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**Review of Lease Agreements for Shops in the
Central Business District Parking Garage
referred to as City Park Mall (CPM)**

Report of Audit 07/08-XX-09

April 24, 2009



Office of Management and Budget

Internal Audit

MEMORANDUM NO. 09-03

DATE: April 24, 2009

TO: Director of Economic Development/Jeff Modarelli
Director of Finance/Michael Kinneer

SUBJECT: *Review of Lease Agreements for Shops in the Central Business District
Parking Garage referred to as City Park Mall (CPM).*

Enclosed is the "subject" Final Report of Audit.



Shonda Singleton-Taylor
Acting Director, Office of Management and Budget

Attachment - Final Report of Audit No. 07/08-XX-09

c: City Commission
City Manager/George Gretsas
Assistant City Manager/Ted Lawson
Assistant City Manager/Allyson Love
Assistant City Manager/David Hebert

SST/am

REPORT OF AUDIT NO. 07/08-XX-09

DATE: August 4, 2008

TO: Director of Economic Development/Jeff Modarelli
Director of Finance/Michael Kineer

FROM: Assistant Internal Audit Director/Renée C. Foley

BY: Financial Management Analyst/Aaron Strain
Financial Management Analyst/Dede Alexakis

SUBJECT: *Review of Lease Agreements for Shops in the Central Business District Parking Garage referred to as City Park Mall (CPM)*

BACKGROUND

CPM, constructed in 1979, is a downtown City of Fort Lauderdale (City) owned property currently renting to five (5) Lessees. Section 8.12 of the City Charter permits the City Manager to negotiate lease agreements with the shop owners (Lessees) with approval by the City Commission. The City's Real Estate Division administers and is responsible for the overall monitoring of the lease agreement requirements¹ and reports to the Director of the Economic Development.² The City's Finance Department, Treasury Division is responsible for billing and collecting payments³ from the Lessees and Risk Management Division is responsible for reviewing and verifying that Lessees' insurance certificates are in accordance with the requirements of the lease agreements.

SCOPE

The objective of our review was to determine whether the City and Lessees complied with the provisions of the lease agreements. We reviewed 5 Lessees, Downtown Deli⁴ and Sushi KO Express Corporation (Sushi KO) in detail and conducted limited testing of Nadezda (Nadja) Horst, Cucina Tradizionale/Bar.Don Development, and Paul James Salon in the areas of lease renewal, insurance, permits and licenses. We reviewed the adequacy of internal

¹ Lease requirements include rent, sales tax, property tax, refuse, interest, permits and licenses, certificates of insurance, security deposits, lease renewal, etc.

² The Real Estate Division was transferred from Public Works to Economic Development in FY2007.

³ Invoice/payment includes rent, property tax, sales tax, and refuse.

⁴ United Deli Services, Inc.

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controls used for the billing, collection, and management administration in monitoring Lessees' compliance with the lease agreements. The review included interviews, documenting processes and procedures used, the examining of files and records, tests of transactions and consultation with outside sources. We reviewed transactions for fiscal years 2006/2007 and 2007/2008 (through June 2008) and documentation dating back to 2001. The audit was performed during May and June 2008. The audit was conducted in accordance with generally accepted government auditing standards and included tests of internal controls as considered necessary under the circumstances.

OVERALL EVALUATION

Our review disclosed inadequacies exist in internal controls and management oversight of the renewal and expiration of multiple lease agreements, billing/collection operations, and tracking and monitoring Lessees' compliance with requirements in lease agreements. Certain Lessees maintained delinquent/late payment histories with no interest penalties billed nor collected. One Lessee has not been invoiced and the premise has been occupied by another entity. There is a lack of management review and approval of charges submitted and invoiced. Procedures are not adequate for the billing and collecting of late payments, interest charges and delinquent non-sufficient funds (NSFs), as well as security deposits. Lessees have not been billed for property taxes until approximately two months subsequent to the City's payment. Methodology used to calculate the Consumer Price Index (CPI) adjustment on invoices to Lessees was not applied in a consistent manner and was calculated erroneously. Furthermore, certificates of insurance (COIs) and permits and licenses were not in the City's possession for any CPM Lessees; thus, adequacy of coverage could not be determined.

FINDING 1

Internal control procedures could be strengthened to address follow-up on renewal of lease agreements in advance of expiration dates and to detect/prevent the default of lease agreement obligations.

Lease agreement, Section 2. Term states: "Lessee shall have the option to extend the term of this Lease for one additional term of five years. At least ninety days prior to

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the expiration of the original term or the applicable option term, Lessee shall notify the City Manager of the City, in writing, of its intention to exercise such option. Such option shall not be applicable if, at the time of the exercise, or at any time thereafter prior to the expiration of the original term, Lessee is in default of any of its obligations under this Lease.”

Section 83.03, Florida Statutes, Title VI states: “A tenancy at will may be terminated by either party giving notice...the tenancy is from month to month, by giving not less than 15 days’ notice prior to the end of the monthly period....”

4 of 5 (80%) Lessees’ lease agreements had expired and are currently operating on a month-to-month basis as follows.

Date	Downtown Deli	Sushi KO	Nadja Horst	Cucina Tradizionale	Paul James Salon
Lease Signed	9/19/03	6/20/03	5/20/03	4/23/08	2/26/04
Lease Commenced	3/01/03	6/01/03	5/01/03	4/01/03	3/01/04
Lease Expired	2/29/08	5/31/08	4/30/08	3/31/08	2/28/09
Expired as of 06/30/08	Yes	Yes	Yes	Yes	No

There was no evidence in the Lessees’ files of their intent to exercise option to renew, nor written correspondence from the City to Lessees informing them of new lease agreements being drafted for execution. Lessees were not in compliance with several requirements⁵ at the time of their respective lease agreement expirations.

On May 27, 2008, the Economic Development Manager submitted a request to the City Attorney’s Office (CAO) for modifications to lease terms for the 4 expired Lessees. We were unable to determine follow-up of lease renewal intent, why proposed modifications were not prepared and submitted to the CAO prior to lease expirations, and why the Economic Development Manager would consider renewal of non-compliant Lessees.

Without a formal lease agreement and the acceptance of Lessees who are non-compliant with lease requirements would place the City in a vulnerable legal and financial position with limited recourse.

⁵ As detailed in Findings 2, 4 and 6: Timely receipt of payments, submission of COIs, permits and licenses.

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RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Economic Development* should require the *Economic Development Manager* to:

Recommendation 1. *Revise the 90 day⁶ written notification letter to be completed and returned to the City by all Lessees of City owned properties with their renewal intention of the lease agreement. Furthermore, prepare the necessary paperwork for lease renewal or termination to confirm an agreement is reached prior to expiration date in order to make arrangements prior to renewals or find new Lessees for the non-renewed premises.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The letter has been revised to better promote a response indicating whether or not the lessee chooses to renew. The current renewals were an exception. The City faced a decision of having empty spaces or reducing rents to keep the space occupied and generating income. This required greater time and attention for a longer amount of time. Ultimately the City Commission decided to reduce rents to allow businesses further opportunity to remain viable. Under normal circumstances, it is expected agreements will be reached earlier.” **This item is closed.**

Recommendation 2. *Perform a comprehensive review, identifying Lessees who are not meeting requirements and take action to bring about compliance in order to protect the City’s physical/financial assets. Prior to renewal of lease agreements for all City owned properties, confirm that Lessees have complied with all requirements and in the event of noncompliance, those lease agreements should not be renewed up until the non-compliant issues are rectified through to resolution.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Real Estate Division generally identifies lessees who are not meeting their requirements prior to lease renewals. If a tenant is in arrears, all rent due is requested and received from the Tenant prior to entering into a new lease with them. An example of this is the Downtown Deli lease rent that was in arrears in the amount of \$18,453.78, as per the

⁶ Number of days specified in CPM lease agreements; however, this could vary with other City owned properties.

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Treasury Department, which was subsequently collected prior to the lease renewal. The Real Estate Division generally attempts to work with the tenants so that they may remain in the space while working through issues of non-compliance. Additionally, the Real Estate Division will purchase software which will integrate the Treasury, City Attorney and Risk Management Departments so that functions regarding leases with the Economic Development Department, will provide a central mechanism, accountable and control process during the lease cycle. Purchase of software will be completed within 3 months. **Estimated completion date May 29, 2009.** Upon the purchase of the software, a comprehensive training period will take place that may extend for 6 - 12 months. Staff anticipates all leases to begin to be entered into the software system within 6 months and be completed within 12 months after implementation of software. Although Real Estate staff did assist Treasury in the collection of unpaid rent balances prior to lease renewal of the four City Park Mall leases indicated, staff agrees that the review process should include other matters in addition to rent and these requirements will be added to the Real Estate review process and Real Estate "Property Guide". **This item is open.**

FINDING 2

Internal control procedures could be strengthened to accurately invoice and secure timely collection of payment.³ Furthermore, late charges were not billed to Lessees to encourage timely payments.

Lease agreement, Section 9(a) states: "...Lessee agrees promptly to pay to the City as rent for the occupancy of the Premises...plus adjustments..., in advance and without demand on the first day of each month...." Section 17 states: "Lessee may assign or sublease its interest in this Lease, in whole or in part, only with the written consent of the City, authorized by appropriate municipal action, taken at a public meeting of the City Commission of the City.... Such consent shall release the Lessee from its obligations under this Lease...." Section 26 states: "All delinquent payments to the City shall bear interest at the rate of one percent per month on any unpaid balances at the date of the delinquency."

First amendment lease agreement approved 4/17/07, Section 5 states: "For a period commencing August 17, 2006 and ending the earlier of either (i) May 31, 2007 or (ii) the date on which Lessee secures a Certificate of Occupancy for tenant improvements to the Premises from the City...evidencing compliance with all codes.... At the end of the Pre-Rental Period Lessee shall be obligated to commence paying the applicable

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rent on Shop 128.” First amendment lease agreement approved 4/17/07, Section states: “...provisions relating to Shop 128... LESSEE shall pay rent to CITY for the Premises (Shops 128 and 132) at the same rate per square foot as is currently due CITY under the Lease for Shop No. 132, together with LESSEE’s proportionate share of operating expenses.” Lease agreement between Paul James Salon and the City, Section 9(b) states: “At the time Lessee takes possession of the Premises, Lessee shall provide to City...a “security deposit” equal to the rental amount of one month of the original term.”

Our review to determine whether payments were current for Lessees, Downtown Deli and Sushi KO, revealed Downtown Deli has not paid their June 2008 invoice (\$3,545). We also found Lessee, Paul James Salon, has not made any payments nor security deposits for their second rental space in the past 13 months (\$18,888).⁷ Paul James Salon’s amendment to their lease agreement only permits an extension of the existing business; however, they have been allowing a separate business entity, Bronze Tanning Salon Spa, to occupy shop 128. In FY06/07 and FY07/08 (through June 2008) payments were late for both Downtown Deli (\$71,937) and Sushi KO (\$10,564).⁸ Furthermore, 1% interest totaling \$4,099⁹ (**Schedule**) was not charged to any Lessees. Lessees’ payment histories revealed delinquencies at times as great as 6 months by Downtown Deli. Furthermore, refuse billing for Lessees was inconsistent to the amount billed to/paid by the City and reflects rates that have not been updated since 2000.¹⁰

Although lease agreements include a provision to charge interest; it was not enforced. Real Estate did not adequately instruct Treasury on charges and adjustments to Lessees’ billing and did not get involved in the recovery of Lessees’ past due balances until February 2008 for Downtown Deli and Sushi KO and July 2008 for Paul James Salon as a result of this review. Furthermore, no written methodology exists to calculate the current refuse amounts (trash portion of invoices). Although the City has received monthly billings from the refuse vendor, the rate has not been adjusted in the monthly invoices to the Lessees since 2000. The City has not paid refuse for shop 140 occupied by the Real Estate office.

⁷ Real Estate was unable to provide support for refuse calculation methodology; therefore, total includes an estimated \$33.04/month for refuse based on the 2006 rate of a similar business. Property tax is included in this figure, as it has not been billed to date.

⁸ Late payments calculated do not include property tax as this item is detailed in Finding 4.

⁹ Interest is calculated on all late payments and amounts billed, including property tax.

¹⁰ Per Financial Accounting Management Information System (FAMIS).

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Management review and approval of both charges submitted and invoice accuracy based on written methodologies and documentation, as well as the enforcement of collections and late fee assessment will provide incentive for Lessees to pay timely; thus, increasing revenues to the City.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Finance* should:

Recommendation 3. *Assign the Treasurer full responsibility and accountability for administration, billing and collection of Citywide accounts receivable, including those to Lessees of City owned properties.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “With regard to the collection of lease payments due for City owned properties the Treasurer is charged with the administration and billing of amounts due. The following process is in place: Once a lease is received by the Treasury from the Economic Development Department it is recorded on an Excel spreadsheet. An Account Receivable billing request is created for the creation of an invoice in the FAMIS accounting software. The Account Receivable Request indicates the amount to be billed as well as the recurring billing requirements according to the terms of the lease. Each month the account receivable report is reviewed to verify whether payment has been received. The Treasury monitors the payment or non-payment of rental amounts due the City. The Treasury has written procedures regarding the non-payment of rentals, which provide as follows: “If payment has not been received, 1) a past due letter mailed to the lessee. Letters are mailed out for 30-day, 60-day, and 90-day intervals on all unpaid balances and 2) phone calls are made to the lessee at least once a month after a 60-day letter is mailed out to the lessee. The Economic Development Department receives a copy of all the correspondence that is mailed to the lessee.

With regard to assigning the Treasurer full responsibility and accountability for administration, billing and collection of Citywide accounts receivable, a recommendation will be made based upon available staffing and resources.”
This item is open.

Recommendation 4. *Establish, issue and implement written policies and procedures that provide direction and guidance for managing, billing and*

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collection of accounts receivable, including the review and approval of invoices for accuracy of all Lessees of City owned properties.

Management Comment. *Management concurred with the finding and recommendation and stated:* “Staff concurs with the recommendation. This recommendation will be completed by June 12, 2009.” **Estimated completion date June 12, 2009.**

Recommendation 5. *Require the Treasurer to enforce the assessment and billing of late interest charges to Lessees of City owned properties whose payments are not received by the grace period in accordance with lease agreements to encourage timely payments.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Treasury Division will add late interest charges when incurred. This recommendation has been implemented.” **This item is closed.**

Recommendation 6. *Require the Treasurer to establish an aggressive collection policy, including interest for late payments and actions to be taken if Lessee, after a specific timeframe, remains delinquent, while keeping the Economic Development Manager aware of actions taken against non-compliant Lessees of City owned properties.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Treasury monitors the payment or non-payment of rental amounts due the City. The Treasury has written procedures regarding the non-payment of rentals, which provide as follows: If payment has not been received, 1) a past due letter mailed to the lessee. Letters are mailed out for 30-day, 60-day, and 90-day intervals on all unpaid balances and 2) phone calls are made to the lessee at least once a month after a 60-day letter is mailed out to the lessee. The Economic Development Department receives a copy of all the correspondence that is mailed to the lessee. The Treasurer has been directed to calculate interest and late payment penalties on all delinquent payments and to notify the Economic Development Department of outstanding balances.” **This item is open.**

The *Director of Economic Development* should require the *Economic Development Manager* to:

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Recommendation 7. *Consult with the City's refuse vendor for CPM together with Public Works to develop a written methodology/procedures for the calculation of refuse amounts for all shops at CPM (including City occupied shop) and provide Treasury with a request to invoice Lessees at adjusted rates. Upon any changes to Lessee occupancy or requested change in service, inform Public Works and reevaluate the degree of service and pro rata share of refuse billing for all Lessees.*

Management Comment. *Management concurred with the finding and in principle with the recommendation and stated: "The Real Estate Division believes the formula to calculate for refuse for the CPM is accurate. The monthly refuse fee is divided among City tenants (5) with restaurants paying 2x the amount charged to non-restaurant tenants. The Treasury Department billed under this practice prior to creation of the Real Estate Division. The responsibility for refuse is the lessee's and listed in each lease. The City occupied shop does not contribute to the refuse charge, as it is removed by our maintenance (another) contractor. The City Real Estate Office currently has a vendor contract for janitorial services. Trash from the Real Estate Office is not placed in the dumpster. It is carried away by the contractor. Per recommendation the Real Estate Division has included this practice/methodology in writing as part of the Property Guide and procedures." This item is open.*

Recommendation 8. *Conduct a review of all City owned properties leased to include all written methodologies/procedures needed to perform calculations (i.e., refuse, property tax) and submit all necessary documentation (i.e., copies of refuse bill, lease amendments, etc.) required for Treasury to verify calculations for accuracy and determine all adjustments including rent, property tax, sales tax, refuse, and security deposits and update on a continuous basis.*

Management Comment. *Management concurred with the finding and recommendation and stated: "The Economic Development Department concurs and will complete the review and forward the suggested info to Treasury and will develop a monthly report so that there is consistent communication between Real Estate and Treasury." Estimated completion date September 30, 2009.*

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Recommendation 9. *Immediately provide Treasury with a formal request to invoice Paul James Salon \$18,888¹¹ for shop 128. Consult with the City Attorney's Office to formalize a sublease or other applicable agreement for shop 128 as an additional business, namely Bronze Tanning Salon Spa. Verify if any other unauthorized occupancies have occurred in City owned properties and follow-through to resolution on all issues.*

Management Comment. *Management concurred with the finding and recommendation and stated:* "The Treasury Department has invoiced Paul James Salon for rent not currently paid as required by the lease. Economic Development Department has cooperated with Treasury to assist in collecting these funds. A master lease was created by the City Attorney's Office covering both Paul James Salon and Bronze Tanning. A further sublease is unnecessary. There were no unauthorized occupancies at the time of the audit and are currently none at the present. **This item is closed.**"

Recommendation 10. *Establish, issue, and implement written policies and procedures to provide guidance for the complete administration of leases associated with City owned properties together with a system to monitor compliance with lease agreement requirements.*

Management Comment. *Management concurred with the finding and recommendation and stated:* "The Real Estate Division has established written procedures included in its "Property Guide". This manual provides a system to track leases. Although Real Estate was not utilizing its current system to monitor or track permits or COIs at the time of the audit, the "Property Guide" has been updated to include monitoring of COIs and permits along with other requirements of the lease."

The Economic Development Department currently works in conjunction with the City's Legal, Treasury, Finance and Risk Management and other Departments to administer leases.

Staff will monitor additional requirements of lease as contemplated in this audit and add the following procedures:

Real Estate Division is responsible for overall monitoring (requirements) of all City Leases.

¹¹ The amount included in this total for refuse is subject to change to reflect methodology developed.

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Real Estate Division is responsible to review charges and invoices.

The Real Estate Division is responsible to maintain all COIs and permits and licenses in its files. The file is to be updated upon new and renewed leases and on an annual basis as permit or COI is issued or updated/changed.

The Real Estate Division is responsible to make certain that prior to renewal of any lease all obligations are met per the lease. Both Risk Management and Treasury must be notified, when lease renewals begin, of any obligations that are not being met.

The Real Estate Division will keep notes or records indicating that a lease is being negotiated and update the notification letter to include a response method for Lessee to inform City whether or not they intend to renew.

The Real Estate Division will begin renewal discussions with Lessees and CAO upon receipt of "intent to renew letter/response". This email to CAO will be kept in file.

The Real Estate Division will, upon routing of new leases, complete the routing page of the lease to contain revenue comments on how much should be collected prior to being sent to Finance. This routing slip will be followed by an email to the Treasurer and Director of Finance indicating Revenues are to be collected. In addition, any change to a lease will be communicated via email to Finance and Treasury.

The Real Estate Division will create a policy and add to Operations Manual the method of charging for refuse. In addition, the Real Estate Division will send this policy to Treasury along with amounts to be charged to all Lessees when new lease is made or existing lease is renewed or adjusted.

The Real Estate Division will complete a monthly report containing information required for Treasury to verify calculations for accuracy and determine all adjustments including rent, property tax, sales tax, refuse, and security deposits.

Once a lease is received by the Treasury from the Economic Development Department it is recorded on an Excel spreadsheet. An Account Receivable billing request is created for the creation of an invoice in the FAMIS accounting

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software. The Account Receivable Request indicates the amount to be billed as well as the recurring billing requirements according to the terms of the lease.

Each month the account receivable report is reviewed to verify whether payment has been received.

The Economic Development Department receives copies of all correspondence that is mailed to the lessees.” **This item is open.**

FINDING 3

Internal control procedure could be strengthened to verify the accuracy of posting, billing and collection of NSF payment replacements, NSF fees and initial lease agreement security deposits into the Lessees’ FAMIS accounts.

Treasury Procedures, Section 6.12 Utility Billing-Process Returned Checks states: “Upon receipt of payments from customer, within the month of occurrence, the funds are entered as redeposit via Miscellaneous Receipt and the returned check fee is also collected at that time.... If the time of the Month End Report is completed and customer has not paid, the Customer Service Representative enter on the spreadsheet JE in the Comment Column and provide the index and sub-object code where revenue was originally recorded for the Accountants to chargeback the department in the Charge to Account column.”

City Budget Fiscal Year 2008 Treasury Division’s Goal states: “Provide outstanding customer service while generating, collecting and accounting for all revenues due to city.”

Our review of payments received from Lessees, Downtown Deli and Sushi KO, revealed that the journal entry for the replacement check to the original NSF check posting in Downtown Deli’s account totaling \$27,673.32 was not made. The Lessee’s account history shows that payment was made on February 28, 2008; however, does not show the NSF debit nor replacement check received on April 10, 2008. Likewise, all security deposits and NSF fees are also posted in non-associated “Subsidiary accounts” without corresponding journal entries to Lessees’ accounts.

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Treasury/Utility Billing procedures¹² are being used for security deposits and NSF's; however, these procedures are not adequate to provide a complete representation of Lessees' account histories.

Establishment, issuance and implementation of proper policies and procedures will provide an accurate representation of all transactions in Lessees' account histories whereby providing a complete audit trail.

RECOMMENDATION 11

The Director of Finance should require the Treasurer to establish a procedure to monitor and verify the process of posting and depositing NSF replacement checks, fees and security deposits into City owned property Lessees' account histories.

MANAGEMENT COMMENT

Management concurred with the finding and recommendation in principle and stated: "The NSF procedure for leases is the same as with all checks returned to the City due to non-sufficient funds. This process is in place. An Excel Worksheet is prepared for each lessee and all activity relative to such lessee is recorded on the worksheet. This includes payment history as well as NSF activities." **This item is open.**

FINDING 4

Internal control procedures could be strengthened to verify proper administration and monitoring of Lessees' compliance with property tax requirements in the lease agreements.

Lease agreement, Section 5(i) Property Taxes states: "Lessee shall be liable to the City for the proportionate share of ad valorem real property taxes and assessments attributable to the Premises. The City shall bill Lessee monthly for the estimated amount of property taxes owed by Lessee, based upon the latest actual property taxes assessed. The City shall then remit to the Broward County tax collector the total amount of such taxes and special assessments...."

¹² These procedures have not been reviewed nor approved by the Acting Treasurer and/or Acting Director of Finance.

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Our review of property tax assessment and collection revealed that although the City has fulfilled its obligation in paying the total property tax for all five Lessees within the CPM premises in advance, it is currently owed \$420 in past due property taxes from Lessee, Downtown Deli. Prior to their lease expiration dates for 2008, Downtown Deli was \$3,360 (8 months) and Sushi KO \$525 (4 months) in arrears. Furthermore, Treasury is not billing Lessees for property taxes until approximately two months subsequent to the City's payment. The City has also been paying property tax for 2006 and 2007 on vacated shop 140, previously leased by Bromir/Downtown Travel and currently occupied by the City (\$3,998).

No system exists to bill Lessees immediately upon the City's receipt of the property tax assessment and address the deficiency created by the Lessee's lack of payment or premature vacancy prior to the City's reimbursement or to review the necessity of full payment of the ad valorem amount assessed by Broward County. Annually, the Broward County Property Appraiser's Office sends a list of City owned properties to determine whether they are leased, either in whole or part, to a taxable organization. Real Estate completed the 2008 list; however, did not specify the exemption of shop 140.¹³

Prompt billing, collection, and monitoring the taxable status of properties will maximize revenue received and minimize the risk of dollars lost if Lessees vacate premises.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Finance* should require the *Treasurer* to:

Recommendation 12. Invoice property tax to the Lessees of City owned properties at the time the City makes the payment (usually November) to prompt a more timely payment from the Lessees and bill the November rate for the upcoming year and make necessary adjustments upon receipt of Trim Notice from Broward County (in August).

Management Comment. Management concurred with the finding and recommendation and stated: "Adjustments will be made in the new year by

¹³The City's Real Estate office occupies shop 140.

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utilizing the TRIM notice sent to the City in August by the Broward County Property Appraiser. This will begin immediately.” **This item is closed.**

Recommendation 13. *Communicate with Economic Development Manager at the time ad valorem property taxes are due to determine if any vacancies of City owned properties exist so that the City can make appropriate adjustments in order to avoid the overpayment of taxes.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Real Estate Division will advise the Treasury Department if any vacancies of City owned properties exist at the same time ad valorem property taxes are due in order to avoid overpayment of taxes. This will begin immediately.” **This item is closed.**

The *Director of Economic Development* should require the *Economic Development Manager* to:

Recommendation 14. *Consult with the City Attorney to recover overpayment of property taxes for 2006 and 2007 of CPM shop 140. Immediately assess the occupancy status of all City owned properties and notify Broward County of any vacancies in order to receive a property tax adjustment for 2008 prior to Trim Notice. In the future, perform this practice annually upon receipt of the Trim Notice with the projected property tax assessments.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Broward County Property Appraiser Office has indicated that the City property, under the current folio number of which Shop 140 resides, is paying a tax rate of 2% (minimum amount) and therefore no overpayment was made. Whether or not shop 140 is included in the tax calculation, the City will still pay the minimum. The appraised value for shop 140 does not add enough value to even reach the 2% threshold, thus the City is being charged the minimum rate of 2%. In addition, regardless of whether or not City occupies the space, the space will be charged per the Property Appraiser’s methodology. In the meantime, the EDV has sent a letter to the Property Appraiser’s Office indicating that Shop 140 is being occupied by the City, should this methodology change.” **This item is closed.**

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FINDING 5

Methodology used to calculate the CPI adjustment on invoices to Lessees was not applied in a consistent manner, nor was it in compliance with CPI lease requirements.

Lease agreement, Section 9(d) states: “The annual rent shall be adjusted each year of the original term and each year of the subsequent term...by the increase in the Consumer Price Index.... The increase in the CPI shall be determined by calculating that number greater than one that results from dividing the index...for the month of January proceeding the beginning of such lease term year by the index figure for the identical CPI for the month of January of the prior calendar year....”

U.S. Department of Labor site under the ‘How to use the Consumer Price Index for Escalation’ states: “Escalation agreements using the CPI usually involve changing the base payment by the percent change in the level of the CPI between the reference period and a subsequent time period. This is calculated by first determining the index point change between the two periods and then the percent change.”

Our review of the accuracy of annual CPI adjustments to the Lessees’ monthly rent payments for Downtown Deli and Sushi KO, revealed the City has over-billed Sushi KO (\$85) from June 2003 through June 2008. The annual CPI rental adjustment calculation details in notification letters to the Lessees did not equate to amounts stated. Furthermore, the Department of Labor produces two CPI tables and the City is using an outdated table that does not reflect the most recent data available. Currently, under the Economic Development Manager’s direction, the annual CPI adjustments are on hold until the proposed renewal of the 4 expired CPM lease agreements in July 2008.¹⁴

Treasury does not have a written procedure in place to explain the methodology used for the calculation of the CPI adjustment, nor is this calculation reviewed for accuracy and approved by a supervisor prior to sending annual notification letters to Lessees.

Utilization of current CPI tables, together with an established explanation of the calculation methodology documented in writing and review/approval of CPI adjustment calculations, will enhance accuracy and correctly reflect the City’s financial position.

¹⁴ This item has since been approved 5-0 by the City Commission on July 15, 2008.

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RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Finance* should require the *Treasurer* to:

Recommendation 15. *Establish in writing a calculation model to be used as a single point of reference in the CPI adjustment process.*

Management Comment. *Management concurred with the finding and recommendation and stated: “A model is incorporated into the billing spreadsheet and has been adjusted to use only the current CPI index as recommended.” This item is closed.*

Recommendation 16. *Verify that the completed CPI calculations in annual notification letters to Lessees of all City owned properties are accurate and via supervisor’s signature approval.*

Management Comment. *Management concurred with the finding and recommendation and stated: “Staff concurs with this recommendation. This recommendation has been implemented.” This item is closed.*

Recommendation 17. *Utilize the most current version of the U.S. Department of Labor’s CPI table to calculate the escalating factor portion of the CPI adjustment formula.*

Management Comment. *Management concurred with the finding and recommendation and stated: “Staff concurs with this recommendation. This recommendation has been implemented.” This item is closed.*

FINDING 6

Internal control procedures could be strengthened to track and monitor Lessees’ compliance with insurance, permit and license lease requirements.

Lease agreement, Section 16 Insurance states that the Lessee shall: (1) provide insurance on any improvements and personal property within the premises; (2) compensate the City for increases in its premiums due to Lessee’s conduct (3) carry all necessary Workers’ Compensation insurance and (4) maintain comprehensive public liability and property damage insurance for the benefit of the City.

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City Budget Fiscal Year 2008, Risk Management’s Goal states: “Protect the City’s physical and financial assets against loss by maintaining effective insurance programs, minimizing the City’s exposure to risk....”

Lease agreement, Section 5(e)(3) states: “The Lessee agrees to obtain at its expenses all permits and licenses and pay all fees and charges which may be required by any governmental unit, including the City. Upon the City’s request, at reasonable intervals, Lessee shall promptly furnish to the City evidence satisfactory to the City showing Lessee’s compliance with its obligations under this section.”

Code of Ordinances of the City, Chapter 15: Business Tax Receipts and miscellaneous Business Regulations, Article II: Local Business Tax, Sec. 15-28. Required; payment states: “Every person engaging in or managing any business, profession, or occupation and who maintains a permanent business location or branch office within the city shall, on or before October first of each year...pay for a business tax receipt and register with the business tax division....”

Broward County website link states: “Any person doing business in Broward County needs a Broward County Local Business Tax Receipt. Businesses will also need to obtain a city license from the municipality that the business is located in.”

Our review to determine Lessees’ compliance with insurance, permit and license requirements in lease agreements revealed the following:¹⁵

5 of 5 (100%) Lessees’ COIs, permits and licenses were not in the City’s possession.

3 of 5 (60%) Lessees did not have a Broward business tax license as follows.

Type of License	Downtown Deli	Sushi KO	Nadja Horst	Cucina Tradizionale	Paul James Salon
City of Fort Lauderdale - Certificate of Operation					
Broward County Business Tax (Occupational License)					
Florida Business License			N/A		
Florida Medical License*	N/A	N/A		N/A	N/A

Legend:

* Florida Medical License is equivalent to Florida Business License

N/A Not Applicable

¹⁵ Certain licenses were verified via government resources since no licenses were evidenced.

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Real Estate has no system in place to review, track, and monitor Lessees' compliance with COI, permit and license requirements, nor was this included in their procedures manual to be used in the administration and monitoring of lease agreements for the City. Risk Management stated they never received the lease agreements from Real Estate, who did not follow-up on the status of compliance for the terms of the leases. The City did not have a list of applicable permits and licenses that Lessees should possess in order to legally conduct business in the City, County and State.

Establishment of a system for management to track and monitor Lessees' compliance with COIs, permits and licenses for all applicable government agencies is crucial to limit the City's liability exposure and provide assurance that assets and services are safeguarded.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Economic Development* should require the *Economic Development Manager* to:

Recommendation 18. *Establish a list of COIs, permits and licenses required for Lessees of City owned properties and maintain on file in order for administrator and/or independent reviewer to verify compliance.*

Management Comment. *Management concurred with the finding and recommendation and stated: "The Economic Development Department concurs and will establish requirements within the next 3 months." Estimated completion date May 1, 2009.*

Recommendation 19. *Establish written procedures to include a system to track and monitor Lessees' compliance (i.e., current/valid) of City owned properties with COI, permit and license requirements per applicable government agencies for the lease term on either the annual anniversary date of the lease agreement or renewal date of the COIs, permits and licenses. Notify Lessees of any areas of non-compliance and follow-through to resolution.*

Management Comment. *Management concurred with the finding and recommendation and stated: "The Economic Development Department*

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concur and will include additional written procedures related to COI, permit/license requirement in its "Property Guide" and tracking by end of 2009. See response to Recommendation 10." **Estimated completion date September 30, 2009.**

Recommendation 20. *Notify the Risk Manager of all new and current Lessees of all City owned properties and provide same with copies of corresponding lease agreements for their records.*

Management Comment. *Management concurred with the finding and recommendation and stated: "The Economic Development Department concurs. See response to recommendation 10." This item is open.*

Recommendation 21. *Send letters to current Lessees of all City owned properties notifying them of non-compliance in COI, permit and license requirements, requesting each be forwarded to Real Estate within an established timeframe. Copies of all correspondence and documentation referencing each should be maintained in Lessees' files by staff and copies of COI documentation and correspondence forwarded to the Risk Manager for final quality review and approval.*

Management Comment. *Management concurred with the finding and recommendation and stated: "The Economic Development and Finance Departments concur that Risk Management is to review and approve COIs and Economic Development will correspond with Lessee to obtain them. This will begin immediately." This item is closed.*

Recommendation 22. *Obtain copies of COIs, permits and licenses from new Lessees at the time lease agreements are executed. Forward COIs to the Risk Manager for final review and approval. This should be conducted for all City owned properties.*

Management Comment. *Management concurred with the finding and recommendation and stated: "COIs, permits and licenses will be obtained at the time of lease execution. The Economic Development and Finance Departments concur that Risk Management is to review and approve COIs and should correspond with Lessee to obtain them. This will begin immediately." This item is closed.*

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The *Director of Finance* should require the *Risk Manager* to:

Recommendation 23. *Review and approve COIs for all City owned properties to verify whether they are current and determine adequacy of coverage.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “Staff concurs that Risk Management will review and approve COIs, which includes, approving the types of coverages, determining the adequacy of the coverages, and the dates of coverage. Unless they have been altered, the lease agreements include language stating, “The lessee shall provide a provision in all policies according the City thirty days written notice by any carrier of any cancellation or material change in any policies. City will determine if the following language can be added to lease agreements: “The lessee shall include a receipt indicating that premium has been paid.” **This recommendation will be implemented by June 5, 2009.**

Recommendation 24. *In the event that requested COIs for noncompliant Lessees are not received timely, the Economic Development Manager should be notified for further follow-up through to resolution.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “The Economic Development and Finance Departments concur. This will begin immediately.” **This item is closed.**

EVALUATION OF MANAGEMENT COMMENTS

Management comments provided and actions taken and/or planned are considered responsive with the exception of recommendations 2, 3, 6, 7, 11, 10 and 20.

Recommendation 2 - All lease compliance requirements have not been addressed.

Recommendation 6 - Aggressive collection policy when outstanding balances exceed 90-day intervals has not been addressed.

Recommendation 10 and 20 - New/updated procedures did not address main criteria for contract compliance.

REVIEW OF CITY PARK MALL LEASE AGREEMENTS
SCHEDULE OF 1% INTEREST NOT CHARGED FY 06/07 and 07/08 (through 6/30/08)

SCHEDULE

DOWNTOWN DELI (DD)					SUSHI KO (SK)				
Payment Due Date	Payment Received	# Days Late ¹	Payment/Billed Amount ²	1% Late Fee ³	Payment Due Date	Payment Received	# Days Late ¹	Payment Amount ²	1% Late Fee ³
10/1/2006	10/18/2006	17	\$4,124.25	\$23.37	10/1/2006	1/18/2007	109	\$1,246.78	\$45.30
11/1/2006	12/19/2006	48	4,124.25	65.99	11/1/2006	1/30/2007	90	1,246.78	37.40
12/1/2006	2/1/2007	62	4,124.25	85.23	12/1/2006	3/8/2007	97	1,246.78	40.31
1/1/2007	3/15/2007	73	4,124.25	100.36	1/1/2007	3/8/2007	66	1,151.48	25.33
2/1/2007	4/30/2007	88	4,168.26	122.27	2/1/2007	3/8/2007	35	1,151.48	13.43
3/1/2007	4/30/2007	60	4,146.25	82.93	3/1/2007	3/8/2007	0	1,151.48	0.00
4/1/2007	7/24/2007	114	4,150.26	157.71	4/1/2007	4/12/2007	0	1,151.48	0.00
5/1/2007	7/24/2007	84	4,168.26	116.71	5/1/2007	5/16/2007	0	1,151.48	0.00
6/1/2007	7/24/2007	53	4,168.26	73.64	6/1/2007	6/13/2007	0	1,151.48	0.00
7/1/2007	2/29/2008	243	4,168.26	337.63	7/1/2007	7/6/2007	0	1,151.48	0.00
8/1/2007	2/29/2008	212	4,168.26	294.56	8/1/2007	8/8/2007	0	1,151.48	0.00
9/1/2007	2/29/2008	181	4,168.26	251.49	9/1/2007	9/28/2007	27	1,151.48	10.36
10/1/2007	2/29/2008	151	4,368.25	219.87	10/1/2007	9/28/2007	0	209.14	0.00
11/1/2007	2/29/2008	120	4,368.25	174.73	11/1/2007	10/26/2007	0	363.80	0.00
12/1/2007	2/29/2008	90	4,368.25	131.05	12/1/2007	12/6/2007	0	1,092.96	0.00
1/1/2008	4/15/2008	105	4,368.25	152.89	1/1/2008	2/4/2008	34	1,092.96	12.39
2/1/2008	4/15/2008	74	4,368.25	107.75	2/1/2008	2/4/2008	3	1,092.96	0.00
3/1/2008	4/15/2008	45	4,368.25	65.52	3/1/2008	6/3/2008	94	1,092.96	34.25
4/1/2008	4/15/2008	0	3,965.36	0.00	4/1/2008	6/3/2008	63	1,092.96	22.95
5/1/2008	6/19/2008	49	3,965.36	64.77	5/1/2008	6/16/2008	46	1,092.96	16.76
6/1/2008	Outstanding as of 6/30/08	30	3,965.36	39.65	6/1/2008	6/16/2008	0	1,092.96	0.00
TOTAL				\$2,668.11	TOTAL				\$258.49

GRAND TOTAL 1% NOT CHARGED (DD, SK & PJS)

\$4,099.20

AVERAGE DAYS LATE			
	2006-2007	2007-2008	AVERAGE
DOWNTOWN DELI	102.92	73.78	88.35
SUSHI KO	35.33	26.67	31.00
TOTAL			59.67

AVERAGE MONTHS LATE DURING ANNUAL BILLING CYCLES					
	2006-2007	2007-2008	% LATE '06-07	% LATE '07-08	ANNUAL AVERAGE
BILLING CYCLES	12	9			
MONTHS LATE:					
DOWNTOWN DELI	12	8	100%	89%	94.44%
SUSHI KO	6	5	50%	56%	52.78%
TOTAL					73.61%

Notes:

1. Not withstanding 15 day grace period per lease agreement.
2. Rent, property tax, sales tax and refuse.
3. Calculation for late fees uses an average 30 day month ((0.01/30) x the # of days late).

**REVIEW OF CITY PARK MALL LEASE AGREEMENTS
SCHEDULE OF 1% INTEREST NOT CHARGED FY 06/07 and 07/08 (through 6/30/08)**

SCHEDULE

PAUL JAMES SALON - SPACE 128 (PJS)				
Payment Due Date	Outstanding as of	# Days Late ¹	Amount to be billed ²	1% Late Fee ³
6/1/2007	6/30/08	395	\$1,270.71	\$167.31
7/1/2007	6/30/08	365	1,270.71	154.60
8/1/2007	6/30/08	334	1,270.71	141.47
9/1/2007	6/30/08	303	1,270.71	128.34
10/1/2007	6/30/08	273	1,270.71	115.63
11/1/2007	6/30/08	242	1,270.71	102.50
12/1/2007	6/30/08	212	1,270.71	89.80
1/1/2008	6/30/08	181	1,270.71	76.67
2/1/2008	6/30/08	150	1,270.71	63.54
3/1/2008	6/30/08	121	1,327.44	53.54
4/1/2008	6/30/08	90	1,327.44	39.82
5/1/2008	6/30/08	60	1,327.44	26.55
6/1/2008	6/30/08	29	1,327.44	12.83
TOTAL				\$1,172.61