

CITY OF FORT LAUDERDALE

OFFICE OF THE CITY AUDITOR

Review of Internal Audit Report #08/09-XX-07

**“Review of International Swimming Hall of Fame
Lease Agreement/Amendments”**

Special Report #09/10-02

March 24, 2010



CITY OF
FORT LAUDERDALE

City Auditor's Office

Memorandum

No: 09/10-05

Date: March 24, 2010

To: Mayor John P. "Jack" Seiler
Vice-Mayor Bruce G. Roberts
Commissioner Charlotte E. Rodstrom
Commissioner Bobby B. DuBose
Commissioner Romney Rogers

From: John Herbst, CPA, CGFO
City Auditor

Re: Review of the Internal Audit Report #08/09-XX-07 "Review of International Swimming Hall of Fame Lease Agreement/Amendments"

At the request of the City Commission, the City Auditor's Office (CAO) performed a review of the Report of Audit #08/09-XX-07 "Review of International Swimming Hall of Fame Lease Agreement/Amendments", prepared by the Internal Audit Division (IA).

A review consists of sufficient testing to express a conclusion about whether any information came to the auditors' attention on the basis of the work performed that indicates the subject matter is not based on (or not in conformity with) the criteria or the assertion is not presented (or not fairly stated) in all material respects based on the criteria.

SUMMARY

The overall objective of the audit by IA was to determine whether the City was due/received 25% of net revenues specified in the terms and conditions of the agreement/amendment. They also evaluated internal controls within the Business Enterprises Department for monitoring compliance with the agreement, and the adherence by the International Swimming Hall of Fame (ISHOF) with its contractual obligations.

As part of our review, we examined the workpapers produced by IA which (a) document the evidence gathered during the course of the audit and (b) provide the basis for their findings. We also spoke or corresponded with staff from IA, other City departments, ISHOF, and ISHOF's external auditor.

Based on our review of the documentation and methodology used by IA, we do not agree with the primary finding that ISHOF owes the City \$68,533. With respect to the rest of the findings and the conditions that support the findings, we noted a number of instances where we agree with IA,

several where we disagree, and a few where we neither agree nor disagree.

The details for these conclusions are outlined on pages 3 – 8. These items focus primarily on a laxity on the part of both the City and ISHOF in ensuring that all of the contractual terms were being adhered to. Much of that laxity can be attributed to previous verbal agreements between the parties, long-standing practices, changes in staff over the years, and confusion over terms in the agreements.

Finally, we agree with the request from both City staff and ISHOF that the agreement be updated, revised, and clarified to better facilitate the future success of the Aquatic Complex and the International Swimming Hall of Fame.

DETAIL

The CAO's review focused on IA's overall objective of determining whether the City was due/received 25% of net revenues as specified in the terms and conditions of the agreement/amendment:

Independent Auditor's analysis of net revenue:

The 1990 Amendment to the 1965 Agreement between the City of Fort Lauderdale and ISHOF, paragraph 7 subsection (f), states "The allocation of net revenues and rental income, as defined, will be determined by the Corporation's independent auditors in the course of the annual examination of the Corporation's financial statements. The Corporation will disburse to the City its share of such revenues, as provided herein, within sixty (60) days after completion of its annual audit".

Finding 1

The City estimates that ISHOF owes \$68,533, at a minimum, which represents 25% of the net revenues.

DISAGREE – The documentation and work performed was not sufficient to support the estimated amount owed as described in the finding.

In accordance with the agreement, ISHOF's independent auditors were responsible for providing a schedule outlining the allocation of net revenues and rental income during the course of the annual audit. The auditors did not provide the schedule in the annual audit report. ISHOF did provide IA with an Excel spreadsheet prepared by the independent auditors showing the required allocation, however IA did not rely on the schedule, as it did not come as a formal report from the auditors with an opinion as to the allowability and reasonableness of proposed contract amounts that are based on detailed costs. Absent that assurance, IA developed its own estimates, using ISHOF's general ledger, to calculate the potential revenue due to the City.

IA's schedule separates the revenue and expenses amongst City, Non-City, and Unable to Determine (UTD) categories. The UTD items were not discussed with ISHOF or their auditors to determine how to appropriately assign them to the City or Non-City categories. It is the exclusion of the UTD expenses, primarily administrative support, which lead IA to the conclusion that a reimbursement is due to the City.

Using the schedule prepared by the independent auditors indicates that no payment is due to the City. In addition, even a minimal allocation of the UTD administrative support expenses to operations, as shown below, indicates that no payment is due to the City.

- 28.7% (\$101,051 out of \$351,427) in FY 2006
- 15.0% (\$77,445 out of \$512,898) in FY 2007
- 23.6% (\$95,635 out of \$404,225) in FY 2008

Thus, although the information provided by ISHOF and their auditors did not strictly comply with the terms of the agreements, our overall opinion is that no money is owed the City.

Finding 2

ISHOF did not obtain City approval of rates for the museum admission and auditorium rentals; thus, we were unable to determine the appropriateness of the rates charged.

AGREE

Condition 1

No rates for museum admission and auditorium rentals were approved.

The CAO agrees that the City did not approve the museum rates, and the contract would seem to suggest that the City must approve the rates prior to the rates being applied.

Condition 2

Auditorium rental rates were not posted, nor advertised by ISHOF and rates charged varied from \$500 to \$1,800 with no written justification for variances.

The CAO neither agrees nor disagrees with the condition, as this relates to ISHOF's operational management of the facility and is therefore outside the scope of this audit.

Condition 3

Not all auditorium rentals had lease agreements.

The CAO agrees with the condition. Per the work performed and supporting documentation, ISHOF does not always use contracts for auditorium rentals.

Condition 4

Aquatic Complex Operational Manual did not contain procedures for confirming ISHOF obtained/received museum admission and rental approvals from the City.

The CAO neither agrees nor disagrees with the condition as the Aquatic Complex Operational Manual only governs procedures for the management of the pool facilities, not the contract with the International Swimming Hall of Fame.

Finding 3

Lease agreement/amendment contained vague/outdated language that did not provide a clear division of responsibilities, resulting in possible erroneous payments and service provided for utilities, alarm/security, and maintenance.

DISAGREE – The conditions noted below do not support the conclusion that the agreement/amendment contained vague/outdated language, only that there was no consensus between the parties regarding the terms of the agreement/amendment.

Condition 1

The City paid utility costs for both buildings and the City did not calculate possible increases in ISHOF's electric consumption for the new building, even though the premises contains multiple separate meters.

The CAO agrees with the condition statement. Documentation provided supports the condition

stated by IA that Business Enterprises is paying for the utility costs of both Hall of Fame buildings. The contract does not specifically address the payment of utility costs for the original Hall of Fame building. Work performed indicated that IA spoke with the City Attorney and the Attorney stated that the utility costs of the original building may be determined by past practice and additionally may be supported by the language in the contract concerning building maintenance costs.

Condition 2

The City paid for alarm/security service fees; thus replacing the guards and night watchmen requirement for the existing building.

The CAO disagrees with IA's determination that the alarm system eliminated the requirement for guards and night watchmen in the original building. Although the City is paying for the alarm/security service fees, the 1965 Agreement states, "...the City shall provide janitor service, guards, night watchmen, and other such personnel..." (Provision 5). In addition, the 1990 Amendment, Provision 6(c) states, "As part of the construction of the new building, an adequate burglar alarm system shall be installed...Monthly service fees shall be borne by the City." Further, the Amendment provides that the remaining provisions of the original agreement not expressly modified by the Amendment remain in effect.

Condition 3

ISHOF invoiced and the City paid \$6,000 for maintenance at year-end instead of on the first of the month. According to the City and past practice, annual maintenance fee covers both buildings. According to ISHOF, such fee covers the new building only.

While IA is correct in noting that the City paid \$6,000 for maintenance at year-end rather than paying in equal monthly installments on the first day of each month, this is an immaterial deviation from the contract with no adverse effect on the City.

The CAO agrees with ISHOF that the \$6,000 is for the new building only as per the 1990 First Amendment, Provision 3, titled "New building", sub-section (b).

Finding 4

Internal controls were not adequate to track and monitor compliance with insurance, permit, license, and alarm/security requirements.

AGREE with the conditions regarding compliance with the insurance requirements.

DISAGREE with the conditions regarding compliance with licenses and alarm/security requirements.

Condition 1

City did not submit ISHOF's annual Certificate of Insurance (COI) and request Risk Manager's approval for 2005/06 and 2006/07. When a request for 2007/08 approval was made, the corresponding agreement was not attached to verify agreement requirements.

The CAO agrees with the condition statement above, such that supporting documentation confirms that Business Enterprises did not forward the COI submitted by ISHOF to Risk

Management.

Condition 2

COIs for vendors and third parties using ISHOF premises were also not evidenced. General aggregate coverage was \$2,000,000 opposed to \$3,000,000 requirement.

The CAO disagrees with the portion of the condition regarding vendors and third parties. Per the CAO's discussion with Guy Hine, Risk Manager, COIs are not required for vendors and third parties using ISHOF premises.

The CAO agrees with the lack of general aggregate coverage as stated in the condition. Hence, ISHOF did not maintain the contractually required insurance coverage of \$1,000,000 for each occurrence and \$3,000,000 for general aggregate.

Condition 3

ISHOF was not insured for the contents within the structures. In ISHOF's financial statements for FY2005/06, memorabilia collection was valued at \$7,506,071.

The CAO agrees with the condition statement above. Based on the supporting documentation in the work papers as well as CAO discussions with Guy Hine, Risk Manager, ISHOF does not maintain the contractually required insurance coverage for the contents in the buildings.

Condition 4

No license/permits were evidenced by ISHOF for 2005/06, 2006/07, and 2007/08.

The CAO neither agrees nor disagrees with the condition statement above. Documentation was not sufficient to establish whether licenses/permits were required for the years in question.

Condition 5

Required City business tax license was not evidenced by ISHOF.

The CAO disagrees with the condition above. In accordance with Florida Statutes Sec. 205.022 (1) (b), it appears that nonprofit museums are exempt from having to obtain a business tax license from the City. We suggest that IA seek an opinion from the City Attorney's Office on this question.

Condition 6

City did not track and monitor compliance with COI, permits, license, and alarm/security requirements.

The CAO agrees with the condition above stating that the City did not track and monitor compliance with COIs.

The CAO neither agrees nor disagrees with the statement that the City did not track and monitor compliance with permits, licenses, and alarm/security requirements, as documentation was not sufficient to support this portion of the condition statement.

Condition 7

Business/account name and payment coupon on security/alarm system invoice lists ISHOF

opposed to the City.

The CAO disagrees with the condition above. Business Enterprises receives and pays the alarm system invoice monthly as required by the contract. Overall, the alarm billing process seems to be appropriate, as the invoice identifies the location of the alarm system (i.e. the addressee is International Swimming) and is received by Business Enterprises for payment (address of bill is Fort Lauderdale City Hall).

Condition 8

City did not inform ISHOF to test alarm system on a monthly basis.

The CAO neither agrees nor disagrees, as the agreement does not require monthly testing of the alarm system by ISHOF.

Finding 5

ISHOF changed the location and the date of the board meetings without proper communication to all parties; and minutes were not formally distributed to inform board of directors of meeting decisions/approvals.

DISAGREE - board meeting dates, locations, and minutes are governance issues related to the operations of the International Swimming Hall of Fame and therefore are outside the scope of this audit.

Condition 1

Annual board meetings were not held by ISHOF at the specified location and date in ISHOF's Charter. Meeting minutes provided upon request during the audit evidenced locations such as Beverly Hills, California and New York, New York; thus, increasing travel expenditures.

The CAO disagrees with the condition above. ISHOF's Charter, as amended in 2005, does not specify a time and place for the annual board meeting. Rather, it allows the board to make that determination. IA relied on the original 1964 ISHOF Charter for its conclusion.

Condition 2

Although not within the audit period, the City was not informed by ISHOF of the last minute location change for the November 2008 board meeting; thus, City Director of Business Enterprises arrived late.

The CAO disagrees with the condition statement above. There is no supporting documentation in the workpapers indicating that ISHOF had a duty to inform the Director of Business Enterprises of the location change. The City has one designee on the board and that designee is a City Commissioner. Therefore, the Director of Business Enterprises is not entitled to the same rights and privileges as an ISHOF board member.

Condition 3

Meeting minutes were not received/evidenced by the City Director of Business Enterprises with the exception of those for September 8, 2005. The City's version of these minutes stated the By-laws needed to be amended; however, ISHOF CEO's version stated By-laws and Charter were amended and approved reducing the number of City board members from 2 to 1. Although not within the audit period, the City was not informed by ISHOF of the last minute location change for the November 2008 board meeting; thus, City Director of Business Enterprises arrived late.

The CAO agrees in part based on the supporting documentation provided, as the CAO was unable to verify whether the City received meeting minutes for additional ISHOF board meetings.

The CAO disagrees in part because supporting documentation only provides one set of meeting minutes. Thus, there is insufficient supporting documentation to conclude on the part of the condition statement regarding multiple versions of minutes. Moreover, it is noted that the meeting minutes indicate that the origin and preparer is ISHOF.

Condition 4

Meeting minutes provided as a result of our review were recorded by ISHOF's CEO, other, or recorder was omitted.

The CAO neither agrees nor disagrees, based on the ambiguity of the condition statement and lack of supporting documentation within the work performed.

Condition 5

ISHOF's original By-laws referenced in the 1965 Lease Agreement were not evidenced by the City or ISHOF.

The CAO agrees with the condition statement; however, even though the bylaws from 1965 were not included in the supporting documentation, the Board amended ISHOF's bylaws in 2005 and such controlling documents were provided to IA during the course of the audit.

cc: George Gretsas, City Manager
Harry Stewart, City Attorney
Jonda Joseph, City Clerk
Allyson Love, Assistant City Manager
Shonda Singleton-Taylor, Acting Director, Office of Management and Budget
Cate McCaffrey, Director of Business Enterprises