation Agreements Audit
PERIOD: October 1, 2010 through March 31, 2013

This report is the result of a regularly scheduled audit of the management and operation of a green market on Lincoln Road and a street market in Normandy Village by The Market Company, Inc. in adherence to their concession agreements.

INTRODUCTION

On July 31, 2002, the City Commission adopted Resolution No. 2002-24947 which approved the issuance of Request for Proposals (RFP) 57-01/02 for the operation and management of markets. Then via Resolution No. 2003-25154 on March 19, 2003, the City Commission approved the selection of The Market Company, Inc. (concessionaire) and authorized the Administration to negotiate the following three separate concession agreements:

- a green market on a portion of the Lincoln Road right-of-way that sells fruits, vegetables, juices, nuts and other related products, plants and cut flowers
- a street market on a portion of the Espanola Way right-of-way that sells arts and crafts, cut flowers and plants, fruits, juices, nuts and other related products
- a street market on Normandy Island on Rue Vendome that sells arts and crafts, fruits, vegetables, cut flowers, orchids and other related green market products, tropical fruit preserves, dressings, dried fruits and nuts, honey and organic produce

After negotiations concluded, the City Commission approved Resolution Nos. 2004-25527, 2004-25528 and 2004-25529 detailing the relevant terms for each respective marketplace commencing on April 1, 2004 and expiring on March 31, 2006. Shortly after the agreements expired, RFP No. 30-05/06 was issued which resulted in the City Commission's subsequent adoption of Resolution No. 2006-26281 and its attached agreements authorizing The Market Company, Inc. to manage and operate these same three markets through September 30, 2009.

These detailed concession agreements covered a variety of issues including concession fees, facility maintenance, facility uses, etc. with the City opting to extend their terms an additional three years. Lastly, the City Commission through the ratification of Resolution No. 2012-27997 approved the Finance and Citywide Projects Committees recommendation to extend these expired concession agreements on a month to month basis until at least May 31, 2013.

The City Commission also authorized The Market Company, Inc. through the adoption of Resolution No. 2009-27235 to operate a street market in the area adjacent to Collins Park on 22nd Street between Collins and Liberty Avenues on a trial basis. This pilot project was to

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

commence January 1, 2010 and end on December 31, 2010 so that the City could obtain data as to the viability to continue the market on a long term basis and to tailor the functionality of the products as they fit into the neighborhood's residential and commercial environment.

However, both the Espanola Way and Collins Park markets were discontinued prior to the beginning of the October 1, 2010 audit period due to the lack of participating vendors. As a result, they were excluded from this audit's scope and testing which focused on the Lincoln Road green and the Normandy Village street markets.

OVERALL OPINION

The Market Company, Inc. (concessionaire) has managed and operated markets in Miami Beach for more than ten years. This cash based business requires strong internal controls, sufficient documentation and perpetual supervision to help ensure compliance with the concession agreements' terms and that the monies collected and remitted are correct. Unfortunately, the City has not adequately monitored the concessionaire's actions to determine their appropriateness which has resulted in the concessionaire operating in a manner that promotes their interests which may or may not be supportive of the City's interests. The following shortcomings were noted during testing that are in need of corrective action:

- Financial deficiencies which resulted in the concessionaire underpaying the City by a total of \$4,511.54 plus potentially the cost of this audit pending the outcome of future discussions per section 6 of the concession agreements. A majority (91%) of this deficiency relates to the concessionaire's exclusion of vendor's insurance payments with the balance being attributed to not increasing the Field Monitor's salary reimbursement hourly rate by 5% annually through September 30, 2012.
- Assorted inconsistencies observed with the concession agreements' terms during unannounced site visits conducted on May 4, 2013 and May 5, 2013 are listed.
- Off-duty police officers have not been used at the Lincoln Road green market since November 28, 2006 despite their requirement in section 3.6.1 of the concession agreement.
- Space rental prices charged to Miami Beach market vendors were increased from Exhibit 3.1 of the concession agreements without receiving written approval from the City Manager or his designee.
- The concession agreements' terms in effect since October 2006 do not satisfactorily protect the City's interests or completely cover the incurred costs in the areas of business tax receipts, security deposits, and registration for resort taxes.
- The City's Redevelopment Coordinator or his designee did not receive or request the audited annual statements of gross receipts required in section 6 of the concession agreements during the audit period.
- The last insurance policy certificate received from the concessionaire by the Redevelopment Coordinator expired on January 23, 2012 thereby potentially increasing the City's risk exposure. Once requested from the concessionaire, a new policy was promptly received which was subsequently approved by the City's Risk Manager for sufficiency.
- The concessionaire was not billed a total of \$34.39 in late charges for 21 payments received after the 60 tested due dates described in Section 4.2 of the concession agreement which ranged between one and four days late.

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

PURPOSE

The purpose of this audit is to determine whether The Market Company, Inc. (concessionaire) timely paid the appropriate monies to the City which is properly supported with sufficient documentation and internal controls; was in compliance with such selected concession agreements' terms as maintaining the required insurance, selling only approved products, positioning vendors in accordance with the site plan, etc.; and whether all the tested payments received from the concessionaire were accurately recorded in the City's Financial System.

SCOPE

1. Confirm by examination of the provided books, records and operation, that The Market Company, Inc. (concessionaire) used acceptable accounting control devices, internal controls and records to control sales and that the corresponding payments were correctly calculated and timely remitted in accordance with the concession agreements.
2. Confirm that tested files and records are adequately secured, neatly organized and properly maintained.
3. Confirm that the concessionaire is current with all tested taxes, fees and licenses.
4. Confirm that the concessionaire has complied with such selected criteria described in the agreements as maintaining the required insurance coverage, adherence to approved product listings and site plans, the timeliness of submitted payments and documents, etc.
5. Confirm that all tested payments received were accurately recorded in the City's Financial System.

PROCESS DESCRIPTION

As previously mentioned, the Espanola Way and Collins Park markets were both closed prior to October 1, 2010 and therefore were excluded from analysis. As a result, the focus of this audit was on the Lincoln Road green and the Normandy Village street markets, which are addressed in more detail below.

The Lincoln Road green market was approved to operate on Lincoln Road between Meridian Avenue to the west and Washington Avenue to the east excluding the Euclid Circle on Sundays between the hours of 9:00am and 6:30pm. Vendors are permitted to sell cut flowers and plants plus fruits, vegetables and other edible plants in accordance with the site plans in Exhibit 2.0 of the concession agreement. Any changes from the site plans or items sold were to be approved in advance by the City Manager or his designee.

Similarly, the Normandy Village street market operated on Rue Vendome between 71st Street and Normandy Drive. Vendors were authorized to sell arts and crafts merchandise, plants and cut flowers; fruits, vegetables, and other edible products and related food items; and to provide live entertainment on Saturdays between the hours of 9:00am and 5:00pm.

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

The Market Company, Inc. (concessionaire) was required to furnish the City with a security deposit for each market (\$1,000.00 for Lincoln Road and \$400.00 for Normandy Village) per section 4.1 of the agreements. In addition, the concessionaire was required to remit the following monies to the City:

- 15% of gross receipts within 30 days following the end of each month. An additional amount shall be due if the annual minimum guarantee promised to the City is more than the total of the corresponding monthly payments. The minimum annual guarantee equaled \$8,820.00 for Lincoln Road and \$3,675.00 for Normandy Village during the audit period.
- \$4.00 per day plus applicable taxes for each vendor that proposes to use electricity.
- At least one off-duty police officer during all hours of the Lincoln Road green market's operation. A similar provision was absent from the Normandy Village market's concession agreement.
- \$18.00 per hour for a minimum of two hours per day per market to reimburse the City for costs incurred by the Office of Real Estate, Housing and Community Development's Field Monitor in monitoring the concessionaire's activities (to increase by 5% annually after the initial agreement terms ended on September 30, 2009 which would equal \$18.90 for the 2009/10 fiscal year, \$19.85 for the 2010/11 fiscal year, and \$20.84 for the 2011/12 and 2012/13 fiscal years).
- Quarterly reimbursement to the City to help cover the cost of pressure cleaning the market area (\$100.00 for Lincoln Road and \$25.00 for Normandy Village).

The following table provides a breakdown of the payments received from the concessionaire for each Miami Beach market operating during the audit period by revenue / reimbursement source and fiscal year:

Revenue / Reimbursement Source	Fiscal Year 2010/11	Fiscal Year 2011/12	10/01/12 – 03/31/13	Total By Source
Lincoln Road Green Market				
Rent	\$13,112	\$14,341	\$7,993	\$35,446
Electricity	\$3,084	\$2,968	\$1,432	\$7,484
Off-Duty Police Officer	\$0	\$0	\$0	\$0
Field Monitor	\$2,064	\$2,064	\$1,032	\$5,160
Pressure Cleaning	\$400	\$400	\$200	\$1,000
Total	\$18,660	\$19,773	\$10,657	\$49,090
Normandy Village Street Market				
Rent	\$4,258	\$4,836	\$2,229	\$11,323
Electricity	\$380	\$840	\$220	\$1,440
Field Monitor	\$2,025	\$2,064	\$1,032	\$5,121
Pressure Cleaning	\$100	\$100	\$50	\$250
Total	\$6,763	\$7,840	\$3,531	\$18,134
Total Market Company, Inc. Payments	\$25,423	\$27,613	\$14,188	\$67,224

Internal Audit Report

The Market Company, Inc. Management and Operation Agreements Audit

November 6, 2013

Compliance with the concession agreements' terms was to be monitored by the Office of Real Estate, Housing and Community Development's Redevelopment Coordinator. Meanwhile, the concessionaire's monthly payments and supporting documentation were received by his designee, an Office Associate V, before being processed by the Finance Department's Central Cashier's Office and posted to the designated general ledger accounts in the City's Financial System.

FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. Finding: Financial Deficiencies Resulting in the Concessionaire Owing the City a Total of \$4,403.38 Plus Potentially the Cost of the Audit are Listed

The following financial deficiencies were found after conducting inquiries with the City's Field Monitors and reviewing The Market Company, Inc.'s (concessionaire) provided records:

- a. The Office of Real Estate, Housing and Community Development's Field Monitor is required to be present to monitor operations for a minimum of two hours daily on market days. Subsequent inquiries found that he did not record the number of vendors and tents present, which vendors were using electricity, etc. during the performance of these duties. As a result, the City is solely dependent on the effectiveness of the concessionaire's implemented internal controls in reporting their gross receipts and the accuracy of the records maintained for this cash based business.
- b. Section 4.2 of the concession agreements state "*During the initial term, and any renewal term, of the Agreement, Concessionaire shall pay the City, on a monthly basis, and within thirty (30) calendar days from the end of each month during the term herein, an amount equal to fifteen (15%) percent of Concessionaire's gross receipts.... The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Concessionaire from customers and required by law to be remitted to the taxing or other governmental authority.*"

Testing found that the concessionaire charges its uninsured vendors a flat fee of either \$5.00 or \$8.00 for each market day to be covered under their insurance policy. These vendor insurance payments were used to offset the concessionaire's premiums associated with satisfying section 11's requirements and were not used to purchase additional insurance coverage.

Consequently, these payments represent income and were incorrectly excluded from the concessionaire's gross receipts upon which the 15% owed to the City was calculated. They do not represent a pass through such as with the monies generated from electricity, state sales tax and the Field Monitor's hourly rate reimbursement. Finally, section 11 of the concession agreements summarized states that the concessionaire shall maintain the specified required insurance coverage at its sole cost and expense.

Internal Audit Report

The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

Concessionaire provided QuickBooks profit and loss statements showed the amount of vendor insurance payments received by Miami Beach market by fiscal year. Internal Audit's corresponding calculations determined that the concessionaire owes the City a total of \$4,094.34 which includes \$2,845.14 (\$18,967.58 x 15%) for the Lincoln Road and \$1,249.20 (\$8,328.00 x 15%) for the Normandy Village markets respectively excluding interest.

- . Section 6 of the concession agreements state "*The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Concessionaire's statement of gross receipts for any year or years audited, in which case the firm shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until Concessionaire has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City.*" Pending the outcome of this audit, the current concessionaire's total gross receipts financial deficiency equals 8.75% $((\$18,967.58 + \$8,328.00)) / (\$236,306.20 \text{ gross receipts received during the audit period for Lincoln Road} + \$75,556.93 \text{ gross receipts received during the audit period for Normandy Village})$ which exceeds the 5% threshold thereby making The Market Company, Inc. potentially responsible for the costs of this audit.
- c. Section 3.6.2 of the concession agreements state "*Concessionaire's responsibility for the costs associated with said Field Monitor position for the initial term shall be limited to eighteen (\$18.00) dollars per hour {10/01/06 – 09/30/09}. During the renewal term, said limit shall be increased by five (5%) percent per contract year {\$18.90 for 10/01/09 – 09/30/10, \$19.85 for 10/01/10 – 09/30/11, and \$20.84 for 10/01/11 – 09/30/12 and 10/01/12 – 09/30/13}.*" However, testing found that the concessionaire reimbursed the City at a fixed hourly rate of \$19.85 for the entire audit period of October 1, 2010 through March 31, 2013 rather than increasing it by 5% annually through September 30, 2012 per the agreements. As a result, the City was underpaid by a total of \$309.04 which consists of \$154.52 each for the Lincoln Road and Normandy Village markets.

Although these Field Monitor salary reimbursement amounts (also pressure cleaning quarterly payments) were fixed for each year, the Redevelopment Coordinator or his designee did not create a City Bill in the Eden System's Accounts Receivable module in advance for each market date with the prescribed amounts. Instead, the current practice was to create the corresponding City Bill only upon receipt of the monies thereby making it more difficult to identify missing or incorrect payments.

Recommendations:

The implementation of the following recommendations should help resolve the findings addressed above:

- a. After discussions with Internal Audit, the newly hired Field Monitor is currently recording the number of vendors and tents present at each market, which

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

vendors are using electricity, etc. and is comparing their locations with the approved site plan along with his other duties. The Office of Real Estate, Housing and Community Development's Redevelopment Coordinator or designee should subsequently compare this information with the concessionaire's submitted payments supporting documentation to verify their accuracy.

- b. In the future, the concessionaire should include the Miami Beach market vendors' insurance payments in their gross receipts calculations subject to the 15% provision. Pending the outcome of this audit, a City Bill may need to be created invoicing the concessionaire \$4,094.34 for the received vendor insurance payments plus the costs of the audit.
- c. Going forward, the City should more closely review the accuracy of the monthly payments received with the terms listed in the concession agreements. Corrective action should then be promptly taken to help correct any identified deficiencies in their infancy. The City should also create City Bills in advance for these fixed amounts (Field Monitor salary reimbursements, pressure cleaning payments, etc.) to help increase the likelihood that the correct monies are received for each market date. Meanwhile, a City Bill should be promptly created in the Eden System's Accounts Receivable module invoicing the concessionaire a total of \$309.04 for the total incorrect Field Monitor's salary reimbursement hourly rate payments through March 31, 2013.

Management Responses (Office of Housing, Real Estate and Community Development):
The insurance charges were determined not to be a pass-through charge as the insurance agent charged a fixed amount to cover the markets at each location and the insurance fee being collected from the vendors were not connected to a particular insurance fee but were, instead, used by the concessionaire to set off their insurance costs. Additionally, the contract requires The Market Company to pay for the insurance as part of their responsibility under the contract. Office of Real Estate has billed The Market Company for the total sums owed, in the amount of \$4,403.38, less the cost of the audit, and they have paid. The Administration will consider whether or not to charge the Concessionaire the cost of the audit and if determined that Concessionaire owes said cost, Office of Real Estate will send Concessionaire a bill for same.

As of March 30, 2013, the Office of Real Estate hired a full time monitor who has been effectively documenting the necessary information in order to properly ensure the accuracy of the information provided by the Concessionaire, which includes the categories which he monitors, such as, number of vendors and/or tents present at a particular day; whether or not said vendor was using electricity at the site, whether or not there was security present and also spot check Concessionaires in order to ascertain how much they are paying for their space/tents etc. ("Market Information").

In addition, Effective April 29, 2013, a new Leasing Specialist was assigned to manage the Market Company Inc. concession agreements on behalf of the City. Thereafter, on May 16, 2013, the Office of Real Estate began reporting to the Tourism, Culture and Economic Development Director. The department, under our current Director, has been in the process of setting up procedures to improve the accountability and efficiency. The Office of Real Estate intends to include, as a policy and procedure, commencing fiscal

Internal Audit Report

The Market Company, Inc. Management and Operation Agreements Audit

November 6, 2013

year 2013-2014, the requirement that the concessionaire complete the vendor listing form plus the name, products sold and charges which each vendor paid for that given day. This form will be submitted will the percentage rent every month and compared with the Market Information prepared by the Field Monitor.

Based upon the recommendations contained in the audit report, Office of Real Estate shall implement the following new procedures:

- Continue with the current practice of having the field monitor provide Market Information;
- Require concessionaire to complete in full and submit the vendor listing form;
- Require concessionaire to provide receipts from the vendors;
- If the market date is cancelled for rain, illness, etc., the concessionaire will be required to submit a signed letter stating so, which information will be confirmed by the City's Field Monitor's report;
- The Office of Real Estate will set up automatic payments on the Eden System for the fixed sums which are due under the management agreement;
- The Office of Real Estate shall secure the proper insurance requirements prior to providing the signed concession agreement to concessionaire and set up with Eden and Outlook, the expiration dates so that they will be automatically updated each year.

Concessionaire Responses:

We do not agree with the recommendation that the vendors insurance payment is subject to the 15%. For 13 years it has been treated as a pass through to offset expenses. The City explained to us that we owed them 15% of the standard fee for the vendor space less any rain discount. The rational was they owned the street and they were renting it to us. This is what we have always paid. We don't agree that we should pay for the internal audit. For all these years vendor insurance was not included in the calculations and to add it this year and state that it makes us go over the 5% gross receipt findings making us pay for the audit is improper. We do agree that we should have increased the payment for the monitor.

Internal Audit Observation:

The concessionaire subsequently paid the outstanding amounts for percentage of gross receipts of insurance payments and field monitor salary reimbursement. The City Administration will address whether the cost of the Internal audit will be billed to the concessionaire.

2. Finding: Assorted Inconsistencies Observed with the Concession Agreements' Terms during Unannounced Site Visits Conducted on Saturday May 4, 2013 and Sunday May 5, 2013 are Listed

Internal Audit conducted unannounced site visits on Saturday May 4, 2013 of the Normandy Village street market and on Sunday May 5, 2013 of the Lincoln Road green market. The following points summarize the results of our observations and inquiries:

- a. Several Lincoln Road green market vendors using City electricity did not have their power cords securely fastened to the ground. After being instructed of the need, they were taped down to help prevent passersby from possibly tripping.

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

- b. Section 2.1 of the Lincoln Road green market's concession agreement states that the market is bounded on the west by the easternmost line of Meridian Avenue right-of-way. Yet, a site plan provided by the market manager showed that one vendor selling Noni products is typically positioned on the southwest corner of Lincoln Road and Meridian Avenue. Although he was correctly positioned near Washington Avenue during our site visit, it was subsequently confirmed that his booth is typically stationed west of Meridian Avenue when the Antiques and Collectibles market is not operating.
- c. One Normandy Village street market vendor uses electricity to power his radio but is not charged the associated \$4.00 fee to be remitted to the City.
- d. One Normandy Village street market vendor permitted the sale of children's toys at his booth which is not an approved item per Exhibit 3.2.1 of the concession agreement. Once notified during our site visit, the toys were immediately removed from display.

Recommendations:

The implementation of the following recommendations by both the concessionaire and the City should help facilitate market operations:

- a. All electrical power cords should be securely fastened to the ground to help reduce the risk that someone may trip and/or fall.
- b. No vendors should be positioned outside the designated areas on the concession agreements' site plans without prior written approval from the City.
- c. Any vendors using electricity should be charged the \$4.00 fee which is passed through in its entirety to the City.
- d. The assigned market managers and the City's Field Monitor should ensure that only authorized products are being sold. Any found discrepancies should be immediately removed.

Management Responses (Office of Housing, Real Estate and Community Development):
Pursuant to the new Supplemental Management Practices, the Field Monitor is on site to contact the pertinent City department which would be responsible for addressing any safety conditions at the market. In addition, the Field Monitor will report back to the Leasing Specialist to ensure that the contract terms are being followed.

Concessionaire Responses:

We obtained approval that when Antiques and Collectables was not using the space, we could extend the Lincoln Road market west of Meridian Avenue which we did. This has been happening for years. We agree with the other recommendations presented.

Internal Audit Observation:

While the concessionaire claims that there was approval from the City, there was no written documentation to substantiate this claim.

Internal Audit Report

The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

3. **Finding:** *Off-Duty Police Officers have not been used at the Lincoln Road Green Market Since November 28, 2006 Despite their Requirement in Section 3.6.1 of the Concession Agreement*

Section 3.6.1 of the Lincoln Road green market's concession agreement states "*Notwithstanding the foregoing, Concessionaire, at minimum, shall provide at its sole cost and expense, at least one (1) Off-duty Police Officer during hours of operation, specifically to include break down periods, on the day(s) that the Market is scheduled to operate.*" Yet, it was determined that the concessionaire has not employed an off-duty police officer at this market since November 28, 2006. The concessionaire claimed that they ceased hiring an off-duty police officer upon receiving a phone call in which the City agreed to waive the requirement as long as no incidents occurred at the Lincoln Road Market. However, no evidence was found supporting these statements and the concession agreement was not amended by the City Commission.

Recommendations:

The City Administration should decide whether the off-duty police officer should be required during the Lincoln Road green market's operating hours. If deemed necessary, the concessionaire should be immediately contacted and informed of the need to comply. If not, the concessionaire should be notified in writing and the requirement should be omitted from the next concession agreement.

Management Responses (Office of Housing, Real Estate and Community Development):
The Office of Real Estate has notified concessionaire that pursuant to the current contract they have to hire an off-duty police officer for the Lincoln Road location. For future contracts, Office of Real Estate recommends removal of the initial requirement of an off-duty police officer for the Green Market at Lincoln Road, unless the City, in its sole discretion, deems it a necessary requirement.

Concessionaire Responses:

We agree with this finding.

4. **Finding:** *Space Rental Prices were Changed from Exhibit 3.1 of the Concession Agreement without First Receiving City Approval*

Section 18 of the concession agreements state "*Concessionaire agrees that prices charged for facilities and or space (booth) rental, be consistent with the price schedule(s) herein submitted by the Concessionaire and approved by the City and incorporated herein as Exhibit 3.1 to the Agreement. All subsequent price increases and amendments to Exhibit 3.1 must be approved in writing by the City Manager, or his designee, and prior to such changes being implemented within the Concession Area a new updated Exhibit 3.1 will be incorporated into this Agreement. Notwithstanding the foregoing, Concessionaire agrees and acknowledges that any discounted prices it may offer for the rental of facilities shall not in any way reduce the amount of remuneration due to the City, including but not limited to the Percentage of Gross (Section 4.2), which shall be based and calculated on the prices set forth in said Exhibit 3.1.*"

A comparison of the concessionaire's Lincoln Road fees schedule with Exhibit 3.1 found that 21 categories prices for the Winter/Spring season (December through May) had been increased with the largest difference being \$60.00 per day for the category entitled "bread (can have other baked)". Also several new categories had been added such as "organic/new – two booths", "new (established)" and "new (good potential)". Similarly,

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

five differences were found in a comparison of Normandy Village's rental fees with the largest being associated with the category entitled "garden display (40 feet)". Despite these changes being implemented which increase revenues for both the concessionaire and the City, no evidence was found indicating that the City Manager or his designee had approved them in writing and created a new updated Exhibit 3.1.

In addition, it was noted that the concessionaire gave rain discounts to Miami Beach markets' vendors (usually 25%) who would work the following weekend's markets to help offset lower sales. While we recognize that rain discounts from an operational standpoint may be necessary to keep vendors interested in participating in future markets, they are not addressed in the concession agreements. However, the concessionaire would decrease the amounts paid to the City by this rain discount in deference to Section 18 of the concession agreement. It would be time consuming for Internal Audit to calculate the corresponding amounts as each market date would have to be independently reviewed and recalculated.

Recommendations:

The concessionaire should fully comply with section 18 of the concession agreement and not increase prices unless approved in advance by the City Manager or his designee. In the meantime, the City should seek subsequent approval on the current fees and evidence approval in City files. Also, the City should seek approval for rain discounts and allow such discounts in future contracts.

Management Responses (Office of Housing, Real Estate and Community Development):

The Office of Real Estate has prepared a letter agreement between the City and concessionaire, updating the prices being charged by concessionaire and reflecting the rain credit as between the concessionaire and vendor.

Concessionaire Responses:

We disagree with the wording throughout this finding. We did obtain approval, it just wasn't written and you couldn't find all the copies of the changes. In addition, for the past 13 years rain discounts have always reduced the standard fee and therefore, the amount paid to the City.

Internal Audit Observation:

While the concessionaire claims that there was approval from the City, there was no written documentation to substantiate this claim.

5. Finding: The Listed Areas in the Concession Agreements in effect since October 2006 do not Satisfactorily Protect the City's Interests or Cover the Incurred Costs

Review of the concession agreement terms in effect since October 1, 2006 found the following terms that do not appear to cover the associated incurred costs or satisfactorily protect the City's interests:

- a. Section 3.10 of the concession agreements states that the concessionaire shall obtain the applicable "Retail Sales" category City occupational license/business tax receipt. Inquiries with the City's Revenue Supervisor found that they do not meet this category's defined criteria as the concessionaire should have been charged as "agents, broker, dealers..." instead, similar to Production Sud, Inc. which operates the Antiques and Collectibles market.

Internal Audit Report

The Market Company, Inc. Management and Operation Agreements Audit

November 6, 2013

Further review of the Eden System's Licensing Module found that both the Lincoln Road and Normandy Village markets were charged under the business tax receipt category "office (any other not listed)". As a result, the City did not collect a total of \$202.00 (\$101.00 difference x 2 markets) for the 2012/13 fiscal year that it was entitled to receive. The Redevelopment Coordinator was not cognizant of these categorical differences thereby allowing the incorrect billing to exist since the inception of the concession agreements.

- b. Section 4.1 of the concession agreements summarized states that the concessionaire is to furnish the City with a \$1,000.00 and a \$400.00 security deposit for the Lincoln Road and Normandy Village markets respectively. These two payments were processed by the City on June 2, 2004 and were correctly posted to general ledger account 601-7000-229208 entitled "security deposit 777 Meridian" where they have remained. Furthermore, section 14 entitled "performance bond or alternate security" was intentionally omitted from the agreement. Consequently, the City's primary means to help secure the concessionaire's performance is the \$1,400.00 in retained security deposits from both markets but the average monthly payment received during the audit period was \$1,636.36 for Lincoln Road and \$604.46 for Normandy Village.
- c. Section 102-306 of the City Code requires vendors to be registered with the Finance Department's Resort Tax Section and remit 2% of their sales if they have a license from the Division of Hotels and Restaurants. Various food and beverage vendors rent booth space at the Lincoln Road and Normandy Village markets but none are apparently registered with the Resort Tax Section. Internal Audit's efforts to determine which State of Florida licenses were maintained by these vendors (if any) were unsuccessful as all questioned stated that they were unsure as to which license they had nor was it present.

Recommendations:

The next negotiated and approved concession agreements should consider containing the following terms to better protect the City's interests and to recover any incurred costs:

- a. The concessionaire should be required to annually obtain a business tax receipt with at least the "agents, broker, dealers..." category which should be confirmed by the City. Any found differences should be immediately addressed with the Licensing Section and the concessionaire to help expedite resolution.
- b. Larger security deposits and/or irrevocable letters of credit, performance bonds, etc. should be retained that better protect the City in the event of the concessionaire's nonperformance. It is recommended that it should at least equal the average of three months concession payments.
- c. The concessionaire should be required to obtain a letter from the City's Resort Tax Section stating that either the new vendor selling food and beverages has registered or does not need to remit the 2% tax prior to being permitted to start working at the Miami Beach markets. Meanwhile, all current food and beverage vendors should be required to remit their maintained State of Florida licenses within three weeks or not be permitted to return.

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

Management Responses (Office of Real Estate, Housing and Community Development):
Office of Real Estate accepts the recommendations from the Audit Report for The Market Company and shall make the following contract modifications for the new Management and Operation Agreement for the contracts commencing fiscal year, 2013-2014, as follows:

- Change the language in the contract to require the Concessionaire to secure the requisite business tax receipt but not specify a particular type of license;
- Require a deposit, commensurate with the average of three months' rent, based upon the revenues from the fiscal year 2012-2013;
- Have the agreement require Concessionaire secure a letter from the City's Resort Tax Section, for each vendor, stating that the vendor selling food and beverages has registered or does not need to remit the requisite resort tax.

6. Finding: The Audited Annual Statements of Gross Receipts Required in Section 6 of the Concession Agreements were Not Submitted or Requested during the Audit Period
Section 6 of the concession agreements state "*Concessionaire shall submit at the end of the initial term (and, if approved, the renewal term), an audited annual statement of gross receipts, in a form consistent with generally accepted accounting principles.*" However, no evidence was found indicating that the concessionaire had submitted any audited annual statements of gross receipts during the audit period or that the City's Redevelopment Coordinator or his designee had noticed its omission and requested its submittal.

Recommendations:

The concessionaire should immediately submit all the audited annual statements of gross receipts for all fiscal years since October 2010 to the City. Once received, the audited gross receipts figures should be compared to those included in the concessionaire's monthly payments supporting documentation with any differences immediately investigated.

Management Responses (Office of Housing, Real Estate and Community Development):
Office of Real Estate accepts the recommendations from the Audit Report for The Market Company and has requested the last three years of audited gross receipts from the concessionaire.

Concessionaire Responses:

After the first Gross Receipt Audit was performed and submitted we were told there was no need for another. We were told as part of the internal audit procedures that they were required to perform this activity so there was no need to do it twice. In fact, the internal audit review of gross receipts is how it is determined whether we pay for the internal audit or not.

Internal Audit Observation:

The agreement specifies that the Concessionaire shall submit audited annual statements of gross receipts after each year. The City's internal audit does not satisfy this requirement. The Concessionaire has subsequently agreed to hire an accountant to prepare these statements for the audit period.

Internal Audit Report

The Market Company, Inc. Management and Operation Agreements Audit

November 6, 2013

7. **Finding:** *The Concessionaire did Not Provide the City's Redevelopment Coordinator with Updated Insurance Policy Certificates to Help Ensure that Sufficient Coverage was Maintained*

Section 11 of the concession agreements details the insurance coverage requirements to be maintained at all times. In reviewing the Redevelopment Coordinator's files, it was found that the concessionaire's most recent insurance certificate expired on January 23, 2012, yet no documentation was found requesting the submittal of a new policy. At Internal Audit's request, a new certificate was promptly provided whereby it was approved for sufficiency by the City's Risk Manager.

Recommendations:

The City should always timely receive any new insurance certificates issued to the concessionaire. The Eden System's Contract Management Module should be used to track the insurance coverage's expiration dates as a compensating internal control. Once received, the insurance certificate should continue to be reviewed by the City's Risk Manager for sufficiency with any deficiencies immediately corrected. If not received timely, the City should consider taking the appropriate actions designated in the agreement.

Management Responses (Office of Housing, Real Estate and Community Development):

The Office of Real Estate has requested updated insurance certificates for the requisite coverage under the management agreement. As part of the Supplemental Management Practices, the Office of Real Estate staff, sent out notices to all tenants requesting updated insurance certificates and systematically have started to secure them and update the coverage to make sure they comply with the contract. The expiration dates will be entered in the Eden System this summer so that next year, on a monthly basis, all policies expiring in that particular month, can be updated.

Concessionaire Responses:

We provide the insurance certificate each year but the City did not keep a copy. Once requested, we gave the City a copy.

8. **Finding:** *The Concessionaire was Not Billed a Total of \$34.39 in Late Charges for 21 Payments Received after the 60 Tested Months' Due Dates by a Maximum of Four Days*
- Section 4.2 of the concession agreements states "During the initial term, and any renewal term, of the Agreement, Concessionaire shall pay the City, on a monthly basis, and within thirty (30) calendar days from the end of each month during the term herein, an amount equal to fifteen (15%) percent of Concessionaire's gross receipts (PG)." Subsequent testing found that ten of the Lincoln Road green market's 30 monthly payments or 33.33% were received by the City after the designated due date. These late payments ranged from a low of one day to a high of four days which would result in a total of \$7.72 in interest being due (interest was calculated at a rate of 12% per annum). Similar testing performed on the Normandy Village street market's 30 monthly payments found that eleven (36.67%) were received up to a maximum of four days late. As a result, the concessionaire would owe a total of \$26.67 in late charges (interest was calculated at a rate of 12% per annum). Despite the receipt of these late payments, it was determined that the City's Redevelopment Coordinator did not invoice the concessionaire for any late charges incurred during the audit period.

Internal Audit Report
The Market Company, Inc. Management and Operation Agreements Audit
November 6, 2013

Recommendations:

The City' should more closely monitor the concessionaire's monthly payments to ensure that they are received timely. If not, a City Bill in the Eden System's Accounts Receivable module should be promptly created invoicing the concessionaire for the applicable amount of interest and late charges incurred. Finally, the City should consider whether to prepare a City Bill for \$34.39 (\$7.72 Lincoln Road + \$26.67 Normandy Village) and send to the concessionaire for collection representing late charges incurred between October 2010 and March 2013.

Management Responses (Office of Housing, Real Estate and Community Development):
Office of Real Estate accepts the recommendations from the audit report for The Market Company, has prepared a bill for the outstanding late charges owed by the concessionaire and has been paid.

Concessionaire Responses:

We agree with the report. We thought the due date was the end of the month when the contract said payment was due 30 days after the end of the prior month. Of the 21 late payments, there were 9 cases for Lincoln Road and 8 cases for Normandy Village for a total of 17 where we paid on the 31st instead of the 30th. Of the remaining 4 cases 2 were because the 31st was on a Friday holiday so we paid the next Monday. The other 2 were simply late.

EXIT CONFERENCE

Initial exit conference was held on July 26, 2013 in the Office of Budget and Performance Improvement. Participants included Max Sklar (Tourism, Cultural Affairs and Economic Development Director), Gisela Nanson Torres (Leasing Specialist) Ricky Falls (Field Monitor), James Sutter (Internal Auditor) and Mark Coolidge (Senior Auditor). A second meeting was held on September 4, 2013 with the concessionaire. Participants included Claire Tomlin, Donald Tomlin, Evani Maas, Gisela Torres and James Sutter. All parties were in agreement as to the contents of this report. Management responses were solicited and included in our report.

JJS:MC:mc

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(audit performed by Mark Coolidge, Senior Auditor)

cc: Kathie G. Brooks, Assistant City Manager
Max Sklar, Tourism, Cultural Affairs & Economic Development Director
Patricia Walker, Chief Financial Officer
Claire Tomlin, The Market Company, Inc.