



**BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**

M E M O R A N D U M

TO: The Honorable Jean Monestime, Chairman
and Members, Board of County Commissioners

FROM: Charles Anderson, CPA
Commission Auditor

A handwritten signature in black ink, appearing to read "Charles Anderson", is written over the printed name and title.

DATE: May 6, 2016

**SUBJECT: Audit of Non-Governmental Entities' Compliance with Lease Agreements for
Use of County Owned Properties**

We have concluded our Audit of Non-Governmental Entities' Compliance with Lease Agreements for Use of County Owned Properties and submit this report, which contains findings, recommendations, and management responses. Management concurred with most of our findings and recommendations, except in a few instances noted in the report.

Further, the Internal Services Department (ISD) attachments, referred to in their response, are in the following link: <http://www.miamidade.gov/audit/library/oca-real-estate-audit-attachments-draft.pdf>

We thank the staff of the ISD for their cooperation throughout the audit.

Please let me know if you need further information

C: Mayor Carlos Gimenez, County Mayor
Abigail Price-Williams, County Attorney
Edward Marquez, Deputy Mayor/Finance Director
Mary Cagle, Inspector General
Tara C. Smith, Director, Internal Services Department
Cathy Jackson, Director, Audit and Management Services

THIS PAGE INTENTIONALLY LEFT BLANK



MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

**AUDIT OF NON-GOVERNMENTAL ENTITIES'
COMPLIANCE WITH LEASE AGREEMENTS FOR
USE OF COUNTY-OWNED PROPERTIES**

Project Number 11-143311

May 6, 2016

Charles Anderson, CPA
Commission Auditor

Auditors

Noel Aranha, CPA, CGMA, CRMA
Neil R. Singh, CPA

Auditor-In-Charge
Audit Manager

111 NW First Street, Suite 1030
Miami, Florida 33128
305-375-4354

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

I. Objectives and Scope	1
II. Methodology	1
III. Background	2
IV. Summary Results	2
V. Findings and Recommendations	
Finding 1: Internal controls were inadequate for ensuring that tenants maintained the required liability insurance	3
Management Response	4
Recommendations	5
Management Responses	5
Finding 2: Interest and penalties were not collected for delays or Non-payment	5
Management Response	6
Recommendation	6
Management Response	6
Finding 3: Default clauses stipulating interest and penalty for delays or non-payment were not consistently included in all lease agreements	6
Management Response	6
Recommendation	6
Management Response	6
Finding 4: Lack of effective oversight of billing and revenue collection	6
Management Response	7
Recommendation	9
Management Response	9
Finding 5: Sales Tax exemption certificates were not on file for exempt organizations	9
Management Response	9
Recommendation	10
Management Response	10

VI. Opportunities for Improvement.....	10
Attachment	
Management Response Memo	13

I. OBJECTIVES AND SCOPE

As part of the work plan approved by the Miami-Dade County (County) Board of County Commissioners (BCC), the Office of the Commission Auditor (OCA) conducted the Audit of Non-Governmental Entities' Compliance with Lease Agreements for use of County-Owned Properties. The objectives of the audit were to: (1) assess compliance with lease agreements and, (2) evaluate the adequacy and operating effectiveness of internal controls for ensuring compliance with lease agreements.

The audit scope covers all County-Owned property leases with non-governmental entities, managed by the Internal Services Department (ISD) for the period October 1, 2012 through July 31, 2014. The audit also covers all outstanding lease receivables.

II. METHODOLOGY

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards 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 the audit objectives.

A. Audit Scope and Procedures

To accomplish our objectives, we obtained and analyzed relevant records and lease agreements from the Real Estate Division of ISD. We obtained insurance documents and accounts receivable reports for randomly selected leases. We also reviewed lease contracts for those selected leases in order to determine compliance with terms and conditions of the leases and to confirm that all revenues were collected timely as per the terms of the lease agreement.

B. Property and Casualty Procedure Number 609

Property and Casualty Procedure Number 609 requires that once the lease agreement is approved, the Risk Management Division "*monitors expiration dates and notifies the user Department if the contracting party is not in compliance with insurance requirements.*" We reviewed the insurance certificates to confirm that the insurance policies did not lapse due to non-renewal.

C. County-owned Property Leasing Process

The leasing process was provided to OCA by the Real Estate Division. OCA reviewed the process to verify that the Real Estate Division addressed specific remedies to safeguard County interests such as: obtaining a surety bond or requiring a deposit for failure to pay rent; or covering liability insurance in case the lessee failed to renew the insurance policies.

D. AMS Audit Report-J.M.R. Foods Corporation d/b/a Bottega Express, a Lessee of County Owned Property (Report dated September 25, 2013)

We reviewed Audit and Management Services (AMS) and Office of The Inspector General (OIG) audits to ensure any concerns that were raised in their audits relating to leases were resolved. There were no OIG audits specific to the issues raised in our audit. However, the AMS audit report did state that “*ISD should enforce interest penalties to promote compliance and payment due dates, or amend the contract accordingly*”.

E. Implementing Order No.: IO 3-9 Accounts Receivable Adjustments

As part of the procedures used to review compliance with lease agreements for the collection of rent, we verified whether ISD was in compliance with Implementing Order (IO) 3-9. The IO states in part that “*Department directors shall forward “delinquent” accounts receivable to the Finance Department Credit and Collections Section (FDCCS)*”.

We interviewed and had discussions with relevant program and management personnel from the Risk Management Division and Real Estate Division to obtain relevant policies and procedures and to determine compliance with lease terms.

III. BACKGROUND

Florida Statutes § 125.35 (1) (a) authorizes the BCC to sell and convey any real or personal property, and lease real property belonging to the County. Florida Statutes § 125.38, Section 4.02 of the Metropolitan Dade County Charter, BCC Resolution Number 1161-79 and Administrative Order (AO) No.: 8-4 authorizes the sale or lease of County real estate. ISD’s Real Estate Division manages properties leased to for-profit and non-profit organizations. As of February 3, 2016, there were 87 County-Owned property leases managed by ISD’s Real Estate Division. The leases include retail and non-retail leases.

The Budget and Finance Division is responsible for billing and collection of rent and related receivables from tenants. The Real Estate Division is responsible for monitoring compliance with lease agreements. The Risk Management Division reviews insurance policies received from the Real Estate Division/tenants. The Risk Management Division notifies the Real Estate Division and the tenant of any deficiencies in the policies that affect the County.

IV. SUMMARY RESULTS

During the field work stage of the audit, OCA brought to the attention of ISD missing and expired insurance and sales tax exemption certificates. Since then, ISD has made substantial progress in some areas of lease compliance. The required sales tax exemption certificates were obtained in most cases. In addition, ISD obtained exception letters from leaseholders justifying why they did not obtain workmen’s compensation insurance and insurance on owned vehicles.

However the following weaknesses still exist:

- There are some leases that do not have the required insurance policies as stipulated in the lease agreement.
- Interest and penalties were not imposed on delayed payments.
- Some lease agreements lacked clauses requiring payment of interest and penalty for late payments.
- Lease receivables that were delinquent were not sent to FDCCS as mandated by IO 3-9.
- Sales Tax Exemption certificates were not on file as required by Florida Statutes.

V. FINDINGS AND RECOMMENDATIONS

Finding 1. Internal controls were inadequate to ensure that tenants maintained the required liability insurance coverage as noted below:

County lease agreements require the lessee to furnish the County with insurance certificates indicating that proper insurance coverage has been obtained for:

- Workers Compensation Insurance for all employees of the lessee as required by Florida Statute 440.
 - Public Comprehensive Liability Insurance requirements, which covers products and completed operations, in an amount not less than \$300,000 per occurrence for bodily injury and property damage combined. The County must be shown as an additional insured on this policy.
 - Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the entity, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
1. Three out of the 15 leases (20%) selected for testing were not in compliance with the Public Comprehensive Liability Insurance requirements. Compliance was met after OCA brought it to the attention of ISD.
 2. Two out of 15 leases (13%) did not have Automobile Liability Insurance or had inadequate coverage.
 3. Ten out of 15 leases (67%) selected for testing did not have Automobile Liability Insurance certificates or exception letters to support the lack of insurance coverage. Compliance was met after OCA brought it to the attention of ISD.
 4. Two out of 15 leases (13%) selected for testing did not have workmen's compensation exception letters. Documentation was obtained after OCA brought it to the attention of ISD. Also, in some leases the insurance policy had expired and were renewed after OCA brought it to the attention of ISD.

Management Response

In 2014, the Internal Services Department, Real Estate Development Division (REDD) together with the Risk Management Division (RMD) instituted changes for non-retail and retail leases, to ensure that the tenants both secured and maintained the insurance coverage required by the lease agreements. RMD provided REDD a set of three standard insurance requirements to be included in lease agreements and additional requirements for certain types of proposed use on County property. See Attachment A.

1. "Three out of the 15 leases (20%) selected for testing were not in compliance with the Public Comprehensive Liability Insurance requirements. Compliance was met after OCA brought it to the attention of ISD."

ISD concurs with the finding for Florida Power & Light (FPL), but does not concur with the finding for Southern Bell Telephone & Telegraph (Bell South) and Fiorellas Catering as noted below:

- a) **FPL:** has since provided confirmation of insurance letters. See Attachment D.
 - b) **Bell South:** the lease agreement does not contain insurance requirements. See Attachment B.
 - c) **Fiorellas Catering:** Public Liability Insurance, and Property Damage Insurance are required by the lease. Required Certificates of Insurance are on file from 2012 through 2014, however; a gap in coverage occurred from 2/21/13 through 4/17/13. The lease was terminated in 2014. See copies of Certificates of Insurance in Attachment C.
2. "Two out of 15 leases (13%) did not have Automobile Liability Insurance or had inadequate coverage."

ISD concurs with the finding for Piccolino Ice Cream, but does not concur with the finding for FPL as noted below:

- a) **Piccolino Ice Cream:** has since closed for business and the lease expired.
 - b) **FPL:** the lease does not require Automobile Liability Insurance, however; the tenant agreed to include it in a revised self-insurance letter on 4/9/15. See copies of Lease Agreement and Confirmation of Insurance Letters in Attachment D.
3. "Ten out of 15 leases (67%) selected for testing did not have Automobile Liability Insurance certificates or exception letters to support the lack of insurance coverage. Compliance was met after OCA brought it to the attention of ISD."

ISD concurs with the finding for Richmond Perrine Optimist Club, Florida Nursery, Growers, & Landscape Association, Inc., So. Florida Pioneer Museum, Jay's B. Café - Public Defender, Jay's B. Café - Graham Building, Miami Auto Tag Agency, Food Line Services and The

Historic Hampton House Trust, Inc.; but does not concur with the finding for Bell South and Fiorella's Catering as noted below:

- a) **Bell South:** *Automobile Insurance is not required by the lease. See Attachment B.*
 - b) **Fiorella's Catering:** *Automobile Insurance is required by the lease. Required Certificates of Insurance are on file from 2012 through 2014. The lease was terminated in 2014. See copies of Certificates of Insurance in Attachment C.*
4. "Two out of 15 leases (13%) selected for testing did not have Workmen's Compensation exception letters."

ISD concurs with the finding for Piccolino Ice Cream, but does not concur with the finding for FPL as noted below:

- a) **FP&L:** *the lease does not require Workmen's Compensation Insurance, however; the tenant agreed to include it in a revised self-insurance letter on 4/9/15. See copies of Lease Agreement and Confirmation of Insurance Letters in Attachment D.*

Recommendation 1.1:

ISD should review and update policies and procedures to ensure all leases require Workers Compensation Insurance, Public Comprehensive Liability Insurance and Automobile Liability Insurance.

Management Response

ISD has updated its policies and procedures to enforce compliance and require the necessary insurance documents. See Attachment E.

Recommendation 1.2:

In order to enforce compliance, lease agreements should include penalties for failure to renew insurance coverage or provide exception letters.

Management Response

ISD does not concur that all lease agreements should include penalties for failure to renew insurance coverage or provide exception letters, since each contract has default provisions to address lessees that fail to faithfully observe all terms, covenants, rules and regulations contained in the lease. See sample language for Default and Termination Clauses in Attachment F.

Finding 2. The lease agreement requires the County to collect interest and penalties for failure to pay the rent on the due date. For example, the Miami Auto Tag Agency lease states "In the event the Lessee fails to make payments, including Minimum Rent within ten (10) calendar days of the due date, a late charge of \$100 per month will be assessed". Eight out of 43 (19 %) invoices reviewed were not assessed interest and penalties for the late payment of rent. In addition, a prior AMS audit report on J.M.R. Foods Corporation d/b/a Bottega Express, stated that "ISD should

enforce interest penalties to promote compliance and payment due dates, or amend the contract accordingly”.

Leaseholders continue to delay payments since ISD does not enforce compliance as stipulated in the lease agreements. The County was exposed to losses that may have been caused by not enforcing the appropriate contract clauses to charge interest and penalties for late payments.

Management Response

ISD concurs that interest and penalties for late payment of rent were not assessed.

Recommendation 2:

ISD should establish procedures to ensure interest and penalties for non-payment are promptly collected.

Management Response

ISD has developed policies and procedures in order to enforce compliance. See Attachment E.

Finding 3. The majority of County lease agreements have specific clauses requiring payment of interest and penalties to safeguard the County from losses for late payments and or non-payment. For example the Miami Auto Tag Agency lease states “*In the event the Lessee fails to make payments, including Minimum Rent within ten (10) calendar days of the due date, a late charge of \$100 per month will be assessed*”. However three out of 20 leases (15%) reviewed did not include this clause requiring interest and penalties for late payments.

Management Response

ISD concurs with the finding that Adults Mankind Organization Inc., Florida Nursery Growers and Landscape Association Inc., and Bell South don't require payment of interest and penalties. See copies of the Lease Agreements for these companies in Attachment B.

Recommendation 3:

ISD should ensure that all lease agreements should have specific clauses requiring payment of interest and penalties.

Management Response

ISD concurs that retail lease agreements should include clauses to address interest and penalties for non-payment of rent. Most of the non-retail lease agreements, however, are entered into with non-profit entities who have limited budgets, and/or receive income through donations or government grants. Financially impacting the non-profit entities, without first encouraging them to bring their accounts current, may be imprudent since these agencies are providing an important service to the community.

Finding 4. ISD lacks effective oversight of billing and revenue collection of lease agreements. As of March 18, 2014, there were six lease payments past due 90 days which were not sent to FDCCS for collection. This is in violation of IO 3-9.

IO 3-9 states: *A department shall declare an account “past due” if not paid within thirty (30) days of the due date. If not paid within ninety (90) days of the due date, the account shall be considered*

“delinquent.”Department directors shall forward “delinquent” accounts receivable to the Credit and Collection Section of the Finance Department.

According to ISD, some leases are sent to the County Attorney’s Office to provide additional clarification when leases are in default.

The IO does not provide for any exceptions for not sending the delinquent account to FDCCS, in lieu of negotiations with the lease holder, for non-payments. ISD should commence negotiations when the payments are not received on the date stipulated in the agreement. Negotiating payments after the amounts are past due 90 days is not effective and provides the opportunity for the leaseholders to further delay and file for bankruptcy. Noncompliance with IO 3-9 exposes the County to loss of revenue.

On July 17th 2013, ISD signed an MOU with FDCCS providing some exceptions for not sending delinquent accounts to FDCCS. However; as of the close of the field work, only one delinquent lease was sent to FDCCS. ISD has stated that one other lease will be sent to FDCCS.

Management Response

ISD does not concur with the finding that there is a lack of effective oversight of billing and revenue collection of lease agreements. ISD conducts consistent and aggressive collection efforts as demonstrated by the \$4,374,005 in collections from \$4,555,534 in billings for FY 2014-15. A 96% collection rate of the 480 billings annually could only result from effective oversight of billing and revenue collection efforts.

Leases involving past due amounts often pose unique collection circumstances requiring the involvement of the County Attorney’s Office (CAO) to determine the appropriate action and amount to collect following a delay in payments and/or lease default. These accounts are transferred only after legal consultations have been completed.

In all but one of the seven cases cited by OCA involving a delay in transferring accounts to FDCCS, ISD was in consultation with the CAO regarding legal action which would determine the final amount due from the tenant. Many factors must be taken into consideration, including application of security deposits, the ability to accelerate and bill future rent payments and legal aspects of the lease which would warrant an invoice adjustment or renegotiation of lease payments when extenuating circumstances are determined. These final actions result in invoice adjustments.

IO 3-9 states, “In general, an account receivable becomes delinquent when payment is not received in accordance with conditions giving rise to the receivable.” Accounts under legal review are pending accounts requiring appropriate action to determine the final amount due to ensure collection on accurate and legally binding amounts.

The existing MOU between ISD and FDCCS (See Attachment G) covers the handling of collection of outstanding debts from non-County agencies, vendors and contractors including those that are past due over ninety (90) days. The MOU outlines the manner in which outstanding debts will be referred to FDCCS by ISD and how reporting and collection processes will be handled. The first paragraph of the MOU states: Certain accounts that involve unique collection efforts will be transferred at the discretion of ISD. Section “e” states: Other accounts involving legal action and

coordination with the County Attorney's Office to facilitate payment of funds due to Miami-Dade County will be transferred once all legal efforts have been exhausted, and if legally allowable. Therefore, the delay in transferring accounts which are under legal review does not constitute a lack of oversight. ISD makes every effort to collect a debt prior to sending accounts to FDCCS and do so in accordance with the MOU and the intent of IO 3-9.

It should also be noted that FDCCS advised ISD during the development of the MOU that ISD should not transfer accounts in the cases where a company was dissolved and/or no longer in business. Several accounts were not immediately transferred for this reason.

The audit findings identified seven lease payments that were ninety (90) days past due, which were not sent to FDCCS for collection. ISD concurs that one of the seven accounts, North Dade Regional Academy, was not transferred timely. This account was transferred to FDCCS on April 21, 2014.

ISD does not concur with OCA findings that the remaining six accounts were not transferred in accordance with IO 3-9. These accounts were under legal review. These accounts are described below:

- a) **Cuccina Oulin:** ISD does not concur with this finding. Following extensive and lengthy consultation with the County Attorney's Office beginning in July 10, 2014 to resolve contractual issues involving the condition of the premises that resulted in the tenant defaulting on the lease agreement, this account was transferred to FDCCS on September 1, 2015.*
- b) **Fiorellas Catering, Inc.:** This account was not transferred to FDCCS due to a pending determination as to whether the County had the right to deduct the outstanding rent from the security deposit and whether the lease required the tenant to be billed for the remaining term of the lease. This account is expected to be transferred to FDCCS in April 2016.*
- c) **Piccolino Ice Cream:** This account was not transferred to FDCCS due to a pending determination as to whether the County had the right to deduct the outstanding rent from the security deposit and whether the lease required the tenant to be billed for the remaining term of the lease. This account is expected to be transferred to FDCCS in April 2016.*
- d) **Pickle Barrel:** The County was unable to collect the \$60,705 outstanding rent due. As a result, the County filed a lawsuit in March 2002 and was awarded a Final Judgment against the company, however, never recorded the receivable in the financial system because the funds were considered uncollectable at the time. The corporation was dissolved in 2005 and the County Attorney's Office advised that no further action could be taken. The transfer of the account was discussed with FDCCS in 2013 during the development of the Memorandum of Understanding. ISD was told at that time that FDCCS could not pursue collection efforts if the company was dissolved. Therefore the account was not transferred to FDCC. Supporting documentation and a*

justification memorandum will be prepared and noted to the file with copies provided to the Finance Department to memorialize the history of this account.

- e) **Southern Business:** *Southern Business was a tenant that managed a cafeteria at the Caleb Center during the 1990's. They became delinquent in their rent owing \$52,920 and eventually were evicted in 2002. The corporation was dissolved and the Department was not able to collect. At the time the Department did not record the receivable in the financial system because the funds were considered uncollectable. The transfer of the account was discussed with FDCCS in 2013 during the development of the Memorandum of Understanding. ISD was told at that time that FDCCS could not pursue collection efforts if the company was dissolved. Therefore the account was not transferred to FDCC. Supporting documentation and a justification memorandum will be prepared and noted to the file with copies provided to the Finance Department to memorialize the history of this account.*

Recommendation 4:

ISD should review and institute effective oversight to ensure revenues are collected promptly and all “delinquent” accounts are promptly sent to FDCCS as required by IO 3-9. Even though the MOU provides for some exception, the IO does not provide for any exceptions for sending accounts that are past due to FDCCS for collection. County Departments are not allowed to override IO's without seeking approval from the BCC.

Management Response

ISD has effective oversight over collections. As stated earlier, many accounts require legal consultation which would delay the transfer of accounts, within the guidelines of the MOU. Going forward, ISD will make a request to the Finance Department to write off any debt owed by companies which are dissolved.

Finding 5. Florida Statutes Section 212.031(1) (a) states that any person or entity who rents/leases real property is required to collect and remit sales tax or establish the exempt nature of the transaction. There were two leases where sales tax exemption certificates were not on file. After OCA brought this issue to ISD's attention, ISD obtained the sales tax exemption certificates.

There were no policies and procedures that required ISD to obtain sales tax exemption certificates from organizations that claim exemption from sales tax. The County may be required to pay the sales tax and penalty for not maintaining the exemption certificates.

Management Response

ISD concurs with the finding for Miami Coalition and Children's Home Society. In 2014, REDD had instituted changes for non-retail leases to ensure that all tenants provide the County with evidence that the tenant was not required to pay sales tax on leases. REDD contacted its non-profit tenants in an effort to secure evidence of their exemption from paying sales tax, since not all non-profit entities are entitled to be exempt from paying sales tax. That effort involved educating the tenants, as well as directing them to the State of Florida to obtain the certificate of tax exemption.

Recommendation 5:

ISD should establish policies and procedures to ensure that lease agreements for exempt entities are reviewed and sales tax exemption certificates are obtained from leaseholders.

Management Response

ISD has since obtained the certificate of sales tax exemption for all of the non-profit tenants that the exemption applies to, and has developed a procedure to ensure that lease agreements for exempt entities are reviewed and sales tax exemption certificates are obtained from the lessees. See Attachment E.

Opportunities for Improvement

1. A right-to-audit clause with reimbursement of the cost of audit for providing misleading, incorrect or incomplete information would help to promote compliance with lease terms. The County retail lease contracts do not have such a clause. The County should include such a clause that allows for the County authorized representatives or auditors, access to the accounting records to audit the gross sales or any other financial information provided by the lessee.

Management Response

While some agreements already include a right-to-audit clause, ISD will include such a clause on all new retail lease agreements. See sample Right-to-Audit Clause in Attachment H.

2. Accounts deemed uncollectable should be promptly written off before the end of each fiscal year so as to reflect the true financial position of the County. Amounts exceeding \$10,000 per customer in any given year, should be sent to the BCC before the end of each fiscal year (September 30th) to be written off as mandated in IO 3-9. There were three accounts that were beyond the delegated authority of the Mayor that should have been sent to the BCC to be written off.

Management Response

ISD has requested to write off one of the three accounts and will document the file in the remaining two as described in finding 4. The Finance Department is responsible for preparing the countywide report for uncollectable accounts and submitting the report to the BCC for write-off approval by the end of the fiscal year.

3. The ISD score card in the Active Strategy Report should include aging and monitoring of receivables as mandated by the County Managers memo “Implementing Order on Adjustment to Accounts Receivables” addressed to the BCC on September 1, 2011.

Management Response

ISD Finance and Budget Division score card does track this measure, however; the measure is not linked to the departmental score card. ISD will link this measure to the departmental score card.

ATTACHMENT

Management Response Memo

THIS PAGE INTENTIONALLY LEFT BLANK

Date: April 13, 2016

To: Charles Anderson, CPA
Commission Auditor
Office of the Commission Auditor

From: Tara C. Smith
Director
Internal Services Department

Subject: Response to Audit Report – Non-Governmental Entities’ Compliance with Lease Agreements for Use of County Owned Properties

Thank you for providing a draft report of the audit on Non-Governmental Entities’ Compliance with Lease Agreements for Use of County Owned Properties. Below are the Internal Services Department (ISD) responses to the Findings and Recommendations, and Opportunities for Improvement listed in the Audit Report.

OCA Finding 1

Internal controls were inadequate to ensure that tenants maintained the required liability insurance coverage as noted below:

County lease agreements require the lessee to furnish the County with insurance certificates indicating that proper insurance coverage has been obtained for:

- Workers Compensation Insurance for all employees of the lessee as required by Florida Statute 440.
 - Public Comprehensive Liability Insurance requirements, which covers products and completed operations, in an amount not less than \$300,000 per occurrence for bodily injury and property damage combined. The County must be shown as an additional insured on this policy.
 - Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the entity, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
1. Three out of the 15 leases (20%) selected for testing were not in compliance with the Public Comprehensive Liability Insurance requirements. Compliance was met after OCA brought it to the attention of ISD.
 2. Two out of 15 leases (13%) did not have Automobile Liability Insurance or had inadequate coverage.
 3. Ten out of 15 leases (67%) selected for testing did not have Automobile Liability Insurance certificates or exception letters to support the lack of insurance coverage. Compliance was met after OCA brought it to the attention of ISD.
 4. Two out of 15 leases (13%) selected for testing did not have workmen’s compensation exception letters. Documentation was obtained after OCA brought it to the attention of ISD. Also, in some leases the insurance policy had expired and were renewed after OCA brought it to the attention of ISD.

ISD Response to Finding 1

In 2014, the Internal Services Department, Real Estate Development Division (REDD) together with the Risk Management Division (RMD) instituted changes for non-retail and retail leases, to ensure that the tenants both secured and maintained the insurance coverage required by the lease agreements. RMD provided REDD a set of three standard insurance requirements to be included in lease agreements and additional requirements for certain types of proposed use on County property. See Attachment A.

1. *“Three out of the 15 leases (20%) selected for testing were not in compliance with the Public Comprehensive Liability Insurance requirements. Compliance was met after OCA brought it to the attention of ISD.”*

ISD concurs with the finding for Florida Power & Light (FPL), but does not concur with the finding for Southern Bell Telephone & Telegraph (Bell South) and Fiorellas Catering as noted below:

- a) **FPL:** has since provided confirmation of insurance letters. See Attachment D.
 - b) **Bell South:** the lease agreement does not contain insurance requirements. See Attachment B.
 - c) **Fiorellas Catering:** Public Liability Insurance, and Property Damage Insurance are required by the lease. Required Certificates of Insurance are on file from 2012 through 2014, however; a gap in coverage occurred from 2/21/13 through 4/17/13. The lease was terminated in 2014. See copies of Certificates of Insurance in Attachment C.
2. *“Two out of 15 leases (13%) did not have Automobile Liability Insurance or had inadequate coverage.”*

ISD concurs with the finding for Piccolino Ice Cream, but does not concur with the finding for FPL as noted below:

- a) **Piccolino Ice Cream:** has since closed for business and the lease expired.
 - b) **FPL:** the lease does not require Automobile Liability Insurance, however; the tenant agreed to include it in a revised self-insurance letter on 4/9/15. See copies of Lease Agreement and Confirmation of Insurance Letters in Attachment D.
3. *“Ten out of 15 leases (67%) selected for testing did not have Automobile Liability Insurance certificates or exception letters to support the lack of insurance coverage. Compliance was met after OCA brought it to the attention of ISD.”*

ISD concurs with the finding for Richmond Perrine Optimist Club, Florida Nursery, Growers, & Landscape Association, Inc., So. Florida Pioneer Museum, Jay's B. Café - Public Defender, Jay's B. Café - Graham Building, Miami Auto Tag Agency, Food Line Services and The Historic Hampton House Trust, Inc.; but does not concur with the finding for Bell South and Fiorella's Catering as noted below:

Attachment

Charles Anderson, Commission Auditor

Page 3

- a) **Bell South:** Automobile Insurance is not required by the lease. See Attachment B.
 - b) **Fiorella's Catering:** Automobile Insurance is required by the lease. Required Certificates of Insurance are on file from 2012 through 2014. The lease was terminated in 2014. See copies of Certificates of Insurance in Attachment C.
4. *"Two out of 15 leases (13%) selected for testing did not have Workmen's Compensation exception letters."*

ISD concurs with the finding for Piccolino Ice Cream, but does not concur with the finding for FPL as noted below:

- a) **FP&L:** the lease does not require Workmen's Compensation Insurance, however; the tenant agreed to include it in a revised self-insurance letter on 4/9/15. See copies of Lease Agreement and Confirmation of Insurance Letters in Attachment D.

OCA Recommendation 1.1

ISD should review and update policies and procedures to ensure all leases require Workers Compensation Insurance, Public Comprehensive Liability Insurance and Automobile Liability Insurance.

ISD Response to Recommendation 1.1

ISD has updated its policies and procedures to enforce compliance and require the necessary insurance documents. See Attachment E.

OCA Recommendation 1.2

In order to enforce compliance, lease agreements should include penalties for failure to renew insurance coverage or provide exception letters.

ISD Response to Recommendation 1.2

ISD does not concur that all lease agreements should include penalties for failure to renew insurance coverage or provide exception letters, since each contract has default provisions to address lessees that fail to faithfully observe all terms, covenants, rules and regulations contained in the lease. See sample language for Default and Termination Clauses in Attachment F.

OCA Finding 2

The lease agreement requires the County to collect interest and penalties for failure to pay the rent on the due date. For example, the Miami Auto Tag Agency lease states *"In the event the Lessee fails to make payments, including Minimum Rent within ten (10) calendar days of the due date, a late charge of \$100 per month will be assessed."* Eight out of 43 (19%) invoices reviewed were not assessed interest and penalties for the late payment of rent. In addition, a prior AMS audit report on J.M.R. Foods Corporation d/b/a Bottega Express, stated that "ISD should enforce interest penalties to promote compliance and payment due dates, or amend the contract accordingly."

Leaseholders continue to delay payments since ISD does not enforce compliance as stipulated in the lease agreements. The County was exposed to losses that may have been caused by not enforcing the appropriate contract clauses to charge interest and penalties for late payments.

ISD Response to Finding 2

ISD concurs that interest and penalties for late payment of rent were not assessed.

OCA Recommendation 2

ISD should establish procedures to ensure interest and penalties for non-payment are promptly collected.

ISD Response to Recommendation 2

ISD has developed policies and procedures in order to enforce compliance. See Attachment E.

OCA Finding 3

The majority of County lease agreements have specific clauses requiring payment of interest and penalties to safeguard the County from losses for late payments and or non-payment. For example the Miami Auto Tag Agency lease states "*In the event the Lessee fails to make payments, including Minimum Rent within ten (10) calendar days of the due date, a late charge of \$100 per month will be assessed*". However three out of 20 leases (15%) reviewed did not include this clause requiring interest and penalties for late payments.

ISD Response to Finding 3

ISD concurs with the finding that Adults Mankind Organization Inc., Florida Nursery Growers and Landscape Association Inc., and Bell South don't require payment of interest and penalties. See copies of the Lease Agreements for these companies in Attachment B.

OCA Recommendation 3

ISD should ensure that all lease agreements should have specific clauses requiring payment of interest and penalties.

ISD Response to Recommendation 3

ISD concurs that retail lease agreements should include clauses to address interest and penalties for non-payment of rent. Most of the non-retail lease agreements, however, are entered into with non-profit entities who have limited budgets, and/or receive income through donations or government grants. Financially impacting the non-profit entities, without first encouraging them to bring their accounts current, may be imprudent since these agencies are providing an important service to the community.

OCA Finding 4

ISD lacks effective oversight of billing and revenue collection of lease agreements. As of March 18, 2014, there were six lease payments past due 90 days which were not sent to FDCCS for collection. This is in violation of IO 3-9.

IO 3-9 states: A department shall declare an account "past due" if not paid within thirty (30) days of the due date. If not paid within ninety (90) days of the due date, the account shall be considered "delinquent.".....Department directors shall forward "delinquent" accounts receivable to the Credit and Collection Section of the Finance Department.

According to ISD, some leases are sent to the County Attorney's Office to provide additional clarification when leases are in default.

The IO does not provide for any exceptions for not sending the delinquent account to FDCCS, in lieu of negotiations with the lease holder, for non-payments. ISD should commence negotiations when the payments are not received on the date stipulated in the agreement. Negotiating payments after the amounts are past due 90 days is not effective and provides the opportunity for the leaseholders to further delay and file for bankruptcy. Noncompliance with IO 3-9 exposes the County to loss of revenue.

On July 17th 2013, ISD signed an MOU with FDCCS providing some exceptions for not sending delinquent accounts to FDCCS. However; as of the close of the field work, only one delinquent lease was sent to FDCCS. ISD has stated that one other lease will be sent to FDCCS.

ISD Response to Finding 4

ISD does not concur with the finding that there is a lack of effective oversight of billing and revenue collection of lease agreements. ISD conducts consistent and aggressive collection efforts as demonstrated by the \$4,374,005 in collections from \$4,555,534 in billings for FY 2014-15. A 96% collection rate of the 480 billings annually could only result from effective oversight of billing and revenue collection efforts.

Leases involving past due amounts often pose unique collection circumstances requiring the involvement of the County Attorney's Office (CAO) to determine the appropriate action and amount to collect following a delay in payments and/or lease default. These accounts are transferred only after legal consultations have been completed.

In all but one of the seven cases cited by OCA involving a delay in transferring accounts to FDCCS, ISD was in consultation with the CAO regarding legal action which would determine the final amount due from the tenant. Many factors must be taken into consideration, including application of security deposits, the ability to accelerate and bill future rent payments and legal aspects of the lease which would warrant an invoice adjustment or renegotiation of lease payments when extenuating circumstances are determined. These final actions result in invoice adjustments.

IO 3-9 states, "In general, an account receivable becomes delinquent when payment is not received in accordance with conditions giving rise to the receivable." Accounts under legal review are pending accounts requiring appropriate action to determine the final amount due to ensure collection on accurate and legally binding amounts.

Attachment

Charles Anderson, Commission Auditor

Page 6

The existing MOU between ISD and FDCCS (See Attachment G) covers the handling of collection of outstanding debts from non-County agencies, vendors and contractors including those that are past due over ninety (90) days. The MOU outlines the manner in which outstanding debts will be referred to FDCCS by ISD and how reporting and collection processes will be handled. The first paragraph of the MOU states: Certain accounts that involve unique collection efforts will be transferred at the discretion of ISD. Section "e" states: Other accounts involving legal action and coordination with the County Attorney's Office to facilitate payment of funds due to Miami-Dade County will be transferred once all legal efforts have been exhausted, and if legally allowable. Therefore, the delay in transferring accounts which are under legal review does not constitute a lack of oversight. ISD makes every effort to collect a debt prior to sending accounts to FDCCS and do so in accordance with the MOU and the intent of IO 3-9.

It should also be noted that FDCCS advised ISD during the development of the MOU that ISD should not transfer accounts in the cases where a company was dissolved and/or no longer in business. Several accounts were not immediately transferred for this reason.

The audit findings identified seven lease payments that were ninety (90) days past due, which were not sent to FDCCS for collection. ISD concurs that one of the seven accounts, North Dade Regional Academy, was not transferred timely. This account was transferred to FDCCS on April 21, 2014.

ISD does not concur with OCA findings that the remaining six accounts were not transferred in accordance with IO 3-9. These accounts were under legal review. These accounts are described below:

- a) **Cuccina Oulin:** ISD does not concur with this finding. Following extensive and lengthy consultation with the County Attorney's Office beginning in July 10, 2014 to resolve contractual issues involving the condition of the premises that resulted in the tenant defaulting on the lease agreement, this account was transferred to FDCCS on September 1, 2015.
- b) **Fiorellas Catering, Inc.:** This account was not transferred to FDCCS due to a pending determination as to whether the County had the right to deduct the outstanding rent from the security deposit and whether the lease required the tenant to be billed for the remaining term of the lease. This account is expected to be transferred to FDCCS in April 2016.
- c) **Piccolino Ice Cream:** This account was not transferred to FDCCS due to a pending determination as to whether the County had the right to deduct the outstanding rent from the security deposit and whether the lease required the tenant to be billed for the remaining term of the lease. This account is expected to be transferred to FDCCS in April 2016.
- d) **Pickle Barrel:** The County was unable to collect the \$60,705 outstanding rent due. As a result, the County filed a lawsuit in March 2002 and was awarded a Final Judgment against the company, however, never recorded the receivable in the financial system because the funds were considered uncollectable at the time. The corporation was dissolved in 2005 and the County Attorney's Office advised that no further action could be taken. The transfer of the account was discussed with FDCCS in 2013 during the development of the Memorandum of Understanding. ISD was told at that time that FDCCS could not pursue collection efforts if the company was

dissolved. Therefore the account was not transferred to FDCC. Supporting documentation and a justification memorandum will be prepared and noted to the file with copies provided to the Finance Department to memorialize the history of this account.

- e) **Southern Business:** Southern Business was a tenant that managed a cafeteria at the Caleb Center during the 1990's. They became delinquent in their rent owing \$52,920 and eventually were evicted in 2002. The corporation was dissolved and the Department was not able to collect. At the time the Department did not record the receivable in the financial system because the funds were considered uncollectable. The transfer of the account was discussed with FDCCS in 2013 during the development of the Memorandum of Understanding. ISD was told at that time that FDCCS could not pursue collection efforts if the company was dissolved. Therefore the account was not transferred to FDCC. Supporting documentation and a justification memorandum will be prepared and noted to the file with copies provided to the Finance Department to memorialize the history of this account.

OCA Recommendation 4

ISD should review and institute effective oversight to ensure revenues are collected promptly and all "delinquent" accounts are promptly sent to FDCCS as required by IO 3-9. Even though the MOU provides for some exception, the IO does not provide for any exceptions for sending accounts that are past due to FDCCS for collection. County Departments are not allowed to override IO's without seeking approval from the BCC.

ISD Response to Recommendation 4

ISD has effective oversight over collections. As stated earlier, many accounts require legal consultation which would delay the transfer of accounts, within the guidelines of the MOU. Going forward, ISD will make a request to the Finance Department to write off any debt owed by companies which are dissolved.

OCA Finding 5

Florida Statutes Section 212.031(1) (a) states that any person or entity who rents/leases real property is required to collect and remit sales tax or establish the exempt nature of the transaction. There were two leases where sales tax exemption certificates were not on file. After OCA brought this issue to ISD's attention, ISD obtained the sales tax exemption certificates.

There were no policies and procedures that required ISD to obtain sales tax exemption certificates from organizations that claim exemption from sales tax. The County may be required to pay the sales tax and penalty for not maintaining the exemption certificates.

ISD Response to Finding 5

ISD concurs with the finding for Miami Coalition and Children's Home Society. In 2014, REDD had instituted changes for non-retail leases to ensure that all tenants provide the County with evidence that the tenant was not required to pay sales tax on leases. REDD contacted its non-profit tenants in an effort to secure evidence of their exemption from paying sales tax, since not all non-profit entities are entitled to be exempt from paying sales tax. That effort involved educating the tenants, as well as directing them to the State of Florida to obtain the certificate of tax exemption.

OCA Recommendation 5

ISD should establish policies and procedures to ensure that lease agreements for exempt entities are reviewed and sales tax exemption certificates are obtained from leaseholders.

ISD Response to Recommendation 5

ISD has since obtained the certificate of sales tax exemption for all of the non-profit tenants that the exemption applies to, and has developed a procedure to ensure that lease agreements for exempt entities are reviewed and sales tax exemption certificates are obtained from the lessees. See Attachment E.

OCA Opportunity for Improvement 1

A right-to-audit clause with reimbursement of the cost of audit for providing misleading, incorrect or incomplete information would help to promote compliance with lease terms. The County retail lease contracts do not have such a clause. The County should include such a clause that allows for the County authorized representatives or auditors, access to the accounting records to audit the gross sales or any other financial information provided by the lessee.

ISD Response

While some agreements already include a right-to-audit clause, ISD will include such a clause on all new retail lease agreements. See sample Right-to-Audit Clause in Attachment H.

OCA Opportunity for Improvement 2

Accounts deemed uncollectable should be promptly written off before the end of each fiscal year so as to reflect the true financial position of the County. Amounts exceeding \$10,000 per customer in any given year, should be sent to the BCC before the end of each fiscal year (September 30th) to be written off as mandated in IO 3-9. There were three accounts that were beyond the delegated authority of the Mayor that should have been sent to the BCC to be written off.

ISD Response

ISD has requested to write off one of the three accounts and will document the file in the remaining two as described in finding 4. The Finance Department is responsible for preparing the countywide report for uncollectable accounts and submitting the report to the BCC for write-off approval by the end of the fiscal year.

OCA Opportunity for Improvement 3

The ISD score card in the Active Strategy Report should include aging and monitoring of receivables as mandated by the County Managers memo "Implementing Order on Adjustment to Accounts Receivables" addressed to the BCC on September 1, 2011.

ISD Response

ISD Finance and Budget Division score card does track this measure, however; the measure is not linked to the departmental score card. ISD will link this measure to the departmental score card.

Thank you for the professionalism shown by you and your staff during the completion of this audit.

c: Ed Marquez, Deputy Mayor, Office of the Mayor
Miriam Singer, Sr. Assistant Director, ISD
Theresa Therilus, Assistant Director, ISD
Jose A. Galan, Division Director, Real Estate Development Division, ISD
Mike Iturrey, Division Director, Budget and Finance Division, ISD