Joseph M. Centorino, Inspector General

OIG UPDATE 11/01/2021 – 09/08/2022

This memorandum summarizes OIG projects completed, as well as selected ongoing activities, occurring between the issuance of its November 1, 2021 Annual Report and September 8, 2022.

LEGISLATIVE INITIATIVES

- **Management Policy for Internal Controls on Major Construction Projects**
  Based on findings and recommendations included in OIG Report No. 20-07, Management of the Palm & Hibiscus Neighborhood Improvement Project, the OIG worked in collaboration with the City Administration to develop a comprehensive management policy for internal controls on major construction projects with a value of $5 Million or greater. This resulted in the Commission's approval during 2022 of a City Ordinance directing that such a policy be created and maintained and passage of a Commission Resolution approving the policy.

- **Amendment to Debarment Ordinance**
  Upon the recommendation of the OIG, the Commission adopted an ordinance amending the City's current debarment procedures. The Amendment authorized the City Manager to transmit a request for debarment or suspension of a contractor to the OIG for investigation and to prepare a report for consideration by the Mayor and City Commission.

INTERNAL AUDIT REPORTS

- **State Beachfront Management Agreement #3595 (Financial and Operational Reports) for the 2019/20 Fiscal Year**
  State Beachfront Management Agreement No. 3595 requires the City of Miami Beach to remit to the State 25% of monies collected from private concessionaires for the use of State beachfront property ("sand tax"). The OIG annually completes two separate related reports: (1) a Financial report informing the State of the accuracy of the City's quarterly sand tax payments; (2) an Operational report that reviews City procedures and internal controls and the accuracy of transactions occurring on State-owned property.

Based upon an examination of City records for the period of October 1, 2019 through September 30, 2020, the OIG found underpayments and overpayments of sand taxes owed to the State, resulting in a net $18,605.94 underpayment. One cause of this was the failure to update the EnerGov system by the required Consumer Price Index adjustment at the beginning of the fiscal year. The Facilities and Fleet Management Department Asset Management Division incorrectly processed the Boucher Brothers Inc. Minimum Guarantee payment, which led to a $14,853.13 underpayment. Also, Tourism and Culture Department staff were not reconciling internal documentation with the entries in the Munis system, which resulted in inaccuracies.

- ## Compliance with Selected BDO Audit Recommendations

Internal Audit staff annually reviews City staff's compliance with recommendations from the BDO audit conducted as a result of a $3.6 million fraud involving the City's Treasury Department and Automatic Clearing House disbursements during the fall of 2016. The review focused on compliance with recommendations numbered 27, 34, 44, 52, and 53 in that audit.

The following deficiencies were found:

- Eight individual transactions of more than $100,000 (total $2,674,846.61) were not dually approved, i.e., by two department employees (#27). The Customer Service Complaint Log did not include the numbers of complaints closed or outstanding each quarter (#53). The Finance Department reported taking appropriate action regarding both of these issues.
- No deficiencies were founding regarding the following:
- Testing was able to verify that the Deputy Finance Director had no recordkeeping rights assigned during the review of reports (#34).
- The Human Resources Department was confirmed to be conducting its criminal background checks on all temporary employees, including those obtained through third-party employment agencies (#44).
- The functionality of the ACD system used to document, file and track customer complaints was verified by the OIG (#52).

- ## Public Towing Pricing Methodology Analysis

A City Commissioner requested the OIG evaluate the methodology used in the public pricing being negotiated by the City's Parking Department with Beach Towing and Tremont Towing to arrive at a flat rate fee rather than the previous method of calculating the fee for each tow based on variable service factors. The OIG opted to calculate its own recommended fixed rate for non-resident tows, based upon its review of January 2022 and previous audit documentation (October 1, 2017 through October 31, 2018). After calculating the frequency in which additional fees were charged and applying those percentages to the City Commission approved Maximum Allowable Rates in effect since March 1, 2018 and taking account of a new State law requiring that the City's portion of the fee be billed by the City, the OIG suggested that the flat non-resident rate should be $200 plus the City fee of $30 for a total of $230. The report also recommended a lower fee for City residents and the towing companies' acceptance of both debit and credit cards for City residents and of at least debit cards for non-residents be included in the next Towing Permits.

The OIG provided input to the Parking Department for its consideration in connection with the ongoing negotiations, which concluded with adoption of a flat non-resident fee of $250 plus the $30 City fee for a total of $280, with a resident flat fee of $150 and no City fee. An agreement

was reached for the acceptance of both debit and credit cards for residents and debit cards for Miami-Dade County residents.

- **Building Department Permitting Process**

  At the request of Commissioner Ricky Arriola, the OIG audit staff conducted this review in connection with complaints from residents and businesses dissatisfied with current Building Department permitting procedures. The OIG worked collaboratively with the Building and Information Technology Departments in analyzing the permit application process and customer interface to develop possible solutions to address software and other concerns.

  The review included consideration of the 2019 Matrix study commissioned by the City, Building Code requirements, online applications, a compilation and graph illustration of Building Department survey responses over time, a list of the ten most common complaints, an analysis of EnerGov system data showing the average number of times each type of permit failed until approved, a comparison of time the permit spent with the City compared with the customer, the distribution of the Building Department's call volume over time, recent departmental improvements, technological deficiencies, and its future outlook.

- **Miami Beach Garden Conservancy, Inc. Management Agreement**

  This audit, conducted at the request of the City Manager, noted the following deficiencies in connection with the Management Agreement with the City:

  - The City's annual contributions to the Botanical Garden were not reduced by the Conservancy's reported Net Income, resulting in an excess of $115,579.20 paid by the City during the audit period and another $38,000 paid during the 2021/22 fiscal year.
  - The Conservancy was not fully compliant with insurance requirements.
  - The Conservancy did not ensure that the City received all Resort Tax monies due from food and beverage sales occurring at the Botanical Garden.
  - The Conservancy did not maintain certificates of insurance from tested vendors necessary to enable the OIG Auditor to determine whether each was compliant.
  - The Conservancy charged facility rental rates which differed from the rates approved by the City.
  - The Conservancy submitted required reports to the City after designated due dates.
  - The required inventory list was not updated, although additions and deletions occurred during the audit period.

  The OIG also reported on the circumstances surrounding the November 3, 2021 termination of the Executive Director and suggested five opportunities for future improvement.

SANITATION TAX AUDITS

- **Ojito Waste Systems, Inc. Roll-Off Fee Revenues Audit**

  The OIG Sanitation Tax Auditor periodically conducts site visits of property addresses that have obtained one of nine designated Building permits which may result in the usage of roll-off containers. In doing so, he located roll-offs placed by Ojito Waste Systems, Inc., for which the

contractor had not filed Roll-Off Permit Fee Returns with the City. A subsequent examination of contractor records determined that it owed the City a total of $59,706.13 including penalties and interest for the January 1, 2017 through December 31, 2020 audit period. In addition, the contractor began filing and remitting future monthly roll-off permit fees due to the City, which equaled $25,366.65 for the period of January 2021 through October 2021.

- **Sanitation Field Observations Report**

The OIG Sanitation Tax Auditor performed unannounced field observations of various Miami Beach properties from May 20, 2021 through July 15, 2021 to determine whether the associated contractors had obtained valid business tax receipts (BTRs), acquired the required Building and/or Roll-off permits, and filed Roll-off Permit Fee Returns with the City. Any deficiencies observed were promptly forwarded to the Code Compliance Department for review and issuance of warranted Notices of Violations (NOVs), resulting in the following:

- Code Compliance Enforcement Officers issued 76 NOVs to non-compliant contractors ranging from $100 to $1,000 and totaling $35,400.
- All County Waste, Inc. received NOVs, paid $1,558 to obtain its 2020/21 and 2021/22 BTRs, and remitted $5,165.22 in roll-off fees due from July 2021 through September 2021.
- A recycling contractor, Medley Metal Recycling LLC, was identified that was not remitting any required reports to the City. An audit is pending to determine any roll-off fees owed.
- Riteway Systems, Inc. was found non-compliant and paid $754.00 to obtain its 2021/22 BTRs and will be subsequently audited to determine if roll-off fees are due.

In addition, the OIG made recommendations to improve the enforcement process and the City Code, some of which were subsequently adopted by the City Commission to increase compliance.

- **Pronto Waste Service, Inc. Roll-off Fee Revenues Audit**

After the issuance of two subpoenas, the unresponsive roll-off contractor furnished the necessary records for examination to the OIG, which determined that the contractor had unreported gross receipts, resulting in the levying of a $70,894.31 assessment (including penalties and interest) and $4,765.69 in audit costs. In addition, the Code Compliance Department issued retroactive Notices of Violations to eight Miami Beach serviced properties where the required permits were not obtained. Also, the contractor did not timely remit its monies owed during the audit period, resulting in interest and penalties being levied.

- **Trash Be Gone, Inc. Roll-off Fee Revenues Audit**

The contractor filed six Roll-Off Permit Fee Returns and remitted $1,494.00 to the City Finance Department during the June 1, 2017 through August 31, 2021 audit period. Examination of the records determined that the contractor owed $57,612.24 in unpaid roll-off fees (including penalties and interest) and another $2,992.11 in audit costs. The contractor also remitted $4,560.88 in permit fees due for seven months outside of the audit period, which would not otherwise have been collected.

The Code Compliance Department issued retroactive Notices of Violations to 23 Miami Beach serviced properties where required permits were not obtained. Lastly, the contractor did not timely remit its owed monies during the audit period, resulting in interest and penalties being levied.

- **Pending Sanitation Tax Issues**
  - As a result of an ongoing roll-off permit fee revenue audit, one contractor has already remitted $180,000 on account to the City, pending completion of the audit.

  - The OIG is currently collaborating with the Public Works Department and Office of City Attorney on revising City Code provisions related to Sanitation Tax issues to clarify ambiguities and improve enforcement regarding roll-offs and recycling.

RESORT TAX AUDITS

- Resort Tax Auditors completed 148 audits between October 1, 2021 and September 7, 2022 with net assessments of $1,742,378.92. Also, the OIG issued two semi-annual reports to the City Commission dated October 4, 2021 (OIG No. 21-36) and April 6, 2022 (OIG No. 22-05) to increase transparency regarding this important revenue source.

INVESTIGATIONS, REVIEWS, AND INSPECTIONS

- **Review of Permitting Issues at 310 Meridian Ave. and 333 Jefferson Ave.**

  310 Meridian

  This review began following the OIG receipt of complaints from adjacent property owners and other residents regarding numerous alleged permitting violations in connection with the apartment/hotel conversion at 310 Meridian Avenue. The City Commission also requested this review as well as an independent legal opinion on the issues, for which the OIG engaged an outside law firm. An extensive review was conducted, which included a review of Planning and Building Department records, procedures, and practices, interviews with present and former City employees, attorneys for the residents and the developer, and a review of relevant laws with retained legal counsel. A series of findings were issued, which included violations of City Land Development Regulations (LDRs) and the Florida Building Code. The report also included recommendations for remedying legal and procedural deficiencies, strengthening the City's underlying policies on such conversions, and improving transparency.

  333 Jefferson

  A separate request from the City Commission to review the procedures for the conversion of the property at 333 Jefferson Ave. was also received. That project raised similar issues, and the OIG's independent counsel found corresponding violations of the City's Land Development Regulations. An additional issue was raised by the fact that at 333 Jefferson a stop-work order was issued by City inspectors because the scope of demolition at the site exceeded building permit plans. This led to an after-the-fact Certificate of Appropriateness request that was approved by the Historic Preservation Board (HPB). Independent counsel opined that the after-the-fact application was consistent with City LDRs and that any procedural deficiencies were remedied by the hearing before the HPB. Notably, during these reviews the City has taken corrective action to clarify its procedures in order to resolve issues raised by these types of projects in the future.

- **Review of Termination of Tai Chi Instructor City Contract**

  The OIG initiated a review of the facts and circumstances related to the termination of the City's agreement with a popular Instructor providing Tai Chi classes for residents and visitors at five City Parks and Recreation Department facilities. The instructor was terminated following a complaint to the City by the owner of a local fitness center who alleged that the City's employment of the instructor violated a non-compete agreement with the center. Litigation was pending between the instructor and the center. Following discussions by the OIG with the instructor regarding his defense to the suit, as well as with the Parks and Recreation Department and the City Attorney's Office, it was determined that the instructor could continue to be employed by the City pending the outcome of the litigation, which, in the end, determined that the instructor would be barred from teaching in the North Beach area, but could teach at other City sites.

- **Investigation of City Employee for Theft/Official Misconduct**

  Based on a tip from a City source, the OIG investigated an Operations Supervisor in the Department of Property Management, alleged to have directed a City employee to build a large aluminum kayak holder, on City time and utilizing City materials, for the Supervisor's personal use. With the assistance of the Miami Beach Police Department, sufficient evidence was obtained from cooperating City employees to obtain a search warrant for the employee's backyard, where the City property was located and seized. The investigation led to the filing of criminal charges for Theft and Official Misconduct, and termination of City employment.

- **Investigation of Unauthorized Outside Employment by City Facilities Manager**

  An OIG investigation commenced following receipt of information that a City Facilities Manager, a licensed electrician whose duties included electrical services, was performing unauthorized outside employment involving private electrical work performed by own company. Evidence was gathered confirming the outside work, for which he had received no authorization, and which also indicated that the subject was using images online of City electrical work done by him in order to promote his private business. It was also determined that the employee was on Family Medical Leave (FML) while engaged in the private work, which is disallowed. The investigation led to his resignation from his City position, and also found that department records did not clearly indicate whether the tools he was in possession of belonged to the City or to him personally. The investigation resulted in the adoption of stronger controls over City-issued tools as well as a clarification of FML procedures.

- **Review of West Avenue Phase II Project**

  A review was conducted of the West Avenue Phase II Project upon a referral from the City Commission that sought an explanation for the extensive delay in moving the project forward, with an emphasis on the problems encountered in convincing area residents to sign the harmonization and license agreements necessary for construction to commence.

  The findings in the report included the need to more specifically inform residents of the impacts to individual properties, including the costs involved; to comprehensively address encroachments in the right-of-way; to have the Public Works Department more effectively resolve conflicts with design criteria and to provide clear guidance on drainage and harmonization issues during the design phase; that the project manager should have used CIP's mandated project

management software, E-builder, rather than email, to manage information and provide more timely reviews and approvals of harmonization plans; that the review process stagnated due to COVID-19 restrictions and the deliberate lack of engagement by the former City Engineer with residents and also with team members, by opting not to attend many of the bi-weekly project team meetings; and that confusion and distrust among residents resulted from a lack of transparency caused by inter-departmental delays in reviewing and commenting on proposed plans.

The recommendations in the report included the hiring of a full-time project manager or engineering consultant firm with the proper experience and resources; clarification of the roles of Public Works and CIP during the design phase; development of a consistently-used design criteria package for resiliency projects and use of design-bid-build methodology; full utilization of E-Builder; the need for a comprehensive plan for dealing with encroachments; more strategic cooperation among City departments; and establishment of a community adaptation fund to assist residents with harmonization costs.

- **Investigation/Review of Indian Creek Stormwater Drainage Project**

  The OIG completed a draft report, detailing an extensive investigation and review of issues connected to the Indian Creek Stormwater Drainage Project, that was circulated in June, pursuant to City Ordinance, to all affected individuals and entities for responses. Extensions of time were afforded to respondents due to the length of the report and the complexity of the issues. All responses have now been received, and the report is undergoing final edits and revisions prior to public release.

CONTRACT OVERSIGHT

- **OIG Contract Risk Assessment Procedure**

  To readily identify high risk City contracts and to prioritize the OIG contract oversight function, the OIG has developed a Risk Assessment procedure for City contracts during the past year with the helpful assistance of the Palm Beach County Inspector General and the cooperation of the City's Procurement Department. A Risk Assessment Form has been created that evaluates each City contract based on nine risk factors (See attached form). Procurement personnel include the calculation of these risk factors for each solicitation on a Request for Issuance Approval Form. The OIG compiles these scores to rate the contract as having a high, medium, or low risk level and to plan its oversight accordingly.

- **G.O. Bond Oversight**

  The OIG continued to attend the internal implementation team meetings, bi-weekly CIP and Procurement meetings, Oversight Committee meetings and scheduled meetings with Program Director, when necessary. In Report 21-35, the OIG documented that spending trends on Tranche 1 projects had started to slow. The OIG met with the City's CFO and GO BOND Program Director to discuss the impact of the slowed spending on the prioritization of the projects as well as the budget shortfalls on some of the larger projects. The OIG also conducted a financial analysis of the Firestation #1 project and identified a discrepancy between the G.O. Bond dashboard and E-Builder. E-Builder reflected a total spent to date of $173,724.83 and the dashboard reflected a

total spent of $185,960.00. This was discussed with CIP and a review of the transactions in E-Builder was done, which resulted in the correction of recording errors. E-Builder and the dashboard are now in alignment.

As part of the internal controls implemented this year, the OIG recommended that all bids, technical proposals, letters of interest or other submissions by contractors related to any construction contract include a coordination plan that would demonstrate that the selected firm understands the project's requirements; has identified all critical technical and construction issues; and has developed engineering solutions to address them. This was discussed by the Oversight Committee and it was assured, during a discussion of Firestation #1, that the design team will provide design, constructability, schedule analysis, cost estimates and site complications prior to beginning construction to alleviate any unexpected budget impact that may delay the project.

Additionally, the internal controls policy requires that any major design change in a construction project, defined as a change to the scope that requires significant redesign or revision to any major design element or any change that may result in a project construction cost increase of more than 10%, requires the responsible City department to initiate, prepare and sign a Request for Major Modification to the Project's Scope which shall be submitted to the Project Directors and respective City managers. On March 2, 2022, the new policy was presented to staff working on GO BOND projects and again to the Oversight Committee on March 31, 2022.

- **CBRE Complaint RE: RFP For City-Owned Parking Lots**

  The OIG received a complaint from the law firm of Foley & Lardner on behalf of CBRE, a City contractor, alleging improprieties in connection with the City's acceptance of the proposal of a competing firm, Collier's, which was awarded a contract to act as the City's real estate consultant in connection with the development of Class A office space in city-owned parking lots. The allegations of procedural errors were determined to be unfounded by the OIG, following a review of the process followed by the Economic Development and Procurement departments. The OIG review then focused on the enormous disparity between the cost of Collier's proposal ($15,000) and that of CBRE ($375,000) and the other responding firm ($300,000). The inquiry determined that Collier's had included in its contract proposal a 4% advisory fee that had not been included in its original proposal, which was rightly rejected by the City. Collier's then confirmed its original proposal and proceeded to carry out its contractual responsibilities to the satisfaction of the City.

IG CONTRACT RISK ASSESSMENT

Using Department:_____Bid #/ Project/Service(s):_____

Key Contact: _____ Phone/Email: _____

	RISK FACTORS	Points 1-6	RISK VALUE	RESPONSE STRATEGIES (Suggested Considerations for RiskValue Assignment)
1	This is a new program or service, or has revised changes to a previous contract/solicitation	**(3)**		New programs or services may require early monitoring to ensure any issues are addressed in a timely manor
2	Statement of Work is complex – there are multiple components to the service to be provided.	**(3)**		Complex programs or services may require early monitoring to ensure any issues are addressed in a timely manor
3	Payment method to be used: • Performance Based • Fee for Service • Cost Reimbursement • Revenue Generating	**(1)** **(2)** **(3)** **(4)**		Performance Based – Contract must includeperiodic reporting to ensure required performance is achieved. Fee for Services – Reporting must include periodic tracking of services performed. Cost Reimbursement – Contract must include language to track progress toward achievementof contract to ensure budget is not overspent Revenue Generating - Contract must include language to track progress toward achievementof contract to ensure revenue is being generated and properly recorded
4	Contract will be awarded for this project utilizing: • Competitive Procurement • Non-competitive or Sole Source	**(2)** **(3)**		
5	Vendors for this/these services must maintain accreditation or licensure requirements.	**(2)**		Contract must address the requirement and consequences if the accreditation or licensure is not maintained for the life of the contract.
6	Project has been or will be publicly debated and may generated negative opinions in the community and poses possible negative publicity	**(6)**		This includes projects that are contingent upon voter referendum approval under the City Charter
7	This project represents a significant portion of the City's comprehensive plan and poses a financial or environmental risk	**(5)**		Determine the potential impact on the City if avendor does not meet their obligation.and there is no secondary vendor to complete the project.
8	Project Maximum Amount: • $1,000,000 and above • $500,000 to $999,999 • $250,000 to $499,999 • $50,000 to $249,999 • Below $50,000	**(5)** **(4)** **(3)** **(2)** **(1)**		
9	Vendor will be allowed to subcontract key activities of this project.	**(2)**		If subcontractors are allowed, identify in the contract the monitoring that the vendor must complete to ensure subcontractors are compliant
	TOTAL PROJECT RISK SCORE			**RISK LEVEL:** **HIGH (23 OR >)** **MEDIUM (13-22)** **LOW (0-12)**

Worksheet completed by:_____ Date: _____

IG CONTRACT RISK ASSESSMENT

Instructions

1. To be completed by IG Contract Oversight Unit for competitive solicitations.
2. **Identify** risk factors that you **know** pertain to the project and enter corresponding number (in parenthesis) in the **RISK VALUE** column.
3. If **no** factors apply, leave the box empty; if you believe the risk value should be adjusted higher/lower enter that number and explain circumstances in comment section.
4. **Add** the risk value numbers and enter the total score in the red box – Enter a total score of **"0"** if no factors applied. Using the scoring system, place the appropriate number in the box to indicate the level or risk.

General Guidelines

1. A risk assessment worksheet is required for all projects. The worksheet is conducted as early in the process of development as possible, preferably prior to competitive solicitation.
2. Using the risk assessment worksheet prior to contract development is an effective screening/selection strategy identify unique risks that may be mitigated by the addition of Special Terms and Conditions.
3. If new factors are identified that do not appear on the list,use the "Other Risk Factor" space to explain.
4. While the risk level largely determines the type and frequency of monitoring, the contract type may also influence the monitoring method used.
5. Risk level ratings may be adjusted either up or down during the life of a contract.
6. Once the risk level is assigned, an appropriate monitoring schedule should be developed and implemented. Goals for frequency of review will be based on Risk Level as follows:
   - High risk contracts - semi-annually
   - Medium risk contracts - annually
   - Low risk contracts – as needed
7. Regardless of a project risk level, staff is encouraged to provide assistance throughout the contracting process as an effective risk management strategy.

   NOTE: Each risk factor can be mitigated by some action or response, either before or after the contract is executed. This action or response can take the form of training, technical assistance, special contract requirements/conditions/limitations.