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MEMORANDUM

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov
Office of the Inspector General
Tel: 305-673-7020

November 15, 2019

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

RE: Taste Bakery MB City Hall LLC d/b/a Taste Bakery Café Audit
OIG Audit No. 20-01

Executive Summary

Attached is the Office of Inspector General's audit of selected financial records and transactions of Taste Bakery MB City Hall d/b/a Taste Bakery Café for the period of November 1, 2017 through January 31, 2019. The audit was performed to determine whether Taste Bakery Cafe complied with the applicable sections of their Lease and Concession Agreements.

Based on the results of our audit, it was concluded that compliance with the Lease and Concession Agreements was generally adequate and their terms were being adhered to. However, improvement is needed to ensure that rental payments are timely remitted to the City. The audit determined that, as a result of untimely rental payments, the tenant owes an additional $954.10. In addition, the tenant's insurance coverage should be further reviewed to ensure compliance with the terms of the agreement.

We would like to personally thank Taste Bakery's management and pertinent Office of Real Estate and Human Resources Department staff for their cooperation and assistance during this audit process.

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FINAL AUDIT REPORT

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov
Office of the Inspector General
Tel: 305-673-7020

TO: Honorable Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: November 15, 2019
AUDIT: Taste Bakery MB City Hall LLC d/b/a Taste Bakery Cafe
PERIOD: November 1, 2017 to January 31, 2019

This report is the result of a regularly scheduled audit of selected financial records and transactions of Taste Bakery MB City Hall d/b/a Taste Bakery Café for the period of November 1, 2017 through January 31, 2019. The audit was performed to determine whether Taste Bakery Cafe complied with the applicable sections of their Lease and Concession Agreements.

INTRODUCTION

On November 1, 2017 the City entered into a Lease Agreement with Taste Bakery MB City Hall LLC d/b/a Taste Bakery Cafe, for approximately 734 square feet of Unit 4 of 1701 Meridian Property of Condominium a/k/a 773 17th Street, Miami Beach, Florida 33139. In addition to this Lease Agreement, the parties also entered into a Concession Agreement for the management and operation of a food and beverage concession in the outdoor space adjacent to 773 17th Street.

As disclosed in the Lease Agreement, the City offered the tenant, in consideration of a 40% discount for City employees, a reduced annual rent on the demised premises and concession, in the amount of one dollar ($1), plus additional rent comprised of the tenant's proportionate share of the common area maintenance (CAM), property taxes, and insurance due to the City on a monthly basis. The 40% discount is offered on the purchase price of all food and beverages from any Taste Bakery location within the City to all employees with an active and verified City issued employee identification, whether the purchase is made on-site or ordered for delivery. The City reimburses the tenant a maximum of $200,000 per contract year towards the City employee discount. As it relates to non-employee sales, the tenant is responsible for paying the City an amount equal to five percent (5%) of their annual gross receipts for sales made at the demised premises, until the receipts delivered to the City have reached the $200,000 contribution for employee discounts.

OVERALL OPINION

Based on the results of our audit, it was concluded that compliance with the Lease and Concession Agreements was generally adequate and their terms were being adhered to. However, improvement is needed to ensure that rental payments are timely remitted to the City. The audit determined that, as a result of untimely rental payments, the tenant owes an additional $954.10. In addition, the tenant's insurance coverage should be further reviewed to ensure compliance with the terms of the agreement.

SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of this audit was to determine whether Taste Bakery MB City Hall d/b/a Taste Bakery Cafe complied with selected terms of the Lease and the Concession Agreements entered into with the City on November 1st, 2017. The audit covered the period November 1, 2017 through January 31, 2019, and selected transactions prior and subsequent to this period. In general, the audit focused on the following objectives:

- To determine whether the tenant complied with the rental payment terms of the Lease and Concession Agreements.
- To determine whether rental payments were remitted timely.
- To ensure remitted rental payments were properly recorded in the City's Financial System and deposited into the City's treasury.
- To determine whether employee discounts were offered only to employees with an active and verified City issued employee identification.
- To determine whether reimbursement requests submitted by the tenant were properly supported, were accurately calculated and did not exceed $200,000 during the 2018 fiscal year.
- To determine whether insurance coverage was adequate and in compliance with the terms of the Lease and Concession Agreements.
- Other audit procedures as deemed necessary.

We conducted this performance audit in accordance with the Standard Operating Procedures of the City of Miami Beach Office of the Inspector General as well as internal audit best practices. Those require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit methodology included the following:

- Reviewed applicable policies and procedures; interviewed and made inquiries of appropriate personnel to gain an understanding of internal controls;
- Performed testing consistent with the audit objectives, including but not limited to examination of applicable transactions and records;
- 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 MANAGEMENT RESPONSES

1. Finding: *Rental Payments were not Timely Remitted to the City*
   As per Section 3.1 of the Lease Agreement, the tenant's payment of rent, shall commence on November 1st, 2017 and thereafter, on each first day of subsequent months. The base rent for the demised premises shall be for one dollar ($1) per contract year. Furthermore, as per Section 3.2, in addition to the base rent, tenant shall also pay as additional rent, its proportionate share of common area maintenance (CAM), property taxes, and insurance (see table below).

Section 19.1.6 states that, it is expressly agreed and understood by and between the parties that any installments of rent accruing under the provisions of the lease which shall not be paid when due shall be subject to a late charge of fifty dollars ($50), plus interest at a rate of eighteen percent (18%) per annum, or the maximum amount allowable under Florida law, whichever is lesser, from the due date of the payment until such time as payment is actually received by the City.

Description	Annual Amount*	Monthly Payments Due*	Due Date
Annual Rent	$ 1.00	-	Nov 1st
Additional Rent on Proportionate Share			
(1) Common Area Maintenance (CAM)	2,936.04	244.67	1st day of the month
(2) Property Taxes	4,890.36	407.53	1st day of the month
(3) Insurance	660.60	55.05	1st day of the month

*Plus applicable sales tax

The Office of the Inspector General performed a review of all rental payments due for the period of November 1, 2017 through January 31, 2019 to ensure compliance with the terms of the Agreement. The payments shown below were not remitted timely, but no penalties or interest were assessed by the City. As a result, $954.10 in late fees ($750.00) and interest ($204.10) is due to the City.

Late Payment of Monthly Rent

Period	Due Date	Paid Date as per Munis	# of Days Late	Late Fee Due	Interest Due (18% per annum)	Late Fees and Interest Assessed Yes/No?
Nov-17	12/1/17	1/10/18	40	$ 50.00	$ 22.73	N
Dec-17	12/1/17	1/10/18	40	50.00	22.70	N
Jan-18	1/1/18	1/10/18	9	50.00	11.35	N
Feb-18	2/1/18	2/13/18	12	50.00	11.33	N
Mar-18	3/1/18	3/16/18	15	50.00	11.33	N
Apr-18	4/1/18	4/6/18	5	50.00	11.33	N
May-18	5/1/18	5/7/18	6	50.00	11.33	N
Jun-18	6/1/18	7/5/18	34	50.00	22.66	N
Jul-18	7/1/18	7/5/18	4	50.00	11.33	N
Aug-18	8/1/18	8/16/18	15	50.00	11.33	N
Sep-18	9/1/18	9/17/18	16	50.00	11.33	N
Oct-18	10/1/18	10/3/18	2	50.00	11.33	N
Nov-18	11/1/18	11/14/18	13	50.00	11.35	N
Dec-18	12/1/18	12/10/18	9	50.00	11.33	N
Jan-19	1/1/19	1/3/19	2	50.00	11.33	N
				$ 750.00	$ 204.10	

It was noted that City generated bills do not have a department specific remittance address (only specify City Hall's main address), and payments received are not date/time stamped making it difficult to determine when the payment is received.

Recommendation(s):
The Office of Real Estate should bill and collect the late fees and interest due to the City. In addition, the Office of Real Estate should work with City Management to enable the specific department on the remittance (in this case Office of Real Estate) to facilitate the routing of the payments, and for the department to be able to account for when the payment is received. An alternative solution could be for the Office of Real Estate to create a lockbox account for faster and more efficient payment processing.

Management's Response (Office of Real Estate):
As indicated above, City generated bills do not have a department specific remittance address and only specify the main City Hall address. Payments may be received by the City via standard mail, express mail, bank wire, online payment or hand delivery to the cashier's window. Mailed payments are usually received by the City's Central Services Division and must be forwarded to the Finance Department for processing. Payments received by the City without an invoice are often deposited into a miscellaneous account and staff must research the payment in the miscellaneous account and request a journal entry adjustment which then reflects the receipt date as the journal entry date. Given the various delivery options, and potential delays, it is often difficult to determine when payments are initially received by the City versus when they are posted in the system. As such, late fees are typically not assessed until 30 days from the due date. The Office of Real Estate agrees that the payments for the periods of November 2017, December 2017, and June 2018, received in excess of 30 days of the due date should incur a late fee and interest. The Office of Real Estate billed customer in the amount of $218.09 on November 6, 2019.

Implementation Date:
The Office of Real Estate billed Taste Bakery in the amount of $218.09 on November 6, 2019.

Audit Observation:
Although the Office of Real Estate determines its enforcement practices, the creation of a thirty (30) day grace period does not address the problem of determining the date of the receipt. If concerns exist as to determining the actual date that the payment was received, then corrective action should be taken to remedy the shortcoming rather than to give vendors additional time before assessing the late charges specified in the Agreement. Therefore, it is recommended that the Office of Real Estate establish and consistently follow a designated method to determine the actual date that the payment is received. Examples include utilizing a bank's lockbox services whereby all customer payments are directed to a special post office box, maintaining the concessionaires/lessees' envelopes so that the postmark date can be used as the benchmark, etc.

2. Finding: *Unable to Determine Compliance with Insurance Coverage Requirements*
In accordance with Section 10 of the Agreement, before beginning any work and throughout the term of the Lease (including renewal periods), tenant shall, at its sole cost and expense, comply with all insurance requirements of the City. It is agreed by the parties that tenant shall not occupy the Demised Premises until proof of the following insurance coverage has been reviewed and approved by the City' s Risk Manager. Provider shall indicate that insurance coverage has been obtained which meets the requirements as

outlined below by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively:

(1) Worker's Compensation for all employees of the provider as required by Florida Statute 440 and Employer' s Liability coverage in accordance with the Florida Statutory requirements.
(2) General Liability on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence, for bodily injury and property damage. City of Miami Beach must be shown as an additional insured with respect to this coverage.
(3) Business interruption insurance sufficient to insure tenant for no less than one (1) full year of loss of business, with the City named thereon as loss payee to the extent permitted by applicable law.
(4) All-Risk property and casualty insurance, written at a minimum of eighty percent (80%) of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of tenant and including without limitation all of tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by tenant under the provisions of this Lease).

In order to determine whether the tenant was properly insured, the current Certificate of Insurance (valid for the period of 01/16/2019 - 01/16/2020 and 04/10/19-04/10/20 for worker's compensation), and the current Evidence of Property Insurance (valid for the period of 11/07/18-11/07/19) were reviewed. As part of our testing, Office of the Inspector General staff contacted the City's Risk Management Division (Risk Management), as they are the responsible party for ensuring and approving coverage, to obtain confirmation of compliance. As it relates to requirements #s 1 and 2 above, Risk Management confirmed compliance via email communication. However, as it relates to requirements #s 3 and 4 above, though Risk Management indicated compliance, it was noted as to requirement #3, that while coverage is indicated for business income, it does not specify whether the coverage is sufficient to insure the tenant for no less than one (1) full year of business loss. Regarding requirement # 4 above, the Evidence of Property Insurance provides coverage, but it does not specify whether the coverage is at eighty percent (80%) of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises. Office of Inspector General staff continued to follow-up with the Risk Management Division to obtain additional documentation to substantiate compliance, but as of September 27th, no supporting documentation had been received. As a result, we were unable to determine whether the tenant is in compliance with the insurance coverage requirements as stipulated in the Agreement.

Recommendation(s):
It is recommended that the City's Risk Management Division further review the Evidence of Property Insurance and obtain any additional documentation directly from the tenant or the insurance provider to help ensure proper coverage.

Management's Response (Risk Management Division):
Certificates of insurance are generally provided to the department that manages the agreements and then forwarded to Risk Management or a managing contractor for review and approval. Among the thousands of contracts that we monitor for compliance with insurance requirements, lease agreements are unique in that they require coverages that are typically found in other goods and services type agreements. In this particular case, business interruption and property insurance are required with elements of the coverage tied to information that is not shared with the Risk Management team, such as the lessee's estimated annual revenue and value of leasehold improvements.

As it relates to Taste Bakery Cafe, on October 29, 2019 we obtained the average annual revenue amount as well as the value of leasehold improvements that was needed to determine if the certificate provided showed acceptable coverage for Business Interruption and Property Insurance. Based on the information, we can conclude that Taste Bakery Cafe is compliant with the insurance requirements pertaining to the aforementioned coverages.

Going forward, our office will conduct an audit of all leasehold agreements with similar insurance requirements and work with the Office of Real Estate staff to remediate any deficiencies. Also, prior to any new lease agreements or renewal of current agreements, we will require that the scope and insurance language be sent to Risk Management to ensure that language is accurate and meets industry standards.

Implementation Date:
The Risk Management Division has obtained documentation from the Office of Real Estate. Coverage was reviewed and determined to be in compliance.

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cc: Jimmy L. Morales, City Manager
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