

# MIAMI BEACH

BUDGET AND PERFORMANCE IMPROVEMENT  
Internal Audit Division

## INTERNAL AUDIT REPORT

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

DATE: July 31, 2015  
AUDIT: Penrod Brothers, Inc. Lease, Concession and Letter Agreements Audit  
PERIOD: October 1, 2012 to January 31, 2015

This audit report is the result of a regularly scheduled audit of selected terms pertaining to the Penrod Brothers, Inc.'s lease agreement covering the Pier Park Restaurant located at 1 Ocean Drive, the concession agreement applying to the area between the restaurant and the dunes called Nikki Beach and a letter agreement relating to the beaches located seaward of the dunes. In addition, a resort tax audit verifying the entity's food and beverage revenues was performed simultaneously by a Tax Auditor whose results are reported separately.

### INTRODUCTION

On October 2, 1985, the Mayor and City Commission adopted Resolution No. 85-18223 and the related lease agreement authorizing Penrod Brothers, Inc. (Penrods) for the development, construction, management and operation of a restaurant facility in Pier Park pursuant to Request For Proposal (RFP) No. 202-84/04 issued August 2, 1985. This agreement was for a period of twenty years expiring May 6, 2006 with two additional ten-year option periods automatically renewable at Penrods discretion.

Along with this resolution, the City Commission adopted Resolution No. 85-18222, approving a concession agreement with Penrods for the sale of food and beverages, rental of lounging and related equipment services within a portion of Pier Park, which expired on November 4, 2000. The City subsequently extended this concession agreement an additional year to allow for the issuance of a RFP for the beachfront concessions which was ultimately issued on February 21, 2001 and was subsequently awarded to Boucher Brothers Miami Beach LLC. The new concession agreement was approved by the City Commission and became effective November 5, 2001 for a period of five years with an option to renewal for an additional five year term.

The City Commission subsequently ratified Resolution No. 2001-24678 authorizing the City to enter into a concession agreement with Penrods to provide continued service to beach patrons seaward of Pier Park. The agreement was to be on a month-to-month basis and to include such terms as requiring Penrods to pay the City annually the greater of \$10,000 or 20% of gross receipts, to comply with the City's insurance and indemnification requirements and to abide by the City's rules and regulations for beachfront concession operations. A letter agreement was subsequently signed by both parties on March 1, 2004 listing the pertinent terms for the 2003/04 fiscal year with a second one signed effective October 1, 2013 for the 2013/14 fiscal year.

On February 25, 2004, the City entered into a separate concession agreement with Penrods by Resolution No. 2004-25506 for the portion of Pier Park immediately adjacent east of the restaurant (Nikki Beach) since it was not included in any of the other agreements. It commenced retroactively to October 1, 2003 with the original term expiring on May 6, 2006 with an option to renew to run concurrent with the terms of the Pier Park Restaurant lease agreement. The City and Penrods agreed to revisit and negotiate the financial terms governing

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the restaurant lease agreement, in regards to percentage payments, and where a concession agreement would commence covering the rentals of lounging equipment and food and beverage sales in the portion of Pier Park seaward of the footprint of the Pier Park Restaurant lease premise.

A third amendment to the lease agreement was entered into on February 25, 2004 under Resolution No. 2004-25507. Included among its terms, Penrods is to pay the City an annual minimum guarantee equal to a percentage of the lessee's gross receipts commencing on October 1, 2003, and thereafter on May 7 of each year during the term of the lease agreement as well as any renewals. This annual minimum guarantee is to equal 6.5% per year of the Penrods' gross receipts and is to be paid as monthly percentage rent to the City by the fifteenth of the subsequent month accompanied by a statement of gross receipts. For example, the percentage rent payment for the month of December 2014 is due by January 15, 2015; the January 2015 payment is due by February 15, 2015; and so on.

Penrods submits a rent report each month in support of their percentage rent payment to the City breaking down their gross receipts by the following categories:

- Food and beverages (both alcoholic and non-alcoholic) include all corresponding items sold by Penrods at their Pier Park Restaurant, Nikki Beach and beachfront concession locations plus all sales generated by Le Onde Beach Shack, a separate entity that operates from a small narrow building at the end of South Pointe Drive that sells non-alcoholic beverages and pre-prepared foods.
- Door charges represent an entrance fee that is charged periodically to gain access to the Pearl nightclub located on the second floor of the Pier Park Restaurant building.
- The rental of lounge chairs, umbrellas and cabanas in the Nikki Beach area with prices ranging between \$10 and \$50 per day with the highest prices being charged on weekends and holidays.
- Approximately half of the lot located directly west of Penrods' Pier Park Restaurant (called lot 1A by the City's Parking Department) is used for valet parking with the corresponding fee alternating between \$10 during the week and \$20 on weekends and holidays. The remaining half of this lot is metered and is accessible to the general public so its revenues are captured by the City's Parking Department. Finally, Penrods continuously leases two valet reserved parking spaces to Jugo Fresh located at 40 South Pointe Drive for the fixed price of \$80 per week.
- A small lifestyle boutique located inside the Pier Park Restaurant sells swimwear, clothing, etc. In addition, any hookah sales earned on Sundays are also included in this category entitled "gift shop".

Meanwhile, Penrods is to remit 20% of all gross receipts collected on the beach to the City each month subject to a \$10,000 annual minimum guarantee. Beach attendants typically charge \$10 for chair and umbrella rentals during weekdays and \$20 on weekends which is reported under equipment rentals. However, any food and beverages consumed and paid for by beach patrons are reported under the Pier Park Restaurant which is permitted according to the Analysis section attached to City Resolution No. 2001-24678.

The following table provides a breakdown of the percentage rent payments received from Penrods during the twenty-eight month audit period for the Pier Park Restaurant and Nikki Beach plus the beachfront concessions by revenue category:

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	10/01/12 – 09/30/13	10/01/13 – 09/30/14	10/01/14 – 01/31/15	Total
<b>Pier Park Restaurant/Nikki Beach:</b>				
Alcoholic Beverages	\$8,118,478	\$7,063,794	\$1,763,323	\$16,945,595
Food	\$3,741,401	\$3,189,504	\$1,004,909	\$7,935,814
Non-Alcoholic Beverages	\$631,569	\$532,234	\$118,326	\$1,282,129
Door Charges	\$616,881	\$509,401	\$280,272	\$1,406,554
Equipment Rentals	\$45,223	\$45,937	\$15,605	\$106,765
Valet Parking	\$240,682	\$247,499	\$84,584	\$572,765
Gift Shop	\$184,413	\$226,666	\$63,324	\$474,402
Total Gross Receipts	\$13,578,647	\$11,815,035	\$3,330,342	\$28,724,024
6.5% Rent Due	\$882,612	\$767,977	\$216,472	\$1,867,062
Sales Tax*	\$61,783	\$53,758	\$15,153	\$130,694
Total Monies Received by City	\$944,395	\$821,735	\$231,625	\$1,997,756
<b>Beachfront Concessions:</b>				
Total Equipment Rentals	\$267,607	\$286,542	\$72,047	\$626,196
20% Rent Due	\$53,521	\$57,308	\$14,409	\$125,239
Sales Tax	\$3,746	\$4,012	\$1,009	\$8,767
Total Monies Received by City	\$57,268.01	\$61,320.01	\$15,418.00	\$134,006.02

\* The state sales tax figure represents the total amount of sales tax remitted by the City to the State based on Penrods monthly percentage rent payments. The City's Financial System separates Penrods applicable sales tax payments into two general ledger accounts (currently one for the Parking Operations Fund and another for the General Fund).

Various staff members within the City's Office of Real Estate are responsible for the administration, enforcement and payment processing components of Penrods' lease, concession and letter agreements. For example, an Office Associate IV creates the City Bills and processes the received payments, a Leasing Specialist monitors their compliance with the applicable agreement's terms and a Field Monitor performs periodic site visits to review actual beachfront operations.

### OVERALL OPINION

Penrod Brothers, Inc. (Penrods) operates with adequate internal controls to provide reasonable assurance as to the accuracy of reported gross receipts and the supporting documentation maintained was organized, sufficient and complete. Furthermore, testing found that Penrods was current with its tax, utility and permit payments. Despite these positive findings, the following shortcomings were noted that are in need of corrective action:

- Although the Office of Real Estate time/date stamped Penrods' monthly percentage rent payments when received, it did not necessarily reflect the actual date that it was received by the City Clerk's Office through the mail. Consequently, the 21 of 28 payments that were stamped after the agreement's designated due date may or may not

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- have been actually late so interest was correctly not charged.
- Le Onde Beach Shack was not approved in advance by the City prior to beginning operations and it was incorrectly reported under Penrods' business tax receipt and resort tax number despite being a separate entity. In addition, the gift shop located inside the restaurant operated separately under a different corporate name but did not obtain its own business tax receipt.
- Penrods was only charged one food and beverage beachfront concession fee on their 2013/14 and 2014/15 fiscal year business tax receipts instead of the required two per section 3.15 of the concession agreement.
- Misunderstanding exists surrounding the submittal of annual statements of gross receipts due to inconsistent terms in the associated agreements and amendments covering the different areas.
- Penrods' combined Pier Park Restaurant/Nikki Beach plus the beachfront concession monthly percentage rent payments were occasionally entered incorrectly into the City's Financial System resulting in misstated general ledger account balances.
- Penrods' workers' compensation and employers' liability insurance coverage had expired on the last policy received by the City.
- Penrods' beachfront concessions letter agreements which specify the pertinent terms were not prepared at least bi-annually.

## PURPOSE

The purpose of this audit was to determine whether Penrod Brothers, Inc. remitted the correct monthly percentage rent payments based upon their provided supporting documentation; was otherwise in compliance with selected terms in the lease, concession and letter agreements; and whether the received monies were correctly recorded in the City's Financial System.

## SCOPE

1. Confirm that appropriate internal controls were established and followed.
2. Confirm that the tested supporting documentation is organized, sufficient and complete.
3. Confirm that all tested monthly percentage rent payments were accurately calculated and completely reported to the City.
4. Confirm that all tested monthly percentage rent payments were received timely in adherence to the terms listed in the applicable agreement. If not, was the correct amount of late charges levied?
5. Confirm that Penrod Brothers, Inc. has complied with selected criteria outlined in the agreement. Examples include pricing, hurricane evacuation plan, etc.
6. Confirm that the annual certified financial statements of gross receipts were timely submitted for each fiscal year tested and that the amounts reported therein agree with those previously reported to the City.

7. Confirm that Penrod Brothers, Inc. is current with tested business tax receipts, resort taxes, utilities payments and property taxes.
8. Confirm that Penrod Brothers, Inc. insurance certificates were timely submitted and approved by the City's Risk Manager.
9. Confirm that all tested transactions were properly recorded in the City's Financial System.

## FINDINGS, RECOMMENDATIONS AND MANAGEMENT RESPONSES

1. Finding: *The City does not Properly Record the Date that Penrods' Monthly Percentage Rent Payments were Received thereby making it Difficult to Determine whether the Late Charges Addressed in the Agreements are Warranted*  
Section 13.3 of the lease agreement, section 4.1 of the concession agreement and section 3 of the letter agreement all state that Penrods must submit monthly percentage rent payments by the fifteenth of each month for the preceding month. For example, the December 2014 percentage rent payments are due by January 15, 2015, the January 2015 payments are due by February 15, 2015 and so on.

Testing found that the Office of Real Estate time/date stamped 26 of the 28 Penrods' monthly percentage rent payments during the audit period as to when they received it. In its absence, the date listed in the attestation section of Penrods' monthly percentage rent payment as prepared by Penrods' controller was used. As a result, it was determined that 21 of the 28 months in the audit period were received after the due date ranging from a low of one day to a high of sixteen days. It was subsequently calculated that Penrods would owe a total of \$2,098.03 using a 12% per annum interest rate but a review of the City's Financial System (Eden) found that no interest charges were billed.

Inquiries with Office of Real Estate staff found that Penrods mailed payments are initially received by the City Clerk's Office Central Services Division before being routed to them. Unfortunately, there is no known way to determine when the Central Services Division actually received the payment as they do not record the applicable date, the postmarked envelopes are not maintained and Office of Real Estate personnel claim that they don't always receive their mail timely.

Additionally, it was discovered that there is variation by which payments are received which can create confusion considering that the Office of Real Estate monitors approximately 70 different agreements which may contain different terms. For example, some payments are hand delivered to their office, some are mailed to the City's Finance Department, some funds are wire transferred, etc. Either way, the Office of Real Estate needs to be notified so that a City Bill can be created in Eden System's Accounts Receivable Module to apply the corresponding payment against.

### Recommendation(s):

Given the City's current inherent difficulties in determining when Penrods' payments are actually received, the Office of Real Estate's payment receipt process should be standardized and then communicated to all lessees and concessionaires with the corresponding duties better assigned to City staff. To facilitate these changes, the Office

of Real Estate management and the Finance Department should reach a consensus on the preferred process as to record the date received. Finally, the Office of Real Estate should work with Munis, an enterprise system that will be soon replacing Eden, to determine if the billing of interest can be automated thereby reducing the likelihood of errors and freeing up staff's time to attend to other duties.

Management Response (Office of Real Estate):

In order for an invoice to be generated, Office of Real Estate staff must populate the customer information along with the proper revenue, balance and expenses accounts in Eden (the City's Financial Management System). The invoice must then be posted by department management in order for the Finance Department to generate the paper invoice. Note: City generated bills do not have a remittance address. It only states the main City Hall address without a specific department. As previously stated, monthly payments may be received by the City through standard U.S. Mail, hand delivery, wire or online payment. Additionally, mailed items are usually delivered to the City's Central Services Division, but may also come directly to the Office of Real Estate. Given all of these delivery options, it is often difficult to determine when payments are actually received by the City. Furthermore, if a customer submits payment without the invoice, it is often deposited into a miscellaneous account, which can leave accounts unbalanced. Department staff then must track down the payment in the miscellaneous account and request a journal entry adjustment.

Staff agrees that consistent process should be followed and, in light of the aforementioned challenges with the tracking down the receipt of payment, recommends charging penalties and late fees on all receivables after an agreed upon number of days have elapsed. Additionally, staff will now stamp all envelopes when received by the Real Estate Office.

Management Response (Finance Department):

The Finance Department processes payments on a daily basis as they are received. Payments received at the cashier's window, directly from the customer, are processed immediately. Payments received through the mail are processed on the date received by the City.

2. Finding: *Le Onde Beach Shack was not Approved by the City Prior to Beginning Operations and it was Incorrectly Reported under Penrods' Annual Business Tax Receipt and Resort Tax Number despite being a Separate Entity*  
Section 15 of the concession agreement covering the portion of Pier Park immediately adjacent east of the restaurant (Nikki Beach) states "Except as otherwise provided in this Subsection, Concessionaire shall not assign; sublease; grant any concession or license; permit the use of by any other person other than concessionaire; or otherwise transfer all or any portion of Agreement and/or of the concession area (all of the forgoing are herein after referred to collectively as "transfers"), without the prior written consent of the City, which consent shall not be unreasonably withheld." A separate entity called Le Onde Beach Shack operates from a small narrow building at the end of South Pointe Drive where they sell non-alcoholic beverages and pre-prepared foods. Although Penrods included all tested Le Onde Beach Shack's sales in their monthly percentage rent and monthly resort tax payments, they did not receive the City's consent in advance as required.

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Furthermore, Le Onde Beach Shack does not have a business tax receipt through the Finance Department's Licensing Section or a resort tax account. Penrods' management claims that the City told them that they could piggyback on Penrods' business tax receipt and that they could not obtain a resort tax account because Penrods already had one at that business address. However, no documentation was provided verifying these statements and when recently inquired, the City's Revenue Manager disagreed stating that they need to obtain their own business tax receipt and resort tax account to help improve transparency and accountability as they are a separate corporation.

In addition, a small lifestyle boutique located inside the Pier Park Restaurant sells swimwear, clothing, etc. Despite being currently included in Penrods' annual business tax receipt charges, they are a separate corporation and need to obtain their own business tax receipt per the Finance Department's Licensing Section.

Recommendation(s):

Penrods should immediately request the City's consent concerning Le Onde Beach Shack's operations. If received, Le Onde Beach Shack should immediately apply for and obtain its own business tax receipt and resort tax account number. Finally, the corporation that operates the gift shop should also apply for and obtain its own annual business tax receipt.

Management Response (Penrods):

We will request the City's consent for the Le Onde and gift shop operations.

3. Finding: *Penrods was Only Charged for One Food and Beverage Beachfront Concession Fee on their Annual Business Tax Receipt Instead of the Required Two* Section 3.5 of the concession agreement requires Penrods to obtain one beach equipment and one food/beverage beachfront concession fee on their annual business tax receipt for their operations between the Pier Park Restaurant and the dunes. Similarly, their beachfront concession letter agreement requires another two concession fees (one for equipment and another for food/beverage) for their operations on the sand. However, review of their 2013/14 and 2014/15 business tax receipts found that Penrods was only billed for one food and beverage beachfront concession fee each year instead of the required two resulting in an under billing of \$1,468 (\$734 x 2 fiscal years) for the audit period. A similar review conducted for the 2010/11, 2011/12 and 2012/13 fiscal years did not find any deficiencies as Penrods was properly billed and paid for a total of four beachfront concession fees each year.

Recommendation(s):

The Office of Real Estate should ensure that Penrods business tax receipts are billed prospectively in adherence to the terms of the pertinent agreements. Consequently, Penrods should be back billed \$1,468 for at least the two prior years' under billings which the concessionaire should promptly pay in full.

Management Response (Penrods):

We will pay for all required licenses when billed by the City.

Management Response (Finance Department):

The Concessionaire will be immediately billed \$1,468 for the two prior years' under billings.

4. Finding: *Misunderstanding Exists Surrounding the Submittal of Annual Statement of Gross Receipts for the Different Penrods Locations due to Inconsistent Terms in the Associated Agreements and Subsequent Amendments*

There is conflicting terminology in both the lease and concession agreements as to when the annual statement of gross receipts are due and as to what period the financial statements are to represent. Section 15 of Penrods' original lease agreement dated November 7, 1985 pertaining to the Pier Park Restaurant states "*within sixty (60) days after each fiscal year, Lessee shall deliver to the City a written annual statement of the gross receipts for such fiscal year. Said statement shall be certified as true, accurate and complete by Lessee, by and through a duly authorized independent Certified Public Accountant (CPA)*" but it does not define what constitutes a fiscal year.

Conversely, the third amendment to the lease agreement dated February 25, 2004 under section 13.3 refers to section 15 of the original lease agreement as to when the annual statement of gross receipts is due. However, under section 13.3.2 of the same amendment, the lessee may have to pay an additional lump sum if the amounts paid do not meet the minimum guarantee payment "*at the time of delivery to the City of the Annual Statement of Gross Receipts no later than June 30, of each Lease year during the term, including renewal terms, of this lease.*"

Yet section 6, paragraph 3 of the concession agreement pertaining to the area between the Pier Park Restaurant and the dunes (Nikki Beach) dated February 25, 2004 states "*that within 60 days after each contract year {May 6<sup>th</sup>}, the Concessionaire shall submit to the City a written Annual Statement of Gross Receipts for such contract year.*"

Penrods used a May through April fiscal year for both the Pier Park Restaurant and Nikki Beach's combined certified annual statements of gross receipts during the audit period. Testing found that these certified statements were remitted timely based on the Office of Real Estate's time/date stamp for the fiscal years ending April 2012 and 2014 and the signed cover letter dated May 22, 2013 for the fiscal year ending April 2013 as it was not time/date stamped. Regardless, the agreements do not specify any penalties for late submittals (the only current option is being placed in default) and the certified reported gross receipts properly reconciled to those amounts provided by Penrods' management in support of their monthly percentage rent payments.

Meanwhile, the beachfront concession's annual statements of gross receipts which are not required to be certified were prepared with a September 30<sup>th</sup> fiscal year end. A review of the beachfront concession annual statements provided for the fiscal years ending 09/30/12, 09/30/13 and 09/30/14 found that they were all received annually by the October 30<sup>th</sup> due date based on the Office of Real Estate's time/date stamp and/or the date on the signed cover letter.

Recommendation(s):

The Office of Real Estate should always indicate the date that any documents were received when the applicable agreement establishes due dates (see finding #2) and there should be disciplinary actions listed in the event of non-compliance in accordance with the applicable agreement. Going forward, the City should standardize Penrods' agreements and require them to submit certified annual statements of gross receipts for all locations within sixty days following a uniform contract year end.



Management Response (Office of Real Estate):

While it would certainly be easier to have all reports of all three (3) agreements due on the same date, this has not created a reporting problem for the tenant. In the event that one or all of the agreements are amended, staff will negotiate with the tenant to amend the reporting deadlines.

5. Finding: *Incorrect Entries were made into the City's Financial System for the Penrods' Restaurant/Nikki Beach and Beachfront Concession Percentage Rent Payments*

Based upon receipt of the supporting documentation provided accompanying Penrods' Pier Park Restaurant and Nikki Beach monthly combined percentage rent payments, the Office of Real Estate would create City Bills in the City's Financial System's Accounts Receivable module accordingly. These City Bills would contain a breakdown of the amounts to be entered into the four designated general ledger accounts. Upon reviewing the 28 applicable monthly payments received during the audit period for Penrods' Pier Park Restaurant/Nikki Beach, incorrect general ledger entries were made for the October 2012 through September 2013 payments which resulted in the following misstated account balances:

480-7000-208100 (Parking state sales tax) was overstated by \$1,168.69  
601-7000-229032 (General fund state sales tax) was understated by \$1,317.93  
480-8000-344502 (Parking lot 1A) revenues were understated by \$2,171.21  
011-8000-369924 (Penrods' rent) was overstated by \$2,290.46

A similar analysis of the 28 monthly beachfront concession percentage rent payments identified the following incorrect balances caused by inaccurate programmed calculations in the City's Financial System:

011-7000-208100 (General fund state sales tax) was overstated by \$58.18  
601-7000-229068 (Sand tax) was understated by \$11,763.98  
011-8000-369922 (Rent) was overstated by \$12,705.79

A total of \$9,705.30 of the sand tax understatement above occurring between October 2012 and August 2014 has already been addressed in the annual State Beachfront Management Agreement audits, while the \$2,058.68 remainder will be captured in next year's fiscal year audit. The errors all occurred in the processing of February 2014 through October 2014's payments as the decimal point was incorrectly positioned in the concessionaire's sand tax calculations programmed in the Eden System. The necessary corrections were made as the November 2014 through January 2015 reviewed entries were properly posted.

Finally, it was found that Penrods' management commingled their beachfront food and beverage revenues with those generated by the Pier Park Restaurant and Nikki Beach whereby the City receives 6.5% of gross revenues instead of the 20% earned for sales occurring on the beach. It was subsequently concluded in meetings held with the City Attorney and the Chief Financial Officer that this practice was correct based on the negotiations held which were memorialized in City Resolution No. 2001-24678's Commission Memorandum. As a result, Penrods management commingles the beachfront food and beverage revenues with those generated by the Pier Park Restaurant and there is no easy way to distinguish between the two.

Unaware of this inclusion, the Office of Real Estate did not make the correct entry into the City's general ledger and the City did not remit the required in 25% sand tax to the State of Florida. Unfortunately, the corresponding food and beverage amounts would be time consuming and difficult to calculate.

Recommendations:

A designated Office of Real Estate employee, independent of the creation of the City Bills, should review the entries periodically to help ensure that the stated account balances are accurate. Although it is not necessary for the Finance Department to prepare a prior period adjustment for these incorrect prior fiscal years' related entries due to their immateriality, a designated employee should be tasked with reviewing these and other accounts for accuracy prior to the City closing out the fiscal year. Lastly, Penrods management should continue to remit 6.5% of its beachfront food and beverage revenues but they should be reported separately on their monthly reports so that the City can make the appropriate general ledger entries and timely remit 25% in sand tax to the State of Florida.

Management Response (Penrods):

We will separate the food & beverage on the rent reports so the City can pay the correct amount to the State.

Management Response (Office of Real Estate):

The Office of Real Estate agrees with the recommendations and has now assigned the Tourism, Culture and Economic Development Department Senior Administrative Manager to review these entries periodically to help ensure the account balances are correct.

Management Response (Finance Department):

The Finance Department will task a designated employee with reviewing sand tax accounts for accuracy prior to the City closing out the fiscal year.

6. Finding: *Penrods Workers' Compensation and Employers' Liability Coverage had Expired on the Insurance Policy Last Received by the City.*

All three agreements require Penrods to maintain at its sole cost and expense stated insurance coverage levels at all times. A copy of their most recently submitted insurance policy was obtained from the Office of Real Estate. Although the general liability and umbrella liability coverage was sufficient and valid through August 1, 2015, the workers' compensation and employers' liability coverage had expired on January 1, 2015. No documentation was provided showing that an updated insurance policy had been requested from Penrods. Upon request from Internal Audit, the new current policy was promptly received from Penrods which was subsequently approved by the City's Risk Manager.

In order to address the issue of the lack of monitoring issuance Citywide, the City Commission on May 21, 2014 ratified Resolution No. 2014-28589 authorizing the procurement of the Certificate of Insurance Tracking System from Insurance Tracking Services, Inc. This system is managed by licensed insurance professionals that perform all the necessary functions to monitor compliance, audit incoming certificates and follow-ups for renewals.

The City's Risk Manager has been uploading vendors and contractors' insurance information into the Certificate of Insurance Tracking System in phases. The original goal was to have all lessees and concessionaires' insurance information uploaded by July 1, 2015. Although not started as of yet, the City's Risk Manager expects to begin this process within the next month.

Recommendation(s):

The Office of Real Estate should coordinate with the City's Risk Manager to commence the uploading of the pertinent lessees and concessionaires' insurance information as soon as possible into the Certificate of Insurance Tracking System so that its benefits can be fully realized thereby better protecting the City's assets.

Management Response (Office of Real Estate):

The Office of Real Estate agrees with the recommendation and, once the City's Risk Manager advises the Certificate of Insurance Tracking System has been expanded to include the City's assets, will commence uploading the pertinent documents.

7. Finding: *Penrods Beachfront Concessions Letter Agreement was not Finalized at least Bi-Annually*

The City Commission ratified Resolution No. 2001-24678 authorizing the City to enter into a concession agreement with Penrods to provide continued service to beach patrons seaward of Pier Park. The agreement was to be on a month-to-month basis and to include such terms as requiring Penrods to pay the City annually the greater of \$10,000 or 20% of gross receipts, to comply with the City's insurance and indemnification requirements and to abide by the City's rules and regulations for beachfront concession operations.

A letter agreement was subsequently signed by Penrods and the City listing the pertinent terms for the 2003/04 fiscal year. No other signed letter agreements could be found afterwards until one dated August 26, 2013 was made effective for the 2013/14 fiscal year. The City Attorney confirmed that the usage of letter agreements instead of a concession agreement is satisfactory but that they need to be completed at least biannually in conjunction with the price changes.

Also, the language in section 3 entitled "Minimum Guarantee (MG)" incorrectly states that the concessionaire is to remit the greater of \$10,000 or 20% of gross receipts. However, they are to remit 20% of beachfront equipment gross receipts and 6.5% of food and beverage gross receipts as previously discussed in finding #5.

Recommendations:

The Office of Real Estate should complete bi-annual letter agreements for each applicable fiscal year prospectively until at least May 6, 2026 which represents Penrods' lease and concession agreements' expiration date. In doing so, Office of Real Estate staff should confirm that the minimum guarantee language is correct and that Penrods does not have any delinquent outstanding balances before renewing the agreement.

Management Response (Office of Real Estate):

The Office of Real Estate agrees with the recommendation.

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## **EXIT CONFERENCE**

An exit conference was held in the Office of Budget and Performance Improvement on June 11, 2015. Participants included Tourism, Cultural Affairs and Economic Development Director Max Sklar; Asset Manager Mark Milisits, Assistant Finance Director Georgina Echert, Revenue Manager Manny Marquez, Assistant Internal Auditor Laura Franco-Rubines and Senior Auditor Mark Coolidge. The agreed upon revisions were made in the draft audit report which was subsequently sent to the beachfront concessionaire for review. Management responses were solicited and included above. All parties were in agreement as to the contents of this report.

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(Audit performed by Senior Auditor Mark Coolidge)

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cc: Kathie G. Brooks, Assistant City Manager  
Max Sklar, Tourism, Cultural Affairs and Economic Development Director  
Patricia Walker, Chief Financial Officer  
Jack Penrod, President, Penrod Brothers, Inc.