



# 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 *JW*  
FROM: James J. Sutter, Internal Auditor *JJS*

DATE: November 6, 2013  
AUDIT: Production Sud, Inc. Management and Operation Agreement Audit  
PERIOD: October 1, 2010 through May 5, 2013 (the last market for the 2012/13 fiscal year)

This report is the result of a regularly scheduled audit of the management and operation of the Antiques and Collectibles market held on Lincoln Road, Jefferson Avenue and Michigan Avenue during seventeen designated dates (weather permitting) between October and May annually in adherence to the signed concession agreement.

### INTRODUCTION

After Production Sud, Inc. staged the Antiques and Collectibles market for several years as a special event, the City Commission adopted Resolution No. 2004-24947 authorizing the issuance of a Request for Proposals (RFP) to manage and operate the same under a concession agreement. They were subsequently selected and approved via Resolution No. 2004-25682 to operate the market between October 1, 2004 and September 30, 2005 with the City having the sole discretion for an additional one year term.

RFP No. 30-05/06 was issued during this agreement's renewal period which eventually resulted in the City Commission's adoption of Resolution No. 2006-26281 and its attached concession agreement authorizing Production Sud, Inc. to manage and operate the Antiques and Collectibles market through September 30, 2009. This detailed document covered a variety of topics including concession fees, facility maintenance, facility uses, etc. with the City ultimately opting to extend its terms an additional three years through September 30, 2012. Lastly, the City Commission through the ratification of Resolution No. 2012-27997 approved the Finance and Citywide Projects Committees recommendation to extend this expired concession agreement's terms on a month to month basis until at least May 31, 2013.

### OVERALL OPINION

Production Sud, Inc. (concessionaire) has managed and operated the Antiques and Collectibles market in Miami Beach for more than ten years. This vendor based business requires strong internal controls, sufficient documentation and perpetual supervision to help ensure compliance with the signed concession agreement's terms and to verify that the monies collected and remitted to the City are sufficient.

Unfortunately, the City has not adequately monitored the concessionaire's actions to determine their appropriateness during the audit period. Additionally, the concessionaire did not maintain sufficient organized detailed information listing which vendors were present at each market, how

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many tents and/or tables were rented, what amounts were paid by the vendor and when, etc. that would support their corresponding remittances to the City. In its absence, one has to rely on the concessionaire's integrity that all identified vendor payments were deposited intact into their Bank of America operating account. Given this assumption, the following shortcomings were noted based on our site visit observations, inquiries of key personnel and testing of the documents provided:

- Financial deficiencies are listed which resulted in the concessionaire underpaying the City by a total of \$12,364.68 plus potentially the cost of this audit pending the outcome of future discussions per section 6 of the signed concession agreement.
- The concessionaire was not billed interest and late charges for tested rental, Field Monitor salary reimbursements and pressure cleaning payments received after the due dates specified in the signed concession agreement.
- Various inconsistencies observed with the signed concession agreement's terms during a Sunday May 5, 2013 site visit are listed.
- Space rental prices charged to market vendors were increased from Exhibit 3.1 of the signed concession agreement despite not first receiving approval from the City Manager or his designee.
- The current required \$2,500.00 security deposit in section 4.1 of the signed concession agreement does not satisfactorily protect the City's interests in the event of the concessionaire's nonperformance.
- 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 signed concession agreement during the audit period.
- The last insurance policy certificate received from the concessionaire by the Redevelopment Coordinator expired on January 14, 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 required to pay the City prior to the engagement occurring per Police Off-Duty Standard Operating Procedure #011. Also, the corresponding monies remitted were not timely delivered to the Central Cashier's Office for processing as shown by the 116 days that it took for January 29, 2012's payment to be deposited and posted to the City's Financial System after it was received by the police officer at the market's conclusion.

## PURPOSE

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

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## SCOPE

1. Confirm by examination of the provided books, records and operation, that Production Sud, 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 signed concession agreement.
2. Confirm that tested files and records are neatly organized, sufficient 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 signed agreement as maintaining the required insurance coverage, adherence to approved product listings and site plans, the timeliness of submitted documents, etc.
5. Confirm that the concessionaire's remitted market payments were complete and accurately calculated.
6. Confirm that all tested payments received were timely and accurately recorded in the City's Financial System.

## PROCESS DESCRIPTION

The Antiques and Collectibles market was approved to operate on Lincoln Road between Meridian Avenue and Alton Road on designated Sundays between the hours of 9:00am and 6:00pm. The approved concession area also included Michigan and Jefferson Avenues between South and North Lincoln Lanes whereby the respective parking meters were bagged and the streets closed. Vendors are permitted to sell antiques (items created at least 100 years prior), vintage goods (items of high style and quality created at least 25 years prior) and collectibles (jewelry, reproductions, bric-a-brac, memorabilia, arts and creative uses of recycled components, etc. in the spirit of antique and/or vintage) in accordance with the site plans in Exhibits 2.1 and 2.2 of the signed concession agreement. Any changes from the site plan or items sold have to be approved in advance by the City Manager or his designee.

Production Sud, Inc. (concessionaire) was required to furnish the City with a \$2,500.00 security deposit in accordance with section 4.1 of the signed concession agreement plus the following monies for each staged market date:

- 12.5% of gross receipts within thirty days following the end of each month for which a market is held. Additional rental monies shall be due if the \$29,400.00 annual minimum guarantees promised to the City exceeds the total of the 17 designated annual market payments.
- At least one off-duty police officer at the concessionaire's sole cost and expense is to be present during all hours of operation including set-up and break down periods.
- \$18.00 per hour for a minimum of two hours per market date is to be paid 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's terms ended on September 30, 2009 which

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therefore equaled \$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).

- The designated parking meter space rental and administrative charges associated with the bagging of the meters on the 1600 blocks of Jefferson and Michigan Avenues.
- \$266.67 annually to help cover the cost of pressure cleaning the concession area to be paid as follows: \$100.00 by December 31<sup>st</sup>, another \$100.00 by March 31<sup>st</sup> and the remaining \$66.67 balance by June 30<sup>th</sup>.

The following table summarizes the rounded payments received from the concessionaire during the audit period by fiscal year and revenue source (excludes those amounts owed according to finding number 1):

Revenue Source	Fiscal Year 2010/11	Fiscal Year 2011/12	10/01/12 – 03/31/13 ( 6 MONTHS)	Total By Revenue Source
Rent (12.5% of Gross Receipts)	\$35,750	\$34,835	\$35,723	\$106,308
Off-Duty Police Officer	\$6,800	\$7,335	\$11,190	\$25,325
Field Monitor	\$662	\$640	\$583	\$1,885
Meter Space Rentals	\$3,130	\$5,060	\$5,110	\$13,300
Pressure Cleaning	\$100	\$0	\$267	\$367
Total by Fiscal Year	\$46,442	\$47,870	\$52,873	\$147,185

The Office of Real Estate, Housing and Community Development's Redevelopment Coordinator was tasked with monitoring the concessionaire's compliance with the signed agreement's terms. The individual market payments and supporting documentation (excluding parking meter space rentals) 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 applicable general ledger accounts in the City's Financial System.

Meanwhile, the concessionaire's meter space rental payments were received by the Parking Department's Meter Rental Liaison where they were separately recorded and tracked to ensure that all balances were paid in full before the corresponding 29 parking meters were red bagged by the Enforcement Division. This recording process was recently changed in March 2013 as received payments are now processed by the Central Cashier's Office and posted to the City's Financial System just like the other aforementioned received concessionaire payments.

## FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. Finding: Financial Deficiencies Resulting in the Concessionaire Owing the City a Total of \$12,364.68 Plus Potentially the Cost of the Audit are Listed  
The following financial deficiencies totaling \$12,364.68 were found after conducting inquiries with key personnel and reviewing Production Sud, Inc.'s (concessionaire) provided documentation:

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- a. The Office of Real Estate, Housing and Community Development's Field Monitor is to be present to monitor operations for a minimum of two hours daily on market days. Subsequent inquiries found that the dates that the market operated, the number of vendors and/or tents present, etc. were not recorded during the completion of his assigned duties. As a result, the City is dependent on the effectiveness of the concessionaire's implemented internal controls and the accuracy of the records maintained in reporting their gross receipts.

However, the concessionaire did not maintain sufficient detailed documentation for each market date to facilitate reconciling to the reported gross receipts and revenues paid to the City. For example, a summary revenue report was not maintained for each market date that listed the name of each participating vendor; the number of tents and tables rented with the corresponding amounts due; the amounts paid by the vendor with the associated date(s) and payment method; the relevant deposit date and amount; etc.

The concessionaire did provide bank statements, cancelled checks and credit card listings showing that monies were received but no assurances could be obtained regarding their completeness. As a result of these insufficient records, Internal Audit had to assume that all vendor payments were deposited intact into their Bank of America operating account and were properly separated from other monies attributable to the concessionaire's operation of a Coconut Grove antique store.

- b. A comparison of the 51 agreed upon market dates occurring during the audit period (17 annually x 3 years) with the concessionaire's corresponding payments found that the City did not receive payment for five different dates. Of these, the concessionaire claimed that markets were held on May 8, 2011, February 19, 2012 and February 26, 2012 and they proceeded to remit the corresponding rental payments of \$1,141.88, \$2,510.63 and \$2,618.75 respectively in June 2013.

They continued to state that another unreported market date (October 9, 2011) was cancelled due to rain. As previously mentioned, the Field Monitor did not record whether the market was actually held so the City had to rely on the integrity of the concessionaire. An internet weather search found that the .27 inches of precipitation were received on October 9, 2011 but realizes that this data is not necessarily the determining factor as the concessionaire decides 72 hours in advance of the market date based on meteorological forecasts whether to hold the market due to the costs involved. For example, the April 29, 2012 market was held but few vendors showed as 2.86 inches of rain fell during the day but conversely the April 21, 2013 market was cancelled due to predicted rain but none occurred.

- c. Section 4.2 of the signed concession agreement 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 twelve and one half (12.5%) percent of Concessionaire's gross receipts.....The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by the Concessionaire*

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*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.” Subsequent testing found that any profits earned from table rentals (vendors are charged \$12.00 for each table rented while Sunshine Tents and Event Rentals were paid \$8.00 each less any applicable delivery charges) were incorrectly excluded from the concessionaire’s gross receipt calculations as they believed that no monies were made as it was a pass through. Internal Audit’s subsequent calculations allowing for 15 unrented tables at each market date, determined that the concessionaire owes the City a total of \$2,532.33 for unreported table rental revenues during the audit period excluding late fees.*

- d. The concessionaire charges vendors an additional \$20.00 to be located on a corner which was confirmed with several vendors during our Sunday May 5, 2013 site visit. Again, these additional revenues were incorrectly excluded from the concessionaire’s gross receipt calculations and their corresponding payments to the City. Upon review of the site plan and per discussions with the concessionaire, there were 24 corner spaces available whereby the concessionaire could have charged applicable vendors an extra \$20.00 each. It was subsequently calculated using this assumption and allowing for three rain outs (October 9, 2011, April 29, 2012 and April 21, 2013) during the audit period that the concessionaire owes an additional \$2,880.00 to the City excluding late fees.
- e. Section 10.3 of the signed concession agreement states “*Concessionaire shall reimburse the City on a quarterly basis throughout the Term of this Agreement, in the amount of One Hundred (\$100) Dollars; said reimbursement represents the City’s cost to pressure clean the Concession Area, as defined herein.*” Since the concessionaire only operates annually October through May (8 months), the annual pressure cleaning fee payments were prorated to equal \$266.66 ((8 months operating/12 months in a year) x (\$100.00 quarterly payments x 4 quarters). Subsequent testing found that only \$366.67 in pressure cleaning payments were received during the audit period resulting in the City being owed a total of \$434.34 ((\$266.67 x 3 years audited) – (\$366.67 in payments received)).  
  
Section 3.6.2 of the signed concession agreements state “*Additionally, Concessionaire agrees and understands that a Field Monitor, who will report to and be under the direction of the City, is required to and be under the direction of the City, is required for a minimum of two (2) hours daily on Day(s) of Operation.... 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}.*” Testing found that the concessionaire underpaid the City by a total of \$246.75 in Field Monitor salary reimbursements which consisted of five market dates’ payments of \$206.42 that were not received (\$39.70 for May 8, 2011; \$41.68 for February 19, 2012; \$41.68 for February 26, 2012; \$41.68 for

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December 9, 2012; and \$41.68 for December 23, 2012) plus \$40.33 resulting from various payments made at the incorrect hourly rates. The concessionaire subsequently remitted \$123.03 upon notification from Internal Audit thereby reducing the amounts currently owed for Field Monitor salary reimbursements to \$123.72 (\$246.75 - \$123.03).

Although these pressure cleaning and Field Monitor salary reimbursement amounts 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.

Section 6 of the signed concession agreement states "*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;.*" Pending the outcome of this audit, the current concessionaire's total gross receipts financial deficiency equals 10.99% (( $\$50,170.08 \text{ rents} + \$20,258.64 \text{ table rentals} + \$23,040.00 \text{ corner booth space tent rentals}$ ) / ( $\$850,468.08$  in total gross receipts reported to the City during the audit period)) which exceeds the 5% threshold thereby making Production Sud, Inc. potentially responsible for the costs of this audit.

**Recommendations:**

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

- a. The concessionaire should create and maintain a summary revenue report for each market date that contains the name of each participating vendor; the corresponding number of tents and tables rented and amounts due; the payment type, date received and the amount for each vendor; the corresponding bank deposit information; etc. This report could be used to help calculate each market's gross receipts and should be submitted along with the corresponding payment to the Office of Real Estate, Housing and Community Development to help provide a better audit trail.

Any cash paying vendors should receive a pre-numbered receipt to verify that monies were received. Also, the concessionaire should maintain supporting documentation informing readers of each bank deposit's composition and/or consider using a separate bank account for Antiques and Collectibles market transactions.

- b. The new Field Monitor hired on March 25, 2013 has been recording the number of vendors present at each market and their locations, the number of tents used, etc. along with his other duties. The City should subsequently compare this information with the submitted payment's supporting documentation to verify their accuracy.

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The City should also ensure that payments are received for each designated market date. If the market date is cancelled for rain, illness, etc. then the concessionaire should submit a signed letter stating so which should then be confirmed by the City's Field Monitor.

- c – d. Going forward under the current expired concession agreement's terms, any additional monies collected from vendors such as for renting tables (less their rental cost) and corner spaces should be included in the concessionaire's gross receipts. As a result of their omission from gross receipts during the audit period, the separate City Bills should be created in the Eden System's Accounts Receivable Module for \$2,532.33 and \$2,880.00 respectively unless the concessionaire provides timely sufficient documentation showing the inaccuracies of these estimated amounts.
- e. The City should more closely review the accuracy and completeness of the concessionaire's pressure cleaning and Field Monitor salary reimbursement payments. He/she should also create City Bills in advance for these fixed amounts to help increase the likelihood that the correct monies are received for each market date. Meanwhile, City Bills for \$434.34 and \$123.72 should be promptly created invoicing the concessionaire for not remitting the required pressure cleaning and Field Monitor salary reimbursement payments.

Based on the results of this audit and the ensuing negotiations, the City should invoice the concessionaire for the costs associated with this audit if the amount of the deficiency continues to exceed the 5% threshold designated in section 6 of the signed concession agreement.

Management Responses (Office of Real Estate, Housing and Community Development): As of March 30, 2013, the Office of Real Estate hired a full time Field 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 vendors in order to ascertain how much they are paying for their space/tents etc. ("Market Information"). The first Antiques and Collectibles market which the Field Monitor had an opportunity to monitor was May 5, 2013, which was also the last day this market was open.

In addition, a new Leasing Specialist was assigned effective April 29, 2013 to manage the Antiques and Collectibles market on behalf of the City. Since May 16, 2013, the Office of Real Estate is reporting to the Director of Tourism, Culture and Economic Development. The department has been in the process of setting up procedures to improve the accountability and efficiency of the Office of Real Estate. The Office of Real Estate will require the concessionaire to complete a designated vendor listing form which will have to be submitted with the percentage rent every month. This form will allow the Leasing Specialist to compare what the Concessionaire has submitted with the report prepared by the Field Monitor.

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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 prepare Market Information;
  - Require the concessionaire to submit the completed designated vendor listing form when making the monthly remittance;
  - Require the concessionaire to provide receipts from the vendors for each remittance;
  - 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 Asset Manager will set up automatic payments on the Eden System for the fixed sums which the concessionaire owes so that these sums may be secured per the agreement;
  - The Asset Manager shall secure the proper insurance requirements prior to providing the signed management agreement to concessionaire and set up with Eden and Outlook, the expiration dates so that they will be automatically updated by the support staff.
- b. With the Field Monitor effectively documenting the Market Information, along with the Supplemental Management Practices, the office will be able to accurately manage the markets. Upon being placed on notice of this balance, the concessionaire paid in full.
- c – d. With the Field Monitor effectively documenting the Market Information, along with the Supplemental Management Practices, the office will be able to accurately manage the markets. The Office of Real Estate has billed the concessionaire for these sums and payment in full has been received.
- e. As part of the Supplemental Management Practices, commencing with the new contract for the Antiques and Collectibles Market, Office of Real Estate has set up, in the Eden System, all fixed sums when they come due, so that an automatic bill will be generated in advanced. Moving forward, as Leasing Specialist reviews receivables each month, bills for late fees and additional penalties will be mailed out. Office of Real Estate has billed concessionaire for the sums due for uncollected pressure cleaning and Field Monitor fees and concessionaire has paid.

Concessionaire Responses:

We apologize for not submitting payments for three shows, May 2011, February 19th and 26th 2012. One of the principles was very sick during this period, which was an emotional and chaotic period for us. This is the only time in so many years that this has happened and we think the new systems setup by the City of Miami Beach and Production Sud will address this problem and Production Sud has since submitted these three payments to the City. In the past, the City has issued bills quarterly for the pressure cleaning, and we may have been confused by the change in procedure. Going forward, we offer to pay for the entire year all at one time. We will depend on the City's judgment.

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2. Finding: The Concessionaire was Not Billed Interest and other related Late Charges for Tested Payments Received after the Markets' Designated Due Dates

Section 4.2 of the signed concession agreement 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 twelve and one half (12.5%) percent of Concessionaire's gross receipts (PG).*" As needed, the concessionaire issued separate checks to pay for the rent, off-duty police officer(s), Field Monitor's salary reimbursement, parking meter space rentals and pressure cleaning associated with the staged Antiques and Collectibles markets. If any of these payments were not received by the due dates listed in section 4.2, the signed concession agreement states that they are subject to interest at 12% per annum (section 4.5) plus a late charge of \$50.00 per day for any payment received after five days of its due date (section 13.2). While this daily late fee is specifically outlined in the agreement, calculation of these fees for any extended period of time causes the amount owed to be extremely high as shown below.

The Office of Real Estate, Housing and Community Development did not time/date stamp any of the reviewed concessionaire payments supporting documentation upon receipt. Given the occasional lengthy span between the concessionaire's prepared check date and the actual date it was processed by the Finance Department's Central Cashier's Office, Internal Audit elected to use the check date as the date received in its calculations to determine the payment's timeliness. Given this conservative assumption, testing identified that the following number of late payments were received resulting in the listed interest and late charges being applicable:

- 24 of the 49 applicable market dates (51 scheduled dates - 2 complete rain outs) or 48.98% of the received rental payments resulting in \$1,330.02 in interest and \$95,450.00 in late charges. \$77,600.00 of these total late charges or 81.30% originated from the concessionaire's failure to pay the rental payments associated with the May 8, 2011, February 19, 2012 and February 26, 2012 markets until notified by Internal Audit of their omission.
- 23 of the 47 applicable market dates (51 scheduled dates - 2 complete rain outs – December 9, 2012 and December 23, 2012 for which payment has not yet been received) or 48.94% of the received Field Monitor salary reimbursement payments resulting in \$27.43 in interest and \$96,500.00 in late charges. \$77,450.00 of these total late charges or 80.26% originated from the concessionaire's failure to pay the rental payments associated with the May 8, 2011, February 19, 2012 and February 26, 2012 markets until notified by Internal Audit of their omission. Furthermore, the amount of interest and late charges will also increase once the missing Field Monitor salary reimbursement payments for December 9, 2012 and December 23, 2012 are received.
- Three of the four pressure cleaning payments received (five others have not been received to date) or 75% resulting in \$9.30 in interest and \$13,400.00 in late charges. Again, the amount of interest and late charges will increase once these five missing payments have been remitted.

Despite the receipt of these numerous late payments, it was determined that the City's Redevelopment Coordinator or his designee did not invoice the concessionaire for any interest (\$1,366.75 total above) and/or late charges (\$205,350.00 total above) incurred during the audit period.

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Recommendations:

The Office of Real Estate, Housing and Community Development should time/date stamp all concessionaire received documents to aid in determining the timeliness of their submittal. Furthermore, the City should more closely monitor the concessionaire's payments to ensure that they are received by the designated due dates. 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 which would include the remaining unpaid amounts identified above. Finally, the City Administration should decide on the appropriate amount to invoice the concessionaire as the \$50.00 daily late charge provision seems unreasonable as it represents 150 times the calculated interest due.

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

Pursuant to the Supplemental Management Practices, Office of Real Estate will be able to capture any interest or late charges which accrue, as they accrue. The Administration is currently determining whether or not to charge concessionaire for the interest or late charges which have accrued.

3. Finding: Assorted Inconsistencies Observed with the Signed Concession Agreement's Terms during a Sunday May 5, 2013 Site Visit are Listed

The following points summarize the results of Internal Audit's observations and inquiries during a Sunday May 5, 2013 site visit of the Antiques and Collectibles market:

- a. The signed concession agreement's section 2 supported by Exhibits 2.1 and 2.2 describe the concession area as Lincoln Road between Meridian Avenue and Alton Road plus Michigan Avenue bordered by South and North Lincoln Lanes. Furthermore, it states that the concessionaire shall not deviate from or alter the approved site plans without the prior written consent of the City Manager or his designee according to section 3.1.2.

The concessionaire provided an amended site plan which included Jefferson Avenue between North and South Lincoln Lanes due to the loss of the 1100 block of Lincoln Road between Lenox Avenue and Alton Road. The inclusion of vendor booths on Jefferson Avenue with its openness allowed the concessionaire to exceed the maximum number of booth space tent rentals (115) listed in Exhibits 2.1 and 2.2 of the signed concession agreement during various markets in deference to section 3.1.3. For example, documentation provided by the concessionaire showed that 123 tents were rented at the February 3, 2013 market.

- b. A majority of vendors did not have their designated placards posted showing such identifying information as their name, their assigned vendor number and the authorized products to be sold.

Recommendations:

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

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- a. The concessionaire should not exceed the maximum number of booth space tent rentals (115) at a designated market date without prior approval from the City.
- b. Market vendors should always display their placards providing their identifying information to its readers.

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

Through the Supplemental Management Practices, Office of Real Estate should be able to determine whether or not the concessionaire is in compliance with the approved site plan and enforce same. The new contract should specify a maximum amount of spaces/tents which may be designated for this location and further require that the concessionaire require vendors to display their placards providing their identifying information to its readers.

Concessionaire Responses:

Production Sud thought that it was sufficient to simply inform the City's Field Monitor about any price changes and any show cancellations due to weather. Note: the Field Monitor was informed about any price changes; also any and all changes were also reflected in the vendor contracts on our website and were also listed and calculated in all monies submitted to the City. We will conform to any new procedures that the City puts forward. The amended site plan was submitted by the City in response to the Antique Market losing 28 spaces on the 1100 block of Lincoln Road for three seasons which was a loss of revenue for Production Sud, and also the City of Miami Beach. Placards are always affixed on all tents with vendor name/ info, by 6.a.m. or earlier. As to show dealers where they are placed on that morning of the show.

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

Section 18 of the signed concession agreement states “*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.*”

The concessionaire provided documentation showing that vendors were consistently charged \$185.00 for single booth space tent rentals and \$170.00 for each tent when more than one is rented. However, the rental fee schedule in Exhibit 3.1 of the signed concession agreement states that single prices should be \$165.00 from October through December, \$185.00 for January and February, and \$165.00 for March through May. Similarly, double booth space tent rental fees are to equal \$300.00 from October through December, \$330.00 for January and February, and \$300.00 for March through May. Although the concessionaire and the City both benefit from these increased prices charged, no evidence was found indicating that the City Manager or his designee had approved these revisions in advance or had created a new Exhibit 3.1.

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Vendors will also occasionally not show up to the markets resulting in unmanned tents and leaving the concessionaire with no financial recourse since they are not obligated per a signed contract. In these instances, other vendors are typically permitted to use these tents at no charge. Similarly, the concessionaire will allow pre-selected vendors to use extra tents at no charge during slower markets to make them fuller and more attractive to patrons as confirmed during the May 5, 2013 site visit. Finally, the concessionaire operates two booths at each market. The concessionaire did not treat these aforementioned complimentary booth space tent rentals as if they were paying vendors and include these unpaid full amounts in the gross receipts figure upon which 12.50% is due to the City.

Recommendations:

The concessionaire should fully comply with section 18 of the signed concession agreement and not increase prices unless approved in advance by the City Manager or his designee. Also, any complimentary booth spaces/tents given to vendors or used by the concessionaire should be included in the amounts paid to the City as if the corresponding individuals had remitted full price.

Management Responses (Office of Real Estate, Housing and Community Development):  
Office of Real Estate is preparing a letter agreement between the City and concessionaire to update the current fees so the concessionaire may be brought under compliance.

Concessionaire Responses:

The contract referred to above here is from October 2008 to May 2009 season and Production Sud has not charged that older \$165 fee change since then. Also, the City was sent all the fees with any adjusted rates on that year. \$185 is the current uniform price since Oct 2010 to 2013. It is also an industry standard to allow booked vendors to move items into an adjoining empty tent the day of the show at no extra cost to any dealer's lucky enough to be situated close by, as it is important that the show looks full and successful at all times. It is also an industry standard that the promoters do not pay for their tents, or their presence at the shows, as they promote the event & conduct all public and dealer information. During even slower market months we need to address that this is a Special Event, and we need to make it as exciting and interesting as we can, as to compete and compare this city and the Antique Markets, as done in all major cities like London, Paris, New York City.

5. Finding: The Listed Areas in the Signed Concession Agreement Effective since October 2006 Needs to be Updated

Review of the signed concession agreement's terms in effect since October 1, 2006 contained the following terms that are in need of revision:

- a. Section 3.10 of the signed concession agreement states that the concessionaire shall obtain the applicable "Retail Sales" category City occupational license/business tax receipt. However, subsequent inquiries with the City's Revenue Supervisor found that this category does not apply to them as they were properly charged instead as "agents, broker, dealers..." during the audit period unbeknownst to the Redevelopment Coordinator.

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- b. Section 4.1 of the signed concession agreement summarized states that the concessionaire is to furnish the City with a \$2,500.00 security deposit. This payment was received and processed by the Finance Department's Central Cashier's Office on January 12, 2005. Furthermore, section 14 entitled "performance bond or alternate security" was labeled as "intentionally omitted" in the signed concession agreement. Therefore, the City's primary means to help secure the concessionaire's performance is the \$2,500.00 retained security deposit but the average market total booth space rental payment received during the audit period was \$2,169.56 (\$106,308.51 total rent payments/49 market dates for which payments were received).

Recommendations:

The next negotiated and approved concession agreement should consider containing the following terms:

- a. The concessionaire should only be required to annually obtain a business tax receipt as it should not mention a specific category since they are subject to change. Its attainment should be confirmed by the Redevelopment Coordinator with any found differences immediately addressed with the Licensing Section and the concessionaire.
- b. The next approved concession agreement should require a larger security deposit and/or irrevocable letters of credit, performance bond, etc. to better protect the City in the event of the concessionaire's nonperformance. It is recommended that the security deposit at least equal the average of three months market rental payments to adequately protect the City during the time that it would take for a new Request For Proposal to be issued and a new concessionaire selected.

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

The Office of Real Estate shall incorporate the following in the new concession agreement:

- a. The concessionaire should be required to annually obtain a business tax receipt with at least the "agents, broker, dealers..." category.
- b. The next approved concession agreement should require a larger security deposit of at least equal the average of three months market rental payments to adequately protect the City during the time that it would take for a new Request For Proposal to be issued and a new Concessionaire selected.

6. Finding: The Audited Annual Statements of Gross Receipts Required in Section 6 of the Signed Concession Agreement were Not Submitted or Requested during the Audit Period

Section 6 of the signed concession agreement states "*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 had noticed their omission and requested their submittal.

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Recommendations:

The concessionaire should immediately submit audited annual statements of gross receipts for each fiscal year since October 2010 to the City. Once received, the audited gross receipts figures should be compared to the monthly payments supporting documentation with any differences immediately investigated.

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

The Office of Real Estate has already requested the last three years of audited Annual Statements of Gross Receipts and the accountant for the concessionaire is in the process of preparing same.

Concessionaire Responses:

We agree with the City's recommendations for facilitating the shows, we feel that the current audit addresses any documentation requested for this period. Our C.P.A. as required by the City of Miami Beach has complied with any requests made by the City.

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

Section 11 of the signed concession agreement 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 provided 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 which was immediately 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 help track the insurance coverage's expiration dates as a compensating internal control. Once received, the certificate should continue to be reviewed by the City's Risk Manager for sufficiency with any deficiencies immediately corrected.

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

As part of the Supplemental Management Practices, the Office of Real Estate has requested updated insurance certificates, in accordance with the contract and the expiration dates will be entered in the Eden System, as a reminder to update same for next year.

Concessionaire Responses:

Regarding the 23<sup>rd</sup> Jan 2012 expired insurance certificate; the City's Redevelopment Coordinator received a copy of our insurance policy covering the period covering between Jan 2012 up to the 2013 period. Furthermore, we recently added automobile coverage to our insurance policy so that we are in compliance.

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8. Finding: *Off-Duty Police Officer Payments were not Received Prior to the Engagement and the Corresponding Monies were not Timely Delivered to and Processed by the Central Cashier's Office*

Police Off-Duty Standard Operating Procedure #011 summarized requires all applicants requesting police off-duty services to pay in advance to help ensure that the corresponding officers receive their compensation in a secure and timely manner, as well as to recover the costs incurred by the City for providing the services. Testing found that the concessionaire provides the off-duty police officer(s) working the Antiques and Collectibles market with a check payable to the City of Miami Beach at the end of each market date which was to be then brought to the Off-Duty Office before eventually being delivered to the Finance Department's Central Cashier's Office for processing. Although Internal Audit was unable to determine the root cause of the delay, a comparison of the check date with the Eden System's processing date determined that the number of days ranged from a low of 10 (November 7, 2010) to a high of 116 (January 29, 2012).

Recommendations:

The Police Department's Off-Duty Office should create a City Bill invoicing the concessionaire prior to each market date for the requested amount of hours plus administrative charges. The police officer should not be dispatched unless the monies are received in advance of the off-duty engagement where they should be promptly delivered to and processed by the Central Cashier's Office to help offset any costs incurred by the City.

Management Responses (Police Department):

A review of the Antiques and Collectibles File in the Off-Duty Office shows payments for services are received by the job coordinator the same day services are rendered. This payment is transmitted to the Off-Duty Office within 2 – 3 days on average. The above noted delay is not the result of late payments by the concessionaire, but rather delays in processing by the Off-Duty Office and Finance Personnel. These delays are largely the result a shortage of administrative staff within the Off-Duty Office. Over the past year the Off-Duty Office was operating with 1 Administrative Aide as opposed to the budgeted 2. The noted vacancy is now filled and the required training completed. Moving forward the goal of the Off-Duty Office will be to complete payment processing within 30 days, but under no circumstances will the officers be paid prior to the processing of concessionaire payments.

Concessionaire Responses:

We understand that the City requires that the Police Department be paid in advance in order to protect the City. We were reliably paying our police officer at the day of the show mainly to save us from one more errand. We will comply with the City's requirement to pay the police officer show in advance.

## EXIT CONFERENCE

An 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 12, 2013 with the concessionaire. All parties were in agreement as to the contents of this report. Management responses were solicited and included in our report.

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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  
Raymond Martinez, Police Chief  
Louis Bondi and Anthony Angione, Production Sud, Inc.