



Joseph M. Centorino, Inspector General

TO: John Rebar, Parks and Recreation Department Director
FROM: Joseph Centorino, Inspector General

DATE: January 13, 2020

PROJECT: Miami Beach Tennis Management, LLC Management Agreement (Flamingo Park Tennis Center) Preliminary Observations
OIG Audit No. 20-04

This report lists our preliminary observations in determining Miami Beach Tennis Management, LLC's compliance with selected provisions in their management agreement to provide professional tennis management and operations services at the City's Flamingo Park Tennis Center during the designated audit period. Although an audit was started, it has not been completed. In the interim, the Parks and Recreation Department has requested a listing of our preliminary observations as the contractor's agreement is being considered for termination. Our analysis has not been finished, and if continued, additional deficiencies might have been identified that are not stated in this report. Lastly, the preliminary observations reported below have not been presented to the contractor for his rebuttal and our consideration in arriving at a final conclusion or recommendation, which is not presented in this report.

PRELIMINARY OBSERVATIONS

1. ***BUSINESS TAX RECEIPTS WERE NOT OBTAINED SINCE THE INCEPTION OF THE MANAGEMENT AGREEMENT IN 2014 BY THE CONTRACTOR***

Section 3.6 of the management agreement states "Contractor shall obtain, at its sole cost and expense, any and all business tax receipts required by law for the proposed uses contemplated in this Agreement."

Without limiting the generality of the foregoing, securing the requisite business tax receipts, in addition to completing the Background Check Process in accordance with Subsection 3.6 hereof, shall be required and obtained for each individual professional tennis instructor providing lessons and/or clinics at the Centers."

The contractor has operated the Flamingo Park Tennis Center continuously since June 1, 2014 and the North Shore Tennis Center from June 1, 2014 through July 2017. However, review of the City's EnerGov System (the City's licensing and permitting system) found that valid business tax receipts have not been issued to the contractor during their operation of either tennis center, which was subsequently confirmed with the Finance Department's Licensing Section via email.

Furthermore, six (6) of the 14 known tennis professionals (42.86%) did not appear to obtain their business tax receipts from the City for the 2019/20 fiscal year as of November 27, 2019. The current annual fee for tennis instructors is \$245 thereby possibly resulting in \$1,470 in lost fees (excluding late charges) for this fiscal year alone.

2. *MONTHLY PAYMENTS WERE REMITTED AFTER THE DUE DATE*

Section 4.2.1 of the management agreement states "...the City shall, without limitation, withdraw or be paid from the established bank account, on the last work day of each month during the Term of this Agreement...". Office of the Inspector General (OIG) staff's corresponding review of the contractor's payments recorded in the City's Financial System found that the contractor issued four (4) checks to the City for invoice numbers 14675, 16000, 21709 and 22334 that were returned by the bank due to insufficient funds (NSF). Two (2) of these NSF checks were issued during the 2018 calendar year and the remaining two (2) during 2019. The return of the checks for insufficient funds resulted in payments being received by the City after the due date for such payments.

3. *SECTION 4.2.1 OF THE MANAGEMENT AGREEMENT CONCERNING THE SHARING AND CONTROL OF BANK ACCOUNTS IS NOT BEING ENFORCED*

Section 4.2.1 of the management agreement states "All said revenues collected by the CONTRACTOR shall be deposited into an account of the City and CONTRACTOR, established pursuant to this Agreement, and to be maintained solely for the sole and exclusive purpose(s) of the management, operation and maintenance of the Centers, pursuant to this Agreement (including, without limitation, to pay for all budgeted operational expenses arising from the management or operation of the Centers pursuant to this Agreement). Interest accrued in the account shall be part of the operating income."

Upon request, the contractor's bank statements for an account ending in "95" were provided for October 2018 through September 2019. Per inquiries, this JPMorgan Chase bank account is only owned by Miami Beach Tennis Management, LLC and not by the City. Statements are mailed directly to the concessionaire, which he forwards monthly to the City's Parks and Recreation Department.

It was determined that the daily revenues appear to have been deposited into this JPMorgan Chase bank account in adherence with Section 4.2.1. Afterwards, the contractor transferred revenues to another bank account to which the Parks and Recreation Department did not have access to and for which they did not receive bank statements.

The monies in this second account ending in "16" were then apparently used to pay for the Flamingo Park Tennis Center's expenses. A tennis professional who works at both the Flamingo Park Tennis Center and another center operated by the contractor in Miami Shores, provided copies of checks issued from this second account that she said were payment for clinics worked at both tennis centers. If verified, it could mean that the contractor is commingling monies from both cities' tennis centers, which is not in accordance with Section 4.2.1.

4. **SEVERAL ALLEGATIONS OF WAGES EARNED BY TENNIS PROFESSIONALS THAT WERE NOT TIMELY PAID WERE RECEIVED BY AUDITORS**

In conversations with the contractor's principal, it was learned that tennis professionals are paid twice a month, on the fifteenth and then again on the thirtieth, for services rendered previously. Therefore, any lessons or clinics taught by tennis professionals between the first and the fifteenth of the month were paid in the next pay period or on the thirtieth of the month.

Several anonymous complaints were received by the City whereby tennis professionals claimed late payment of wages and/or receipt of wage payments that were returned by the bank due to insufficient funds. In addition, one (1) tennis professional met with OIG staff and made similar accusations, among other claims against the contractor. Furthermore, the tennis professional provided check #3784 dated August 22, 2019 for \$535 at this meeting, which was returned by the bank for insufficient funds.

5. **RATES CHARGED FOR TENNIS LESSONS WERE NOT ALWAYS IN ACCORDANCE WITH THE MANAGEMENT AGREEMENT'S TERMS**

Section 10.3 of the management agreement states *...Initial fees for programs, clinics and lessons are set forth in Exhibit "K" (to be provided by CONTRACTOR) attached hereto.* Furthermore, Section 10.4 states *"The City shall approve in writing, in advance, any increase in fees from those currently set forth in Exhibit "K"; provided the CONTRACTOR shall have the right to increase fees in an amount equal to the amount of any sales and use tax increase enacted after the effective date of such exhibit or schedule without City's consent."*

OIG staff reviewed the rates charged for all 5,864 lessons given at the Flamingo Park Tennis Center between January 1, 2019 and November 12, 2019. It was found that 1,145 did not appear to equal any of the rates listed in Exhibit K. More specifically, 358 individuals received lessons at no charge and one (1) individual was charged more than the highest allowed rate of \$180 (\$200 per hour). No documentation was provided showing that the City approved any of these rate differences in advance in adherence with Section 10.3.

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cc: Honorable Mayor and Members of the City Commission
Jimmy L. Morales, City Manager
John Rebar, Parks and Recreation Department Director
Cynthia Casanova, Assistant Director Parks and Recreation Department