



MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT
Internal Audit Division

INTERNAL AUDIT REPORT

TO: Kathie G. Brooks, Interim City Manager
FROM: James J. Sutter, Internal Auditor

DATE: August 3, 2012
AUDIT: Miami Beach Garden Conservancy, Inc. Management Agreement Audit
PERIOD: October 1, 2008 through April 30, 2011

This report is the result of a regularly scheduled audit of the non-profit Miami Beach Garden Conservancy, Inc.'s compliance with tested provisions in their signed management agreement with the City to manage and operate the Botanical Gardens between October 1, 2008 and April 30, 2011.

INTRODUCTION

The City owns the Miami Beach Botanical Gardens located on 2.6 acres at 2000 Convention Center Drive across from the Miami Beach Convention Center. Admission is free to the public, six days a week between 9:00am and 5:00pm as the grounds are closed on Mondays.

Amid the gardens, sit four buildings used as offices, meeting rooms and storage facilities connected by a covered walkway. These rooms are also available for rent to individuals and organizations at designated rates approved by the City Commission. Meanwhile, the rental fee is waived for City and other duly constituted garden clubs with membership primarily situated in Miami Beach's functions.

A management agreement was executed on 03/19/02 authorizing the Miami Beach Garden Conservancy, Inc. (MBGCI) to manage and operate the Botanical Gardens. It expired on 06/30/04 but the City opted to extend the terms for an additional two years. Prior to its expiration, the Finance and Citywide Projects Committee recommended that the City Commission waive the competitive bidding requirement so that MBGCI could pursue its base mission and to see through the implementation of the general obligation funded capital improvements as well as to try and achieve full accreditation as a botanical garden. The City Commission agreed with this recommendation and subsequently ratified Resolution No. 2007-26429 authorizing MBGCI to operate the Botanical Gardens for another five year term commencing on July 1, 2007 with the City having the sole discretion to renew and extend the management agreement for a subsequent five year term.

This non-profit 501c3 organization currently operates under the leadership of an Executive Director and an active Board of Directors composed of volunteer citizens. Monthly board meetings are held (excluding August) to discuss relevant financial information as well as planning the Botanical Gardens future.

MBGCI's programs and activities are funded primarily by City of Miami Beach contributions, facility rentals, grants, memberships and donations. The following financial figures obtained from MBGCI's unaudited income statements summarize the non-profit organization's activities during the audit period:

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	10/08 – 09/09	10/09 – 09/10	10/10 – 04/11	Total
MBGCI Income	\$212,450	\$204,247	\$186,212	\$602,909
City Contribution	\$152,475	\$152,475	\$72,476	\$377,426
Total Income	\$364,925	\$356,722	\$258,688	\$980,335
Total Expenses	(\$386,109)	(\$355,805)	(\$201,851)	(\$943,765)
Net Income	(\$21,184)	\$917	\$56,836	\$36,569

Finally, the City designated a portion of the 1997 general obligation bond program to improving the Botanical Gardens facilities. The City Commission's ratification of Resolution No. 2008-26930 retained the firm of Raymond Jungles, Inc. to perform architectural, engineering and landscape architecture service for this renovation project. The enhancements include relocating existing palms and shade trees, adding more native plants and trees, removing extensive concrete pathways and brick pillars and moving the main entrance to the southeast corner of the facility.

Harbour Construction, Inc. was selected to perform the work necessary to fulfill this renovation. As a result, the Botanical Gardens temporarily closed for renovation as the physical work started on June 6, 2011 and was completed on October 25, 2011.

OVERALL OPINION

The Miami Beach Garden Conservancy, Inc. or MBGCI has operated the Botanical Gardens since 1997 when they assumed responsibility from the City's Parks & Recreation Department. Since that time, MBGCI among other improvements has increased the facility's cash flow and monetary reserves, established a loyal group of active volunteers and members, fostered good public relations, and helped maintain the grounds despite the pending uncertainty as to when the anticipated renovations would actually begin. Despite these positive attributes, the following weaknesses separated by the responsible party were noted during testing and are in need of corrective action:

MIAMI BEACH GARDEN CONSERVANCY FINDINGS:

- 1) The name of the caterer was frequently not listed on the customers' rental agreements. When listed, the sampled caterers were often not registered with the Finance Department's Resort Tax Division and therefore would not have remitted any corresponding resort taxes owed.
- 2) MBGCI's provided insurance coverage did not necessarily satisfy all the provisions listed in sections 10.1 and 21 of the signed management agreement.
- 3) MBGCI staff needs to revise the present rental agreement document and then require that customers fully complete all sections so that more pertinent information is garnered. Also, the rental rates charged during the audit period were revised without the City's permission from those previously approved in the signed management agreement.
- 4) Assorted internal control deficiencies are listed concerning the receipt, safeguarding and disbursement of MBGCI monies.

CITY FINDINGS:

- 5) The City's Property Management Division has not initiated the recertification process for the Botanical Gardens' auditorium (Banyan Room) in adherence to Miami-Dade County

Ordinance No. 75-34.

- 6) The monthly reports from MBGCI required by the agreement should be reviewed to ensure that budgeted amounts are met during the year in order to gauge performance and assist in determining whether the City contribution is reasonable.
- 7) The City's Parks & Recreation Department did not review MBGCI's maintenance levels during the audit period to verify compliance with section 9.2 of the signed management agreement. Furthermore, the Botanical Gardens have contracted whiteflies or insects which damage plants and spread diseases but aggressive efforts to try and eradicate the insect have not yet been implemented.
- 8) Revisions in the signed management agreement are suggested that would better protect the City's interests.

PURPOSE

To determine whether tested files, records and software systems maintained are complete, neatly organized and sufficient; whether City assets were properly safeguarded; whether tested revenues were adequately documented and completely recorded; whether tested expenditures were in conformity with the organization's purpose; whether tested required documentation was timely submitted to the City; whether selected other tested transactions in the signed management agreement were complied with; whether the Office of Asset Management effectively monitored the concessionaire's performance levels thereby promptly communicating any identified shortcomings; and whether tested payments made by the City's Finance Department equaled the annual amounts approved by the City Commission.

SCOPE

1. Confirm that comprehensive policies and procedures exist, are known to staff and are properly followed.
2. Confirm that the internal control process and segregation of duties implemented are adequate to help ensure that revenues were completely recorded.
3. Confirm that maintained documentation and software systems are organized, complete and sufficient.
4. Confirm by physical counts that tested City owned inventory is present and properly safeguarded.
5. Confirm that tested expenditures were necessary, supported with invoices and timely paid.
6. Confirm that the Miami Beach Garden Conservancy, Inc. has made all tested remittances to the City and is current with permits, taxes and licenses.
7. Confirm that tested required documents and reports are remitted timely to the City in accordance with the signed management agreement.
8. Confirm that the Miami Beach Garden Conservancy, Inc. has maintained the required insurance coverage.

9. Confirm that tested transactions entered into the City's Financial System were accurate.

FINDINGS, RECOMMENDATIONS, AND MANAGEMENT RESPONSES

MIAMI BEACH GARDEN CONSERVANCY FINDINGS:

1. Finding – *Caterers Were Not Always Remitting the 2% Resort Tax on their Food and Beverage Revenues Originating from Rental Events Held at the Botanical Gardens*

Article IV, Division 4, Section 102 of the Miami Beach City Code defines the parameters of resort tax. In summary, it is a 2% tax due on all food and beverages sold in Miami Beach and a 3% tax on all rents collected for stays shorter than six months. Consequently, the catered events held at the Botanical Gardens are subject to the resort tax's food and beverage provisions.

Internal Audit reviewed the signed rental agreements between the customer and Miami Beach Garden Conservancy, Inc. (MBGCI) occurring in the randomly sampled months of November 2008, July 2009, February 2010 and December 2010. In doing so, it was noted that the line item requesting the name of the caterer was frequently not completed by either the customer or MBGCI staff. When listed, it was found that most caterers (Lyon & Lyon, A Matter of Taste Catering, Top Notch Deli and Catering, etc.) were not registered with the Finance Department's Resort Tax Division and therefore had not remitted any resort taxes due.

Recommendation

Although MBGCI is not involved in the selection of the caterer as they are chosen directly by the rental customer, they should be required to ensure that the caterer's name is listed on the customer's signed rental agreement. Additionally, MBGCI should coordinate with the City's Finance Department to develop a resort tax information packet which can be distributed to each caterer. Included in the packet would be a resort tax compliance acknowledgement form which the caterer would have to complete and remit back to MBGCI to be placed in the event file. On the form, the caterer would provide company information and acknowledge that they are aware of the resort tax requirements and would remit any tax due to the City Finance Department. Those caterers located outside the city limits may file under a commonly shared resort tax number set up for the MBGCI.

Management's Response (MBGCI)

For the majority of people who rent the Garden, securing the venue is usually the very first step in the process of planning their event, often 12 to 18 months in advance of the date. Once they have booked the venue, they then begin assembling their team of caterers, florists, decorators, valet service, musicians, priest officiates, etc., depending on the nature of the event. Rarely, if ever, do clients know who their caterer or vendor(s) will be at the time they make their deposit to reserve the space.

It must be affirmed that MBGCI is only responsible for renting the Garden and its facilities. It is not and never has been responsible for contracting caterers and vendors servicing the events.

In regards to resort tax collection, MBGCI can fulfill the following:

- MBGCI's rental clients are required to pay a deposit when the rental contract is executed and to pay the full balance of the rental fee 60 days in advance of their event. At that time, Garden staff will ensure that information on the catering firm is obtained from the rental client and is noted in writing on the rental agreement. However, MBBG has no contractual obligation with caterers or other vendors of the client.
- 60 days in advance of the rental, Garden staff will deliver to the client and to the caterer, a resort tax information packet containing such resort tax information as prepared by the City's Finance Department. Such packet should be written, designed and printed by the Finance Department and delivered to MBGCI for distribution to clients. MBGCI assumes no responsibility for the collection of resort taxes and makes no guarantee of compliance on the part of the caterer.
- MBGCI will add to their rental forms a notice to the renter that any contracted provider (florist, disc jockey, caterer) must be properly licensed to operate in the City, and that any caterer must adhere to any requirements regarding the payment of resort tax.

2. Finding – *Sufficient Insurance Coverage was not Maintained Per the Signed Management Agreement*

MBGCI's provided insurance policies which were reviewed by the City's Risk Manager for compliance to the terms listed in section 21 of the signed management agreement where the following shortcomings were noted:

- MBGCI did not provide evidence that they obtained the required liquor liability insurance coverage of \$2,000,000 in the aggregate and \$1,000,000 per occurrence. Furthermore, section 10.1 of the agreement requires that all rental customers provide certificates of insurance that are to be approved by the City's Risk Manager. Instead, MBGCI charges rental customers a \$1 per attendee fee (excluding non-profits and City events) to be covered under its insurance policy which helps offset its cost. This practice is acceptable to the City's Risk Manager; however, the absence of sufficient liquor liability insurance coverage increases both parties risk exposure.
- MBGCI claims that they maintain workers' compensation through their contract with the payroll services and employee leasing company WorkSquare LLC of Miami, which is responsible for payroll, state and federally mandated employment tax withholding and provision of workers' compensation coverage. However, no documentation has been provided to confirm this statement as of yet. The City was not named as an additional insured on any provided insurance policies.

MBGCI's insurance policies were not furnished to the City's Risk Manager for approval during the audit period which would have been helpful in discovering and correcting these identified deficiencies earlier.

Recommendation

MBGCI has been contacted regarding the aforementioned insurance coverage shortcomings and is working toward an acceptable resolution. Once the new coverage is obtained, the insurance policies should be promptly sent to the City's Risk Manager for his review and approval to best protect the City's interests. In the future, the City's Lease monitor should ensure that MBGCI's insurance policies are timely received and are promptly forwarded to the Risk Manager for his review and approval.

Management's Response (MBGCI)

Each year, MBGCI has in fact provided the City's Asset Management Department with copies of all insurance coverage, including Commercial Liability, Windstorm, Flood, Officers and Directors policies, providing coverages as required under Section 21 of the Management Agreement. While there is no specific mention in this Section singling out liquor liability per se, we believe this issue has been addressed as noted below. With regard to the City of Miami Beach not being specifically listed as an "additional insured" on the policy certificates, this is clearly an oversight by MBGCI, which is being addressed:

- The issue of liquor liability is still being worked out with the City's Risk Manager. MBGCI does not agree that all caterers serving alcohol on the premises be required to name the City as an additional insured and to submit this policy for approval to the City's Risk Manager prior to the event. The Garden has since provided the City with evidence that we do maintain workers' compensation for employees through our contract with the payroll services and employee leasing company WorkSquare LLC of Miami, which is responsible for payroll, state and federally mandated employment tax withholding and provision of workers' compensation coverage.
- Immediate action has been taken to add the City of Miami Beach as an "additional insured" on MBGCI's commercial liability policy. The request has been made through the Brown & Brown agency to amend the Zurich Commercial Policy PPS03565746. As soon as the revised documents are available, they will be filed with City's Asset Management Office for distribution to appropriate departmental entities.

3. Finding – *Event Rental Documentation Needs Revision and MBGCI's Charged Rate Rental Rates Differed From those Approved in the Signed Management Agreement*
Approximately 25% of MBGCI's annual income is derived from facility rentals for meetings, weddings, parties, etc. Information relevant to each event was stored together in three ring binders by calendar year. Internal Audit reviewed all provided rental events occurring in the randomly sampled months of November 2008, July 2009, February 2010 and December 2010 to find the following documentation and rental rate deficiencies:

Documentation

- a. Seven of the twenty-seven sampled rental agreements whereby customer payments were received (25.93%) did not contain the customer's signature indicating acceptance of the listed terms, fees, rules and regulations, etc.
- b. The customer's signed rental agreement does not currently contain the names and addresses of any hired photographer, florist, etc. working the event so that the City could ensure that these individuals or companies have a valid Miami Beach business tax receipt (if applicable).

Rental Rates

- c. Although organizations such as Miami Beach Toastmasters, Surfrider Foundation, Coral Reef 101 Foundation and Kiwanis Club are non-profit organizations, they are not affiliated with the City or duly constituted garden clubs per section 5.1 of the management agreement. Consequently, they are incorrectly permitted to use the facility at either lesser rates or for no charge (some are required to make an annual \$500 donation or to have their organization's members pay \$50 each to become members of the Botanical Gardens instead).
- d. Section 10.1 of the signed management agreement requires MBGCI to adhere to

the listed rental rates with the City having the sole discretion to approve their revision. Yet, testing found that MBGCI, without the City's permission, raised the Banyan Room's rate from \$800 to \$850 for four hours, lowered the Great Lawn from \$3,000 to \$2,500 for four hours, raised the staffing charge from \$24 per hour to \$25 and created a new rental for the entire garden at a charge of \$4,500 for four hours. In addition, MBGCI also increased the additional hours charge for each venue without the City's consent (ex. Japanese Garden increased from \$75 per hour to \$125).

- e. The Japanese Gardens and Great Lawn rates were reduced to \$300 and \$450 respectively for rental customers wanting to use these areas for two hours to hold the weddings, etc. before moving inside to one of the smaller rooms. Yet, Exhibit G of the signed management agreement does not address these discounted rates.
- f. The signed management agreement is silent on the issue but City employees and non-profit organizations were permitted to receive 20% discounts from the stated rates.

Recommendation

MBGCI should implement the following recommendations concerning the completion of rental agreements and the rental rates charged to facility users:

Documentation

- a. The event rental agreement should always be signed by the customer indicating his/her acceptance of the designated terms.
- b. MBGCI's rental agreement should be revised to have the customer list the name, address and business tax receipt number of all hired to work the event. Upon its completion, MBGCI should promptly forward this information to the City's Licensing Section and Code Compliance Division for further investigation. Anyone that meets the requirements of Florida Statute 205.042 and needs a Miami Beach business tax receipt should be required to obtain one prior to working the event or risk being cited by the City's Code Compliance Division.

Rental Rates

- c - f. MBGCI should not revise the City Commission approved rental rates without first receiving written approval of the City. Unless the signed management agreement is amended by both parties, all organizations other than those specifically listed in section 5.1 should pay the stated authorized rental rate for the usage of the venue.

Management's Response (MBGCI)

There is no doubt that during the years 2008 to 2012, the Garden has gone through many changes and has had to respond to an economic recession, contract cancellations due to clients losing jobs and homes, a slump in summer bookings, a series of hurricanes, and the uncertain timing of MBGCI's own renovation plans. MBGCI operates as a non-for-profit, but makes every effort to work as a business. At times, MBGCI has had to offer a summer discount as well as respond to market forces. For example, when the Boat Show scaled back operations, they stopped renting the Garden. Because of the Garden's location within the confines of the Boat Show area, MBGCI was and remains unable to rent the facility during most of the month of February. Additionally, MBGCI annually hosts Art Basel, as mandated by the City, and while MBGCI receives a \$1,000 honorarium, it is unable to rent to anyone else for up to 10 days.

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- a. The Garden will enforce its requirement of original or faxed signature on all contacts.
- b. MBGCI only rents the Garden and its facilities as a venue for events and is not responsible for the hiring of caterers or any other vendors associated with the events themselves. To the extent that any and all vendors, local or not, are required to have or show a Miami Beach Business Tax Receipt or BTR, even if just for a one-time event on Miami Beach, MBGCI can certainly include such requirement language in the Rental Agreement language, as provided by the City's Finance Department. Finally, MBGCI will collect from the renter the name and contact information of the florist, photographer, etc. and forward it to the City's Finance Department to determine if a business tax receipt is needed.[]
- c-f. MBGCI's primary mission is to promote the Garden as a public amenity. This strategy has proven effective. Today the Garden has achieved greater visibility, has developed a strong base of members and supporters and is valued as a community partner with dozens of organizations. The fact that MBGCI offers free admission and partners with community service and arts organizations should in no way detract from its management or fiduciary responsibility to the City which the Board of Directors of the Garden Conservancy has accepted.

MBGCI's goal of increasing awareness and providing free public access to the Garden has been a key ingredient in its approach to welcoming community service organizations including, but, not limited to, the Kiwanis, Rotary, Toastmasters, Surfriider Foundation, ECOMB, Ability Explosion, the City's Beautification Committee, the Miami Beach Women's Conference, MBCDC, the Jewish Film Festival, Save Dade, Miami Beach Chamber of Commerce, the Women's Film Festival, the annual AIDS Walk and dozens of others. Some pay little and some pay what they can. It should be noted that some groups are often accommodated at the request of elected City officials. MBGCI conducts free daily tours, has hundreds of schools groups visit, hosts arts organizations for music, dance, art exhibits and theater and also hosts a children's art camp. MBGCI counts it as a great blessing to operate this venue for the City and believes it is a vital part of its mission to make the Garden available to as many people and programs as possible.

Going forward, MBGCI agrees to charge the rates in the signed management agreement unless written approval is received in advance from the City. It should be noted however, that subsequent to the completion of renovations of the facility, MBGCI has conducted a comprehensive pricing analysis of comparable facilities in Miami-Dade County and has submitted a proposed revision of its rate structure to the City for its consideration and approval.

4. Finding – *Internal Control Deficiencies are Listed Regarding the Receipt, Safeguarding and Disbursement of Monies*

A cursory review of MBGCI's maintained internal controls over the receipt, safeguarding and disbursement of monies found the following deficiencies:

- a. Inquiries revealed that several price quotes were usually received for larger purchases and known vendors were used. However, these price quotes were typically disposed of as they were not maintained in the vendor files.
- b. Supporting invoices for six of the sixty sampled payments or 10% could not be found in the files as only the QuickBooks printed check remittance was present. Also,

separate invoice files were not maintained for each fiscal year thereby making it more time consuming to locate desired invoices.

- c. MBGCI currently has four signatories on their United Bank checking account: the Executive Director, the current Board of Directors President, the previous Board of Directors President/General Counsel and the Treasurer. However, their standard procedures require only one authorized signature to issue and process a check regardless of the amount.

Recommendation

The implementation of the following recommendations should improve the internal controls surrounding the receipt, safeguarding and disbursement of monies:

- a. Quoted prices should be documented and maintained in the files to support the purchase price obtained.
- b. Checks should be prepared only upon the receipt of the corresponding invoice, which should be attached to the check remittance and stored in the appropriate fiscal year's vendor file.
- c. The requirement of two signatures on prepared checks in excess of a designated threshold (ex. \$500) is a sound compensating control. In addition, MBGCI's bylaws may be similarly amended to require Board of Directors on all large purchases.

Management's Response (MBGCI)

In regards to improving internal control procedures, MBGCI can fulfill the following:

- a. On a month-to-month and year-to-year basis, the Garden's chart of accounts and regular monthly vendor payments do not change significantly. MBGCI will ensure that all price quotes are documented and maintained in the files to support the purchase price obtained.
- b. MBGCI will ensure compliance with this requirement
- c. It is MBGCI's policy that the Executive Director must receive verbal or written approval from the President of the Board of Directors for any one-time or extra-ordinary expense in excess of \$500, such as emergency replacement of pump equipment, etc. Every project and large purchases are discussed and approved by the Board of Directors at its monthly meeting, with oversight by the treasurer and the CPA.

Internal Audit Observation:

As long as the compensating controls described in "c" above continue to be followed, Internal Audit believes that the two signature requirement is not necessary.

CITY FINDINGS:

5. Finding – *The Botanical Gardens' Auditorium/Banyan Room Has Not Satisfied the Recertification Requirements Listed in Miami-Dade County Ordinance No. 75-34*
Miami-Dade County Commissioners adopted Ordinance No. 75-34 on 05/21/75 requiring that any building or structure in existence for over forty years be recertified in ten-year intervals. The recertification process involves inspections, approvals and the timely completion/submittal of paperwork. The fundamental purpose of the required inspection and report is to confirm in a reasonable fashion that the building or structure under consideration is safe for continued use under present occupancy.

The only exceptions noted were single-family residences, duplexes and minor structures. A minor structure is defined as buildings or structures having an occupancy load of ten or less

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and having a gross area of 2,000 square feet or less. Three of the four buildings at the Botanical Gardens qualify as minor structures and are exempt from recertification. However, a fourth building called the auditorium or the Banyan Room was built in 1962 and contains 2,880 square feet based on a 2002 limited property appraisal. Consequently, the auditorium's recertification process should have been completed in 2002 but review of the City's Permits Plus System did not contain any evidence noting that it had been initiated.

Recommendation

The City's Property Management Division should immediately begin and complete the recertification process in compliance with Miami-Dade County Ordinance No. 75-34.

Management's Response (Property Management)

This facility is not scheduled for recertification until next year this time. A full report will be made available once the Engineers have completed the recertification inspection.

6. Finding – Lack of Review of Reports Submitted to City

Section 6.3 requires MBGCI to submit a monthly report of receipts and expenditures with a comparison to the stated budget and projection for the balance of the budget period but they were typically not received or requested. In addition section 7.1 of the signed management agreement requires the submittal of MBGCI's annual operating budget for the Botanical Gardens which should include a line item budget and the revenues that it anticipates receiving for the budget year. The City shall use such representation in evaluating its level of contribution for the coming fiscal year which would be approved as part of the City's annual budget process. The monthly reports should be reviewed to ensure that budgeted amounts are met during the year in order to gauge performance and assist in determining whether the City's contribution is reasonable.

For the audit period, the City Commission authorized the following payments to MBGCI through the ratification of the annual budget which were paid by the City upon the receipt of invoices from MBGCI:

\$152,475 for the 2008/09 fiscal year	(paid in full by monthly installments)
\$152,475 for the 2009/10 fiscal year	(paid in full by quarterly installments)
\$137,228 for the 2010/11 fiscal year	(paid in full by quarterly installments)

Finally, City staff has been asked to analyze MBGCI's provided operating budget as part of the discussion of the proposed increases to the rental rates, which is to occur during the Finance Committee's budget meetings.

Recommendation

While the City reduced its contribution for the 2010/11 fiscal year, reports required from MBGCI should be reviewed to measure performance against budgeted amounts and determination of the City annual contribution. This 10% reduction to \$137,228 was required of all entities receiving citywide funds in the city budget. this reduction was not tied to any review of expenses, etc.

Management's Response (MBGCI and Office of Real Estate, Housing and Community Development)

MBGCI currently reports to City' Asset Management Office, to whom it submits its annual budget, as well as its monthly financial report with balance sheet and profit & loss

statements, including year-to-date compilations and previous year actuals for comparison. This monthly financial report is also presented to the Board of Directors by the Treasurer at a Board meeting on the third Tuesday of each month. As noted in the above finding, the City's annual contribution to the Garden Center's operation has historically been budgeted through the City's Office of Management and Budget as a Citywide Cost Center line item. It should be noted that since 2001, as MBGCI has been able to increase its public/private funding contributions, the City has been able to reduce its annual contribution by approximately 33%, or from \$200,500 in FY 2001/02 to \$137,228 per year as of FY 2010/11.

It should also be noted that MBGCI operates the 2.6-acre Botanical Garden for and on behalf of the City. Previously it was operated by the Parks and Recreation Department. The contribution to the Garden is intended for horticulture maintenance, staffing and programming. It should further be noted that during the due diligence process associated with the Garden's contract renewal in 2007, the Parks Department estimated it would cost them approximately \$260,000 annually to operate and maintain the Garden alone. As noted above, the City's current annual contribution is nearly half this amount.

7. Finding – *The City's Parks & Recreation Department is not Ensuring that MBGCI is Properly Maintaining the Botanical Gardens per Section 9.2 of the Management Agreement*
Section 9.2 of the signed management agreement states "*The Conservancy {MBGCI} shall, at its sole cost and expense, have the sole responsibility for maintaining the grounds and horticulture of the Botanical Garden. To that end, the parties herein acknowledge, and the Conservancy herein agrees to be bound by, the minimum maintenance standards as set forth in Exhibit C to this Agreement, entitled "City of Miami Beach Minimum Specifications for Maintenance of the Miami Beach Botanical Garden". It is further understood that the Conservancy shall provide the City with a monthly maintenance report, in a format to be approved by the City Manager and/or his designee.*" Inquiries found that MBGCI has not submitted a monthly maintenance report during the audit period to the City's Parks & Recreation Department, nor has one been requested. Furthermore, the City has not regularly inspected the premises to ensure that MBGCI is complying with Exhibit C.

Although the signed management agreement clearly requires the submittal of monthly maintenance reports, inquiries with the City's Parks & Recreation Department found that they were never notified of these provisions. Consequently, they were not aware that these reports needed to be received or of the need to request them.

Internal Audit toured the grounds with MBGCI's Horticulturalist where it was discovered that whiteflies were swarming around plants and trees near the Botanical Gardens current Convention Center Drive entrance. These destructive insects feed on the underside of leaves damaging the plant. Although a widespread problem and difficult to control, there are neonicotinoid compound pesticides and other treatments that can help limit the damage. Inquiries found that MBGCI has not elected to currently utilize these methods as they are supposedly waiting for the current Harbour Construction, Inc. renovation to be completed before taking more aggressive actions against the whiteflies.

Recommendation

MBGCI should provide the City's Parks & Recreation Department with the required monthly maintenance reports in adherence to section 9.2. Furthermore, the Parks & Recreation Department's designated employee should periodically inspect the Botanical Gardens to confirm that the stated minimum maintenance thresholds are satisfied. Any noted

deficiencies should be documented allowing MBGCI a designated time for resolution. Copies of the maintenance reports submitted, as well as the responses received from the Parks and Recreation Department should also be provided to the Asset Management Office.

Management's Response (Parks and Recreation)

Beginning in July 2012 the Parks and Recreation Department's Greenspace Management staff will meet with the appropriate staff from the Botanical Garden to coordinate an inspection meeting and establish a formal monthly inspection schedule.

Management's Response (MBGCI and Office of Real Estate, Housing and Community Development)

MBGCI agrees to meet with Greenspace Management staff to assist in the completion of these required monthly maintenance reports and agrees to take the necessary corrective actions. The Garden welcomes input from the City's Parks and Recreation Department which was also part of the team responsible for the successful implementation of our \$1.2 million landscape redesign. The Garden was closed to the public from June 6 to October 29, 2011 to accommodate the construction. It was decided by the horticulture experts, landscape designers and project managers that it was not the appropriate time to treat whitefly when trees were being root pruned, dug up, stored and relocated during a five month period.

When the redesigned Garden opened on October 25, 2011 the treatment of whitefly became part of the horticulture maintenance plan. However it is a city-wide scourge. The Garden's Director of Horticulture maintains close contact with the Miami-Dade County Extension Service and serves on several committees to raise awareness and combat specific threats such as whitefly, African swarming bees, and the latest Giant Snail epidemic.

8. Finding – *Suggested Revisions to the Signed Management Agreement to Better Protect the City's Interests*

Upon review of MBGCI's signed management agreement, it was noted that the following terms were not addressed which if included would better protect the City's interests:

- a. MBGCI has added a \$125 janitorial fee and a \$50 Botanical Gardens membership fee that are charged to rental customers thereby increasing the effective rates set by the City Commission.
- b. If MBGCI's net income or bank balances exceed or fall below pre-defined thresholds, then the City's next annual contribution would warrant adjustment or the City may receive a designated percentage of any designated overages.
- c. An annual audit by a certified public accountant (CPA) is not required as MBGCI currently has a compilation performed instead to satisfy the general requirements listed in section 6.3. Testing found that MBGCI complied with this provision during the audit period except that the Accountant's Compilation Reports were not subsequently forwarded to the City. However, a compilation does not require the CPA to gather evidence and verify client information as it is restricted to financial statement information provided by management and they do not express an opinion or any other form of assurance on them. Conversely, audits require more extensive testing and are more costly as they result in the CPA providing reasonable assurance that the presented financial statements are free from material error.
- d. Exhibit D of the management agreement contains an inventory list of City owned items (chairs, tables, bookcases, Rubbermaid storage sheds, etc.). Internal Audit's physical count and subsequent reconciliation with Exhibit D revealed both shortages and

overages. The shortages were most likely caused by disposals due to obsolescence or damage, while the overages were a result of purchases. Furthermore, the City was not notified of these changes in inventory as required in management agreement section 9.3.

Recommendation

The City Administration should consider amending the signed management agreement with MBGCI to address these issues to avoid any confusion over acceptable terms and to better protect the City's interests. Financial information from the contractor should be reviewed on an annual basis to determine the City's contribution levels. Also, MBGCI should not dispose of City property without receiving proper approval and the City should determine what action to take (if any) concerning the missing inventory. Meanwhile, a new inventory list should be completed no less than on an annual basis and provided to the City, to accurately portray the City owned items present on the grounds.

Management's Response (MBGCI and Office of Real Estate, Housing and Community Development)

- a. During the summer of 2011, Miami Beach Botanical Garden compiled a chart of comparable fees charged by competitive facilities (Pincrest Garden, the Shane Center, Spanish Monastery, Bass Museum, Fairchild Garden) in order to evaluate its pricing and policies. The Garden rates are by far the least of any comparable facility. It is common policy to require that users of a facility first become a member of the organization.
Clients are charged for security, insurance, and cleaning service as standard industry practice both to protect the venue and provide the best experience for guests. MBGCI will stop charging these hard costs for current events but would like to have them addressed by the City as part of the proposed new rental rates currently being considered.
- b. The not-for-profit Miami Beach Garden Conservancy accepts its fiduciary responsibility. MBGCI created a hurricane reserve account after several years of being subject to a series of destructive hurricanes. Buildings can be insured. Plants and trees cannot be insured. Having spent \$1.2 million on a new garden landscaping, it would seem appropriate for the City to encourage the Garden in its efforts to maintain a hurricane reserve fund. The Garden's efficient and effective management of its assets and resources has ensured it always operates in the black and builds reserves. Surely such initiative and responsibility should not result in less support from the City's side of the public/private partnership.
- c. The Garden has implemented a multi-tiered financial oversight committee that includes review and responsibility at the levels of the Executive Director, the Treasurer of the Board, monthly financial reports to the Board of Directors, an external paid CPA, and reporting to the City. Since audits are expensive, if the City amends the agreement to require annual audits in the future, then the City's funding to MBGCI should be adjusted accordingly.
- d. The Garden is currently updating its inventory and will provide the completed version to the City. The update will reflect new plants and trees, pond equipment, horticulture supplies and additions to the facility as a result of the landscape redesign. A new plant nursery and storage area is presently being constructed by Harbor Construction which was not part of the landscape redesign but is being funded by the Conservancy. During the past 10 years, MBGCI has funded and implemented significant leasehold improvements in

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excess of \$50,000 value. Additionally, MBGCI has upgraded its equipment, principally that which is used by the public, for example:

- Purchase of 200 white folding chairs with padded seats to replace red vinyl and aluminum chairs that were cast-offs from the Convention Center;
- Purchase of 12 banquet tables (60" rounds) and 12 rectangular tables (8' long);
- Purchase of a smaller cake table for weddings;
- Purchase through Miami-Dade County Cultural Affairs Department grant funding for a powerpoint projector and screen, podium with microphone, speakers and sound board, pipe and drape system, a new laptop computer.

MBGCI believes it is in the best interests of the City to encourage the Garden to secure grant funding from Miami-Dade County and from foundations, as well as private donations of horticulture materials and equipment. MBGCI also accepts donations for tribute and memorial gardens and naming gifts.

MBGCI will provide a submitted inventory form on an annual basis reflecting any additions to or removals from the inventory. Those items to be removed will first be offered to the City to determine if wanted. If not, MBGCI will try to donate the item to a charitable foundation if possible. Finally, the item will be disposed of if no other usages can be found.

EXIT CONFERENCE

An exit meeting was held on April 11, 2012 to discuss the audit report and solicit management responses noted above from affected City personnel. Attendees included Real Estate, Housing & Community Development Director Anna Parekh, Redevelopment Coordinator Kent Bonde, MBGCI Executive Director Laura Jamieson, Internal Auditor James Sutter and Senior Auditor Mark Coolidge. All parties were in agreement as to the contents of this report. Management responses were solicited and are included above.

JJS:MC:mc

Audit performed by Senior Auditor Mark Coolidge

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cc: Max Sklar, Acting Assistant City Manager
Anna Parekh, Real Estate, Housing & Community Development Director
Patricia Walker, Chief Financial Officer
Kevin Smith, Parks & Recreation Director
Duane Knecht, Property Management Division Director