



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph M. Centorino, Inspector General

DATE: February 8, 2023

PROJECT: Miami Beach Watersports Center, Inc. Lease Agreement Audit/Contract Oversight
OIG No. 23-01

PERIOD: February 1, 2021 – January 31, 2022

The City of Miami Beach Office of the Inspector General (OIG) examined the performance of Miami Beach Watersports Center, Inc. ("Watersports Center") with selected provisions of its Lease Agreement with the City related to the construction, operation, and maintenance of a rowing facility at the Ronald W. Shane Center located at 6500 Indian Creek Drive (pictured below). The OIG Auditor also reviewed the related performance of the City Fleet and Facilities Management Department Asset Management Division, responsible for monitoring compliance with the executed agreement. This examination focused on activities occurring during the February 1, 2021 through January 31, 2022 audit period.



INTRODUCTION

On December 14, 1988, the City of Miami Beach entered into a Lease Agreement with the Miami Beach Jewish Community Center, Inc. (JCC) for the parking facility located at 65th Street and Indian Creek Drive to construct and operate a rowing facility, including a boat yard. On November 21, 1989, the City and the JCC entered into the First Amendment to the Lease Agreement, enlarging the size of the leased premises. On November 20, 1991, the Lease Agreement was amended and restated, extending the lease term to twenty years, thus enabling the lessee to obtain a financial commitment from the University of Miami to participate in the construction of the rowing facility building. As part of the Amended and Restated Lease Agreement terms, the City also appropriated a matching contribution of \$225,000 to construct additional improvements for the rowing facility.

In 1996, the City authorized the assignment of the Lease Agreement from the JCC to the Watersports Center, a not-for-profit corporation established to operate and maintain the facility. In 2002, the Watersports Center, as the current lessee, entered into a Second Amended/Restated Consolidated Lease (Consolidated Lease) with the City.

The City of Miami Beach, as the landlord, and the Watersports Center d/b/a Miami Beach Rowing Club were parties to the Second Amended/Restated Consolidated Lease, dated July 10, 2002, for the lease of property known as the Ronald W. Shane Center, located at 6500 Indian Creek Drive, for the operation of a rowing facility, including other ancillary uses. The Consolidated Lease authorized extensive capital improvements to the premises, which included the construction of a boathouse and a second-floor events venue. It also permitted Watersports Center to secure financing for the improvements, with the consent of the City, and for a term that was not to exceed the lease term, secured by a leasehold mortgage.

In 2007, the Watersports Center completed a \$2 million expansion project, which included the construction of a dry dock facility and a second story to the building existing at the time. As permitted under the lease, it secured a portion of the financing for the expansion project from its benefactor, the Shane Family Foundation Corporation (Foundation), through an unsecured \$850,000.00 loan.

The Watersports Center still owed monies to the Foundation for its investment and the Consolidated Lease was set to expire on May 21, 2021, so it requested a new nine-year lease to continue its not-for-profit operations in the community. On January 13, 2021, the City Commission adopted Resolution No. 2021-31557, waiving by 5/7th vote the formal competitive bidding requirement and approving a new Lease Agreement. Consequently, the City entered into a new Lease Agreement with the Watersports Center on March 16, 2021, for the continued operation of a rowing center through January 31, 2030.

OVERALL OPINION

The Watersports Center (lessee) provides low-cost rowing, teaching, and training for men, women, and young adults. It is open to the general public, Monday through Friday from 9:00 am to 5:00 pm, provided the users meet the minimum safety requirements of the United States Rowing Association and the operational requirements. The center is an international destination for Olympic rowers and home of the Miami Beach Rowing Club, which annually hosts the Head of the Indian Creek Regatta and other collegiate races, benefiting the local economy.

The following deficiencies identified during the audit period require corrective action:

1. The Watersports Center was not fully compliant with the stated insurance requirements in Section 9.2 of the Lease Agreement.
2. The Watersports Center was not compliant with the hazardous materials requirements pursuant to Sections 9.5 and 9.7 of the Lease Agreement.
3. Subleases were executed by the lessee without approval of the City Manager pursuant to Section 13.1 of the Lease Agreement.

In addition, the OIG Auditor has identified several areas of the Watersports Center operations that suggest opportunities for improvement related to the following:

1. Amortization of the unsecured promissory note
2. Re-selling of Parking Department hangtags sold at cost to the lessee
3. Repairs and Maintenance responsibilities
4. Resort tax monies that may be due to the City from the sale of food and beverages at future special events held on the premises

SCOPE, OBJECTIVES, AND METHODOLOGY

The primary scope of this audit was to determine whether the Watersports Center complied with the provisions set forth in the Lease Agreement related to its operation. The audit focused on the following general objectives during February 1, 2021 through January 31, 2022 audit period:

- Determine whether the lessee maintained the required insurance coverage.
- Determine whether the lessee is current with required permits, taxes, and licenses.
- Determine whether the Asset Management Division is sufficiently monitoring the lessee and timely identifying any deficient actions.
- Determine whether the lessee is timely remitting all tested monies due to the City.
- Determine whether the lessee complies with other selected provisions of the Lease Agreement.
- Other audit procedures as deemed necessary.

The audit methodology included the following:

- Reviewed applicable sections of the Lease Agreement between the City and the Watersports Center;
- Interviewed and made inquiries of City staff to gain an understanding of internal controls, assess control risk, and plan audit procedures;
- Conducted substantive testing consistent with stated audit objectives, including, but not limited to, examination of pertinent transactions and records;
- Performed site visits and made observations of facility activities;
- Drew conclusions based on the results of testing, made corresponding recommendations, and obtained auditee responses and corrective action plans; and
- Performed other audit procedures as deemed necessary.

FINDINGS, RECOMMENDATIONS, AND RESPONSES

1. **THE WATERSPORTS CENTER WAS NOT FULLY COMPLIANT WITH THE STATED INSURANCE REQUIREMENTS IN SECTION 9.2 OF THE LEASE AGREEMENT.**

Section 9.2.1 of the Lease Agreement, effective March 16, 2021, states as follows: *LESSEE shall maintain the below required insurance in effect duration of the Lease. The maintenance of proper insurance coverage is a material element of the Lease and failure to maintain or renew coverage may be treated as a material breach of the Lease, which could result in the termination of the Lease.*

- (a) *Worker's Compensation Insurance for all employees of Lessee as required by Florida Statute 440, and Employer Liability Insurance for bodily injury or disease. Should Lessee be exempt from this Statute, Lessee and each employee shall hold the City harmless from any injury incurred during performance of the Lease. Lessee shall also submit (i) a written statement detailing the number of employees and that they are not required to carry Workers' Compensation insurance and do not anticipate hiring any additional employees during the term of this Lease or (ii) a copy of a Certificate of Exemption.*
- (b) *Commercial General Liability Insurance on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$3,000,000 general aggregate.*
- (c) *All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all improvements installed in the Demised Premises by or on behalf of Lessee and including without limitation all of Lessee's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Lessee under the provisions of this Lease.*
- (d) *Automobile Liability Insurance covering any automobile, if Lessee has no owned automobiles, then coverage for hired and non-owned automobiles, with limit no less than \$1,000,000 combined per accident for bodily injury and property damage.*
- (e) *Liquor Liability Insurance on an occurrence basis, including property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. (Required, if necessary.)*
- (f) **Lessees' and Users' Liability Insurance Program (TULIP)** -- *Lessee is required to have all third parties that will rent the Demised Premises for special events provide proof of Liability coverage with the City of Miami Beach endorsed as an additional insured for the designated event. If Third Party user does not carry their own Commercial General Liability insurance, coverage will need to be purchased for the use of the facility through the City provided Lessees' and Users' Liability Insurance Program.*

The TULIP's general liability insurance protects both the Facility User (the third party) and the City of Miami Beach against claims by third parties who may be injured or experience damage as a result of attending or participating in an approved event.

In addition, Section 9.2.6 Verification of Coverage states as follows: *Lessee shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Lease. All certificates and endorsements are to be received and approved by the City before Lessee may conduct operations at the Demised Premises. However, failure to obtain the required*

documents prior to conducting operations shall not waive Lessee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

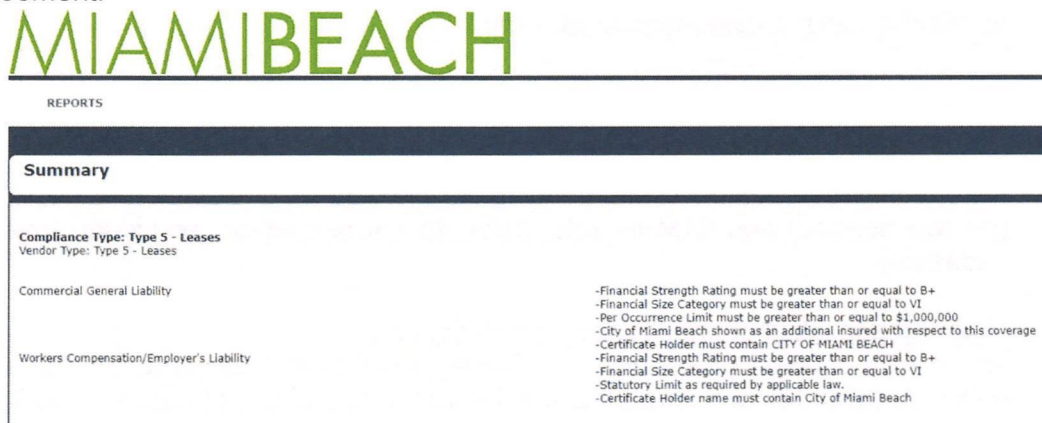
CERTIFICATE HOLDER MUST READ:
CITY OF MIAMI BEACH
c/o EXIGIS Insurance Compliance Services
P.O. Box 4668 - ECM #35050
New York, NY 10163-4668

Kindly submit all certificates of insurance, endorsements, exemption letters to our servicing agent, EXIGIS, at: Certificates-miamibeach@riskworks.com"

The City entered into a master customer agreement with Exigis LLC (Exigis) on July 14, 2018, to use its RiskWorks software, a proprietary web-based Risk Management Operating System comprising a suite of configurable web-enabled risk, insurance, and treasury Application Modules. One of the software's claimed benefits on its website is to centralize the administration and automate the request, follow-up, processing, auditing, and tracking of Certificates of Insurance.

The OIG Auditor reviewed the insurance profile that appears in Exigis for the Watersports Center. Although the system listed the lessee as compliant with the corresponding parameters entered by City staff, the stated parameters were not fully aligned with the requirements in the Lease Agreement. The parameters set in Exigis differ from those in Section 9.2.1 of the Lease Agreement in that they do not contain the required insurance coverage related to Commercial General Liability in the aggregate, Automobile Liability, and Liquor Liability.

The following parameters were set in Exigis related to the Watersports Center Lease Agreement:



Consequently, concerns arose as to whether the Exigis evaluation accurately reflected whether the Watersports Center was fully compliant with contractual insurance requirements.

Asset Management Division, which monitors compliance with stated terms, did not create the insurance parameters in Exigis, and relied on its evaluation results reporting compliance. Questioned Exigis staff by the OIG Auditor confirmed that the system evaluated compliance based on the requirements entered into its software by the City.

The OIG Auditor determined that the lessee maintained Commercial Liability insurance for the fiscal year 2022/23 listed a general aggregate of \$2,000,000, which is less than the \$3,000,000 aggregate required in Section 9.2.1(b) of the Lease Agreement. Also, the required Automobile Liability insurance or Liquor Liability insurance required in Sections 9.2.1(d) and (e), respectively, were not submitted to Exigis, raising concerns about their sufficiency.

On December 6, 2022, the OIG Auditor requested that the Risk Management Division Director review the Certificates of Insurance downloaded from Exigis for the periods of March 20, 2021, through March 20, 2022, and March 20, 2022, through March 20, 2023, for compliance with the stated requirements. The response received from the Risk Management Director on December 9, 2022, the e-mail stated, "They were not compliant in both years reviewed."

Recommendation(s):

The insurance parameters for the Watersport Center entered into Exigis should be revised by City staff to mirror the requirements listed in Section 9.2 of the Lease Agreement. Asset Management Division staff should notify the Watersports Center of the Commercial Liability insurance deficiency and the missing policies related to the required Automobile Liability insurance or Liquor Liability insurance coverage. If not timely resolved, the available disciplinary actions in the Lease Agreement may be enforced by the City.

Risk Management Division Response:

The Risk Management Division has determined continuous lease(s) and property management agreement(s) monitoring. This agreement's insurance requirements differ from our standard insurance groups set up initially in the insurance tracking software. Effective now, all lease(s) and property management agreement(s) should be sent to Risk Management Division for review before execution. Review before execution will increase adherence or provide a rationale for a variance to our standard insurance requirements. Upon execution, a final copy is sent to Risk Management Division for record-keeping, monitoring, and re-evaluation at renewal.

Asset Management Division Response:

Although Exigis did not provide accurate information, the Asset Management Division did take it upon themselves to secure the correct Certificates of Insurance or COIs, which were received November 2022, bringing the COI to \$4M of Commercial Liability coverage (on two policies) and \$1M in auto. They do not sell liquor, so Liquor coverage is not necessary.

Miami Beach Watersports Center, Inc. Response:

There are no sales of alcohol at the Center. The Center has not rented the facility to the public for events since February 2020. The rental operation did not resume after the Covid pandemic closure and there are no plans to resume a rental operation at this time. Prior to Covid, renters were required to contract the services of a licensed and insured caterer. The caterer provided a liquor liability COI naming the Center. The Center hold two liability policies and certificates were provided to Asset Management for both. Together they cover the required \$3,000,000 aggregate. Proof of auto insurance was provided to Asset Management and accepted. For 2023, a COI for auto insurance naming the City of Miami Beach was submitted.

2. THE WATERSPORTS CENTER WAS NOT COMPLIANT WITH THE HAZARDOUS MATERIALS REQUIREMENTS IN SECTIONS 9.5 AND 9.7 OF THE LEASE AGREEMENT.

Section 9.5 of the Lease Agreement states, "Lessee shall (i) not cause or permit any hazardous material to be brought upon, kept or used in or about the Demised Premises by Lessee, its agents, employees, contractors or invitees without the prior written notice to Lessor, demonstrating to Lessor that such hazardous material is necessary or useful to Lessee's use of the Demised Premises and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Demised premises..."

Section 9.6 defines hazardous materials as "(a) pesticides and insecticides; (b) petroleum and its constituents; (c) any substance which is or may hereafter be defined as or included in the definition of "hazardous substance," "hazardous materials," "hazardous waste," "pollutants or contaminants," "solid waste" or words of similar import under the Comprehensive Environmental Response, Compensation and Liability Act...(d) any other substance, the exposure to or release of which is regulated by any governmental entity having jurisdiction over the Demised Premises or the operation thereon; and (e) any substance that does or may pose a hazard to the health or safety of the persons employed at or invitee on the Demised Premises."

During a July 20, 2022 site visit to the Watersports Center, the OIG Auditor found such hazardous materials as gasoline and other fuels used for the coaches' boats being stored in an unlocked room with an open door located next to the boathouse (see picture). The Watersports Center Executive Director explained that the door is usually locked, and it was promptly secured.



Section 9.7 of the Lease Agreement requires the lessee to disclose to Lessor every January 1 all the names and amounts of hazardous materials stored, used, or disposed of on-premises or which Lessee intends to store, use or dispose of on the Demised Premises. Inquiries with the Asset Management Division Director found that this required report was not furnished by the lessee, nor was it specifically requested.

Recommendation(s):

All hazardous materials stored on the premises should always be properly secured. Furthermore, the lessee should timely furnish the required hazardous materials report to the Asset Management Division pursuant to Section 9.7. Although Section 9.7 does not specify whether the annual hazardous material report needs to be filed if no hazardous materials were stored on the premises during the stated period, it is recommended that the report be filed each January 1st and the Lease Agreement be clarified.

Asset Management Division staff should periodically perform unannounced site visits of leased properties to verify compliance with stated requirements. The corresponding results should be documented and maintained in the lessee's file, and any identified deficiencies should be forwarded to the lessee for prompt resolution.

Asset Management Division Response:

Lessee has been notified of the required hazardous material notification each year. The Asset Management Division and Facilities Managers conduct regular site visits each year (both unannounced and scheduled). This is a standard practice. Identified deficiencies are communicated with Lessee by the Facilities Department as necessary.

Miami Beach Watersports Center, Inc. Response:

The storage room used for gasoline was overseen and approved by a fire inspector as part of Phase I of the Center's expansion project in 2002-2004. The sign-off should be on file with the building department. The gasoline for the coaches' boats is stored in containers inside fireproof cabinets in the dedicated gas storage room. The storage room door is usually kept locked but occasional human error occurs, which we will work to minimize. The annual report of hazardous materials storage and use was not requested until this year and was submitted 1/24/2023.

3. SUBLEASES WERE EXECUTED BY THE LESSEE WITHOUT APPROVAL OF THE CITY MANAGER, AS REQUIRED BY SECTION 13.1 OF THE LEASE AGREEMENT

Lease Agreement Section 13.1 "Right and Conditions of Assignment" states as follows: *This Lease is not freely assignable, and no assignment, transfer, sublease, subconcession or license agreement shall be valid unless there is a prior written consent by the Lessor, which consent shall be within the sole discretion of the Lessor, and such instrument of assignment (the "Assignment") that has been consented to is in writing, which Assignment must contain an assumption agreement, duly executed by the Assignee of this Lease and in recordable form, wherein and whereby the Assignee accepts the assignment and assumes and agrees to timely and fully perform and comply with all of the Lessee's covenants and agreements contained in this Lease, and unless and until written notice (the "Notice") shall have been given to the Lessor by the Assignor and Assignee, (the Notice to be given in the manner hereinafter prescribed as the manner and method for giving Notice), enclosing a duplicate-original or photocopy of the original instrument of Assignment and the address at which Notice may thenceforth be given to the Assignee. Approval of any assignment or transfer to an entity other than a not-for-profit corporation shall be conditioned upon the renegotiation of the rent to be paid under this Lease to reflect a fair market value of the Demised Premises. Subleases, subconcessions, or license agreements consistent with the uses set forth in paragraph 4.1 are subject to the approval of Lessor, which approval shall not be unreasonably withheld. The term of any approved sublease, subconcession or license agreements shall not exceed a period of time beyond the stated expiration date of this Lease.*

The City Manager, on behalf of Lessor, shall be authorized to approve Assignments of the Lease. Simultaneously with the approval of this Lease, Lessor hereby approves Barry University and the University of Miami, as subtenants under the Lease, for the use of the Facility, subject to the City Manager's review and approval of the sublease.

Section 13.2 states the following: *The Lessor covenants and agrees that it will, within sixty (60) days after service of Notice upon it of a proposed assignment of this Lease, giving the name and post office address of the proposed Assignee, advise the Lessee in writing as to whether the Lessor will consent to the assignment of the Lease and further advise the Lessee in writing of the existence or nonexistence of any default on the part of the Lessee under the terms of this Lease, and if there is any default or defaults, a statement setting forth such default or defaults. Lessor's failure to give such advice in writing within*

the time required shall not constitute either notice of the absence of any default, or consent to the proposed assignment. Only Lessor's response in writing of the existence or not of a default and permission or not of an assignment shall be effective with respect to each such item.

The Watersports Center entered into agreements authorizing the following subtenants to use the facility during the audit period for which the deficiencies stated below were noted:

A. University of Miami:

Although the Sublease Agreement with the University of Miami was named in Section 13.1, evidence was not provided indicating the City Manager's approval of the sublease. However, the Sublease Agreement was signed by the Assistant City Attorney as a witness, but the Lease Agreement does not state that the City Manager can designate the responsibility to another person nor was any corroborating evidence provided. Therefore, the OIG Auditor could not verify whether the Sublease Agreement was approved by the City Manager pursuant to Section 13.1.

In addition, neither the Lease Agreement nor the Sublease Agreement require the University of Miami to maintain and submit related Certificates of Insurance for review/approval to the City Risk Management Division. Consequently, the OIG Auditor was unable to verify whether the University of Miami maintains proper insurance coverage to adequately safeguard the City concerning the center.

B. Barry University:

Although the Sublease Agreement with Barry University was named in Section 13.1, evidence was not provided indicating the City Manager's approval of the sublease. The Sublease Agreement was signed by the Assistant City Attorney as a witness, but the Lease Agreement does not state that the City Manager can designate the responsibility to another person nor was any corroborating evidence provided. Therefore, the OIG Auditor could not verify whether the Sublease Agreement was approved by the City Manager pursuant to Section 13.1.

In addition, neither the Lease Agreement nor the Sublease Agreement require Barry University to maintain and submit related Certificates of Insurance for review/approval to the City Risk Management Division. Consequently, the OIG Auditor was unable to verify whether the University of Miami maintains proper insurance coverage to adequately safeguard the City concerning the center.

C. Hydrow Inc.:

Miami Beach Rowing Club entered into an agreement with Hydrow Inc. on September 25, 2020, for the use of the premises. The Sublease Agreement may be extended for an additional annual term with mutual written consent of both parties (Hydrow Inc. and Miami Beach Watersports Center, Inc.).

The OIG Auditor did not receive evidence of prior written approval from the City Manager regarding the Sublease Agreement with Hydrow Inc. In addition, the Sublease Agreement did not include any insurance requirements, nor were any related Certificates of Insurance furnished to the City Risk Management Division for review/approval.

Recommendation(s):

The Watersports Center should not enter into Sublease Agreements unless prior written consent is received indicating City Manager approval pursuant to Section 13.1. The OIG Auditor recommends that the existing Sublease Agreement between the Watersports Center and Hydrow Inc. be reviewed by the City, and be revised as deemed necessary. Also, the OIG recommends any City approved Sublease Agreements should include insurance requirements reviewed/approved by the Risk Management Division to minimize the City's risk exposure.

Asset Management Division Response:

The Lessee has been notified and educated on the proper timing of providing the Asset Management Division with notification on a new sub-lease, even if they are short term, so that the City Manager has time to review and provide approval.

Miami Beach Watersport Center, Inc. Response:

Subleases for Miami University and Barry University – The Center accepted the lease agreements signed by the assistant city attorney as valid and approved. We were unaware the agreement with Hydrow Inc also required city manager approval. Our understanding was “tenants” referred to year-round tenants only. If Hydrow requests to return in the future, we will submit any agreement for the city manager’s approval.

OPPORTUNITIES FOR IMPROVEMENT

The following observations were noted by the OIG and are presented as opportunities for improvement:

1. Amortization of the unsecured promissory note

A Commission Memorandum dated January 13, 2021 reported that the Finance and Economic Resiliency Committee (FERC) discussed the request of the Watersports Center for a new nine-year lease, in order to amortize a portion of the Capital Contribution Balance, and found the request to be reasonable, when comparing the term of the Lease Agreement with other non-profit entities similarly situated. FERC recommended in favor of approving a new nine-year lease based upon listed essential terms.

The OIG Auditor reviewed the financial statements of the Watersports Center, audited by Menendez & Company CPA for the years ended June 30, 2021, and 2020, as well as for the years ended June 30, 2020, and 2019.

Note 4 in the audited financial statements for the years ended June 30, 2021, and 2020 stated, “In 2003, the Organization issued an interest-free unsecured promissory note to the Shane Family Foundation Corporation, which was founded by the Chairman of the Organization’s Board of Directors, in exchange for cash. The promissory note was amended in 2011. The promissory note provides for quarterly principal payments in the amount of \$1,500 through November 2154 with the remaining principal balance due in December 2154. There were no loan payments made during the year. The note had an outstanding balance of \$792,000 as of June 30, 2021, and 2020, respectively.”

Maturities of the note payable by the Watersports Center to Shane Family Foundation Corporation subsequent to June 30, 2021, are as follows:

2022	\$6,000
2023	6,000
2024	6,000
2025	6,000
2026	6,000
Thereafter	<u>762,000</u>
	<u>\$792,000"</u>

Furthermore, Article III – Amount of Rent of the Lease Agreement requires the Watersports Center to pay an annual rental of ten dollars (\$10.00) to the City. Meanwhile, the audited financial statements report “In-kind contributions” for the leased facility to equal an average of \$273,891 per year (\$268,485 for 2019 + \$273,855 for 2020 + \$279,332 for 2021)/3 years) under the Revenues, Gains, and other Support in-kind contributions line item (see below).

<u>Revenues, Gains and other support</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Membership dues	\$ 349,007	\$ 390,124	\$ 352,015
Facility fees	\$ 186,989	\$ 108,439	\$ 105,511
Program fees	\$ 210,164	\$ 143,304	\$ 210,528
Contributions and grants	\$ 242,797	\$ 127,039	\$ 143,718
In-kind Contributions	\$ 268,485	\$ 273,855	\$ 279,332
Forgiveness PPP loan		\$ 75,400	
Net gain on sale of assets	\$ 13,819	\$ 2,080	\$ 19,200
Total	\$ 1,271,261	\$ 1,120,241	\$ 1,110,304

Note 2 of the reviewed financial statements stated, “...in-kind contributions consisted of the use of land and facilities leased from the City of Miami Beach, see Note 5.” Note 5 further stated, “...Annual Rent of \$10 for the leased property, is below fair market value. Accordingly, the fair market value of the annual rent is determined each year by the Organization’s management, and the difference between the fair market value and the \$10 rent is recorded as an in-kind contribution and expense in the accompanying statement of activities. The in-kind contribution and expense for the year ended June 30, 2021 and 2020 was \$279,332 and \$273,855, respectively.”

Recommendation(s)

Although it does not necessarily directly affect the City, it is recommended that the Watersports Center apply a larger portion of the monies saved in rent toward reducing the balance of its loan due to the Shane Family Foundation Corporation (\$273,891 average saving per year). The faster repayment of the unsecured loan to the Foundation would better protect the Watersports Center if the current Lease Agreement is not renewed by the City upon expiration and would better align with the essential terms approved by the FERC.

For example, if the lessee were able to increase its quarterly installment payments to \$22,000 (\$88,000 yearly), it should be able to fully repay the Shane Family Foundation Corporation prior to the expiration of the current Lease Agreement on December 31, 2030. An annual loan payment of \$88,000 represents 7.92% of the lessee’s 2021 audited total

revenues (\$88,000/\$1,110,304) and 32.13% of the average savings per year (\$88,000/\$273,891).

Asset Management Division Response:

Although it does not necessarily directly affect the City, it is recommended that the Watersports Center apply a larger portion of the monies saved in rent toward reducing the balance of its loan due to the Shane Family Foundation Corporation (\$273,891 average saving per year). The faster repayment of the unsecured loan to the Foundation would better protect the Watersports Center if the current Lease Agreement is not renewed by the City upon expiration and would better align with the essential terms approved by the FERC.

Miami Beach Watersport Center, Inc. Response:

The OIG recommendation is being forwarded to the board treasurer for review and consideration.

2. Re-selling of Parking Department hangtags sold at cost to the lessee

The OIG Auditor discovered that the Watersports Center sells hangtags allowing vehicles to park in the City owned P82 lot located at 6500 Indian Creek Drive in front of the Ronald W. Shane Center. The P82 lot contains a total of 71 parking spaces available for public parking.

When questioned, the Executive Director of the Watersports Center responded that “the center purchases the parking tags annually in an agreement with the parking department”. These hangtags are purchased from the City Finance Department’s Customer Service Division. The OIG Auditor contacted the Customer Services Manager, who explained that the City sold reusable hangtags annually at cost to the Watersports Center for the P82 lot and provided the following chart showing related sales made since 2008:

MIAMI BEACH WATERSPORTS CENTER, INC.

Date	Quantity	\$ Per Unit	Total	EXPIRATION
9/12/2008	300	\$ 1.27	\$ 381.00	9/30/2009
9/21/2009	300	\$ 0.76	\$ 228.00	9/30/2010
9/27/2010	300	\$ 1.76	\$ 528.00	9/30/2011
9/8/2011	150	\$ 0.76	\$ 114.00	9/30/2012
9/13/2012	150	\$ 1.67	\$ 250.50	9/30/2013
9/23/2013	150	\$ 2.78	\$ 417.00	9/30/2014
9/12/2014	250	\$ 2.48	\$ 620.00	9/30/2015
9/10/2015	200	\$ 2.61	\$ 522.00	9/30/2016
9/8/2016	200	\$ 2.61	\$ 522.00	9/30/2017
9/6/2017	125	\$ 3.09	\$ 386.25	9/30/2018
9/7/2018	125	\$ 3.18	\$ 397.50	9/30/2019
9/10/2019	125	\$ 2.22	\$ 277.50	9/30/2020
9/22/2020	125	\$ 3.18	\$ 397.50	9/30/2021
8/17/2021	120	\$ 3.28	\$ 393.60	9/30/2022
7/8/2022	100	\$ 3.52	\$ 352.00	9/30/2023

Although the City does not require the lessee to sign a written agreement related to subsequent usage of the hangtags, the OIG Auditor's review of financial documentation provided by the Watersports Center found that the lessee sells these hangtags for a regular cost of \$70 each, but offers them to its customers at \$40 each as part of its early registration bonus.

Recommendation(s)

The City Parking Department should determine whether it is beneficial for the City to sell the parking hangtags at cost and then to have the Watersports Center re-sell the hangtags to third parties at a higher cost and retain the difference. The OIG recommends that any customers receiving a discounted price on their purchase of parking hangtags should be required to sign in advance a written agreement with the City concerning the permissibility of their subsequent usage.

Asset Management Division Response:

The City Parking Department should determine whether it is beneficial for the City to sell the parking hangtags at cost and then to have the Watersports Center re-sell the hangtags to third parties at a higher cost and retain the difference. The OIG recommends that any customers receiving a discounted price on their purchase of parking hangtags should be required to sign in advance a written agreement with the City concerning the permissibility of their subsequent usage. Claudia Wong of the City's Parking Department communicated with Elaine Roden of Miami Beach Watersports on January 5, 2023. Ms. Wong agreed with the OIG findings and will be schedule a formal meeting the Miami Beach Watersports Center, Inc. to review the proper process of City hang tags.

Miami Beach Watersport Center, Inc. Response:

The hangtag arrangement was made with former parking director Saul Frances and Dr. Ronald Shane. They had a meeting and agreed the Center could purchase the hangtags annually and resell them to the membership at a price the Center set. The details from that meeting were not memorialized, years ago arrangements were often completed verbally, but our understanding has always been that we had permission to resell the hangtags and would not have sold them otherwise. They were advertised at \$70 but we don't actually charge that amount. Some were sold for \$40 but many are given to volunteers, the university tenants for team vans, trainers, coaches, and rowers on scholarships. We would like to have the ability to cover the cost of the hangtags, but we will follow the direction from the Parking Department in this matter.

3. Repairs and Maintenance responsibilities

Article XVIII Section 18.1 of the Lease Agreement provides as follows: the Lessee covenants and agrees with the Lessor that during the Lease term, exclusive of the Lessor's Maintenance Responsibilities, the Lessee will keep in good State of maintenance and repair any and all buildings and other improvements, fixtures and equipment upon the Demised Premises; Lessee will not suffer or permit any strip, waste or neglect of any buildings and improvements; and the Lessee will perform day-to-day housekeeping and janitorial services and the repair and replacement of all improvements, fixtures, and equipment on the Demised Premises, including interior plumbing and interior electrical repairs; maintain the elevator (maintenance and repair agreement) and HVAC (routine maintenance agreement solely); and maintain the interior paint, as often as it may be necessary to keep the interior of the buildings and improvements, fixtures and equipment on the Demised Premises in a good state of repair and condition (collectively, "Lessee's Maintenance Responsibilities).

Article XIX Lessor's Maintenance responsibilities states as follows: *Except as expressly provided in this Lease, it is understood by the parties hereto that Lessor shall be responsible for the maintenance, and replacement (at Lessor's sole discretion), of the capital improvements or infrastructure (i.e. including, but not limited to, the roof, structural elements and infrastructure, HVAC (repair and replacement only), exterior structural plumbing and sewer lines, and structural electrical, seawall, exterior paint, exterior windows, etc.) for the Demised Premises (collectively, "Lessor Maintenance Responsibilities"). Lessee shall provide Lessor with prompt notice of needed capital improvements or repairs, so that Lessor, in its sole discretion, may prioritize and appropriate the funds necessary for any needed capital improvements or infrastructure repairs. Lessor will perform Lessor's Maintenance Obligations in accordance with the same standards as Lessor provides for other facilities owned or operated by Lessor.*

The reviewed maintenance report dated November 3, 2021, performed by the Facilities and Fleet Management Department Facilities Zone Manager, was provided to the OIG Auditor on July 26, 2022 by the Executive Director of the Ronald W. Shane Center. The detailed report assigns responsibility to the appropriate party to perform needed maintenance and repairs at the facility. Some examples of the needed work involved the following:

- Exterior Landscaping
- Front door closure
- Emergency lights
- Expired extinguisher
- Broken fountain first-floor gym to the right
- Cleaning of the first-floor vents and first-floor gym men's room vents
- First-floor gym cracked mirror
- First-floor gym women's room sink caulking
- First-floor gym electric outlet
- Rear bay exit light and sign
- 2nd floor-high hats
- 2nd-floor lights
- Elevator certificate
- Exterior strobes

The Asset Management Division Director then provided a July 27, 2022 email to the OIG indicating the status and associated cost of the items included on the inspection report responsibility of the Property Management:

- First-floor gym ceiling leak - completed \$308.45
- Hurricane windows first floor - Not yet on the capital schedule
- Ceiling hole first-floor gym 2 - Completed \$48.69
- Ceiling water in ducts - Roof Project to be completed in 2022
- Rear exit gym steps concrete - Completed \$133.74
- Rear gym sealing around ducts - Completed \$279.61
- Garage doors rusting - Completed \$2,008.26
- Rear bay exterior lights - Completed \$1,448.10
- Rear bay doors rusting - Completed

- Rear bay floor vents - Completed \$221.60
- Rear building hose connection-Completed \$63.53
- Exterior painting and cracks - Completed \$1,260.00
- 2nd floor missing ceiling tiles - Completed \$1,586.85
- 2nd-floor ceiling leaks - Roof Project to be completed in 2022
- Conference room ceiling holes - Completed \$1,572.23
- Auditorium vents - Completed \$54.40
- Ceiling cracks 2nd floor hallways - Completed \$1,620.00
- Chartering - Reported to Code Compliance
- Dock - Not complete Capital Improvement Project in 2023
- Iguanas - Citywide project, which is ongoing and not part of this Agreement
- Electrical panel outside - In Progress/waiting on parts, Estimate replacement cost \$7,231.50
- Exterior paint - Completed \$1,288.45

Recommendation(s)

The OIG Auditor recommends that in the future the City consider the repairs and maintenance needed by aging City-owned buildings in its future Lease Agreements during negotiations to determine any monies due from the lessee. The OIG suggests the creation of a standardized formula to determine an equitable rent based on such factors as the community goodwill fostered, the value and age of the facility, etc. that should be consistently applied to prospective lessees.

Asset Management Division Response:

The Asset Management Division agrees with the OIG's observation. This practice is already in place. The Asset Management team has budgeted "property condition assessments" for such future lease agreement negotiations.

4. Resort tax monies may be due to the City from the sale of food and beverages at future special events held at the Ronald W. Shane Center

Although no special events were held during the audit period at the Ronald W. Shane Center based on the furnished documentation, OIG staff noted that the Lease Agreement does not include a provision requiring the lessee to remit any associated resort taxes due to the City.

Chapter 102, Article IV, Division 4, Sec. 102-307(a) of the City Code imposes a tax (Resort Tax) of four percent on the rent of every occupancy of a room or rooms in any hotel, motel, rooming house, or apartment house in the City, and two percent upon the total sales price of all applicable items of food, beverages, alcoholic beverages, or wine sold at retail of any restaurant. A restaurant is further defined as: "any business or place for serving food or refreshments required by law to be licensed by the hotel and restaurant commission of the state, or any premises licensed by the city for sale of intoxicating liquor or wine."

Section 4.1 of the Lease Agreement states, "...The Facility shall not be used as a restaurant or bar; however, there may be catered events (e.g., picnic, barbeque, dinner, luncheon, etc.), conferences and meetings and other activities typical of a hall for hire."

The Office of the City Attorney has previously opined to the OIG that any prepared food products served by caterers operating from a permanent physical (business) location in Miami Beach are subject to resort tax food and beverage provisions.

Recommendation(s):

The Lease Agreement should be amended to include a provision to ensure that the City receives any resort taxes due stemming from rentals of the Ronald W. Shane Center.


Asset Management Division Response:

Ms. Roden of Miami Beach Watersports has been made aware of the resort tax fee program. If and when the facility reinstates private, catered parties, they will enforce (via their venue contract) the required City Resort Tax payment by the caterer. The Asset Management Division will discuss further with the City's Legal Department to determine the possibility of amending this Agreement to incorporate such language into the Agreement.

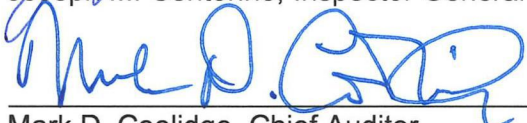
Miami Beach Watersport Center, Inc. Response:

The Center has not rented the facility to the public for events since February 2020. The rental operation did not resume after the Covid pandemic closure and there are no plans to resume a rental operation at this time. If that changes, we are aware resort taxes may be due to the City and the center will be in compliance with the requirement.

Respectfully submitted,



Joseph M. Centorino, Inspector General



Mark D. Coolidge, Chief Auditor

cc: Alina T. Hudak, City Manager
Eric Carpenter, Deputy City Manager
Adrian Morales, Facilities and Fleet Management Department Director
Marla Alpizar, Human Resources Department Director
Sonia T. Walthour, Human Resources Assistant Director
Elaine Roden, Miami Beach Watersports Center, Inc. Executive Director

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