

# City of Miami

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INDEPENDENT AUDITOR GENERAL



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November 11, 2020

Honorable Members of the City Commission  
City of Miami  
3500 Pan American Drive  
Coconut Grove, FL 33133-5504

Re: Audit of Rickenbacker Marina  
Report No. 21-01

## **Executive Summary**

We have completed an audit of records and selected financial transactions of Rickenbacker Marina, Inc. (RMI), primarily for the period January 1, 2014 through December 31, 2018. The audit was performed to determine whether RMI complied with the applicable sections of its Property Lease Agreement (Lease) with the City of Miami (City). During the most recent lease years (2017 and 2018), RMI made percentage rent payments totaling \$1,125,776 and \$1,165,396 respectively, while reporting total gross revenue of approximately \$9.4 million and \$9.8 million, respectively.

Overall, we concluded that except for certain controls over rental payments that required strengthening, procedures and compliance with the Lease were generally adequate and being adhered to. Improvement is needed to ensure that RMI makes accurate rental payments in a timely manner. **As a result, RMI owes the City \$81,850 in additional rent, late fees and audit costs (\$7,122 in additional rent, \$7,301 in late fees and \$67,427 in audit costs).**

In addition, we noted that based on the rent paid, RMI may owe \$307,964 in additional state sales tax per the lease agreement for the current audit period. However, RMI collects sales tax from subtenants and remits the proceeds directly to the State of Florida. RMI has taken the position that Florida Statute § 212.031(2)(b) prohibits the collection of more than one tax on the rental of nonexempt real property. Since the State of Florida is the receiving entity of this tax, RMI reached out to the Florida Department of Revenue (DOR) and received written confirmation that they are in compliance with Florida State Sales tax laws/requirements. However, the letter constitutes the opinion of the writer of the document and is not the official position of the Department. Therefore, RMI has requested under Chapter 12-11, F.A.C., a formal Technical Assistance Advisement clarifying the official position of the DOR and is awaiting their response.

We wish to express our appreciation for the cooperation and courtesies extended to us by the Rickenbacker Marina's management and accounting staff as well as the City's Department of Real Estate and Asset Management while conducting the audit.

Sincerely,



Theodore P. Guba, CPA, CIA, CFE  
Independent Auditor General  
Office of the Independent Auditor General

cc: The Honorable Mayor Francis Suarez  
Arthur Noriega, City Manager  
Victoria Mendez, City Attorney  
Todd Hannon, City Clerk  
Nzeribe Ihekweba, Assistant City Manager/Chief of Infrastructure  
Fernando Casamayor, Assistant City Manager/Chief of Operations  
Mark Burns, Lease Manager, DREAM (Department of Real Estate and Asset Management)  
Erica T. Paschal, Director, Finance Department  
Christopher Rose, Director, Office of Management and Budget  
Demetrio Constantiny, Accounts Receivable Supervisor, Finance Department  
Aabad R. Melwani, President, Rickenbacker Marina, Inc.  
Members of the Audit Advisory Committee  
Audit Documentation File

Audit conducted by: Wesley Laurent, MBA, CPA, CIA, Senior Auditor

Audit reviewed by: Mala Khilnani, CPA, CISA, Assistant to the Auditor General

**AUDIT OF RICKENBACKER MARINA  
JANUARY 1, 2014 THROUGH DECEMBER 31, 2018  
REPORT NO. 21-01**

**TABLE OF CONTENTS**

SCOPE, OBJECTIVES AND METHODOLOGY .....	1
BACKGROUND .....	2
AUDIT FINDINGS AND RECOMMENDATIONS .....	3
FINDING 1: UNDERSTATED GROSS REVENUES REPORTED TO THE CITY RESULTED IN UNDERPAYMENTS OF PERCENTAGE RENT TOTALING \$7,122.....	3
FINDING 2: RENTAL PAYMENTS WERE UNTIMELY RESULTING IN LATE FEES DUE TOTALING \$7,301 .....	5
FINDING 3: RICKENBACKER MARINA, INC. (RMI) SHOULD OBTAIN WRITTEN CONFIRMATION FROM THE FLORIDA DEPARTMENT OF REVENUE REGARDING THEIR COMPLIANCE WITH STATE SALES TAX REQUIREMENTS .....	6
FINDING 4: RICKENBACKER MARINA, INC. (RMI) WAS NOT IN COMPLIANCE WITH AUDITED FINANCIAL STATEMENT REQUIREMENTS .....	7

## **SCOPE, OBJECTIVES AND METHODOLOGY**

The scope of the audit was to determine Rickenbacker Marina's, Inc. (RMI) compliance with the rental payment, insurance, and maintenance provisions of its Property Lease Agreement (Lease) with the City of Miami (City). The audit primarily covered the period January 1, 2014 through December 31, 2018 and focused on the following objectives:

- To determine whether RMI complied with the terms of the Lease to the extent that its rent payments to the City were consistent with: gross revenues periodically reported to the City; sales and use tax returns reported to the State of Florida; and, bank deposits.
- To determine whether RMI rent payments were remitted in a timely manner.
- To determine whether insurance policies were adequate and in compliance with rental agreement terms.
- To determine whether rent payments were properly recorded in the City's accounting system and deposited into the City's treasury.
- To determine whether adequate internal controls were maintained.
- Other audit procedures as deemed necessary.

We conducted this performance audit in accordance with generally accepted government auditing standards. 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 our audit objectives.

The audit methodology included the following:

- Interviews and inquiries of appropriate personnel
- Reviews of written policies and procedures in order to gain an understanding of the internal controls
- Observations of current practices and processing techniques
- Tests of applicable transactions and records
- Other audit procedures as deemed necessary

## **BACKGROUND**

The City of Miami (City) owns a twenty-one (21) acre waterfront site on Rickenbacker Causeway, which is part of the City's Miami Marine Stadium complex. Subsequent to issuing a request for proposal (RFP) to develop and lease the site, the City executed a Property Lease Agreement (Lease), dated July 8, 1977, with Marina Biscayne, Inc. In 1986, the Lease, which terminated on July 7, 2016, was assigned to Rickenbacker Marina, Inc. (RMI). In September 2015, the City entered into a Settlement Agreement and Release (Settlement Agreement) thereby granting RMI holdover tenancy on a month to month basis. Pursuant to a resolution, adopted on September 13, 2018 the City Commission directed the City administration to issue a fifteen (15) day "Notice to Vacate" to RMI. However, in December 2018, the City Commission passed a resolution to indefinitely defer further action on the "Notice to Vacate". As a result, RMI was required to pay to the City \$100,000 per month in addition to RMI's monthly holdover rent.

In accordance with the terms of the Lease, RMI developed a portion of the Marine Stadium complex into a full-service marina complex (known as "Rickenbacker Marina"). In addition to renting "wet slips" (including moorings) where vessels are docked in the water, and "dry slips" (including Jet Ski storage space) where vessels are stored on dry land in racks, RMI also provides other marina-related services that require payment of separate fees. As such, RMI also generates revenue from boat maintenance, parts and service, fuel sales, and a marine retail/convenience store. Its only sub-lessee is "Whiskey Joe's Restaurant".

For the year ended December 31, 2018, "Total Gross Revenues" were \$9.8 million and RMI paid the City percentage rent totaling \$1,165,396.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

**CONCLUSION:** Overall, we concluded that except for certain controls over rental payments that required strengthening, procedures and compliance with the Lease were generally adequate and being adhered to. Improvement is needed to ensure that RMI makes accurate rental payments in a timely manner **As a result, RMI owes the City \$81,850 in additional rent, late fees and audit costs (\$7,122 in additional rent, \$7,301 in late fees and \$67,427 in audit costs).**

In addition, we noted that based on the rent paid, RMI may owe \$307,964 in additional state sales tax per the lease agreement for the current audit period. However, RMI collects sales tax from sub-tenants and remits the proceeds directly to the State of Florida. RMI has taken the position that Florida Statute § 212.031(2)(b) prohibits the collection of more than one tax on the rental of nonexempt real property. Since the State of Florida is the receiving entity of this tax, RMI reached out to the Florida Department of Revenue (DOR) and received written confirmation that they are in compliance with Florida State Sales tax laws/requirements. However, the letter constitutes the opinion of the writer of the document and is not the official position of the Department. Therefore, RMI has requested under Chapter 12-11, F.A.C., a formal Technical Assistance Advisement clarifying the official position of the DOR and is awaiting their response.

Details of our findings and recommendations follow:

### **FINDING 1: UNDERSTATED GROSS REVENUES REPORTED TO THE CITY RESULTED IN UNDERPAYMENTS OF PERCENTAGE RENT TOTALING \$7,122.**

The Lease stipulates that RMI must pay the greater of “Minimum Annual Rent” or “Percentage Rent”. Percentage Rent, includes, among other items, a percentage of “Gross Revenue” generated from the marina (i.e., “wet slips” including transients and users of the mooring field), dry storage, the fuel dock facility, and Whiskey Joe’s Restaurant (RMI’s only sub-tenant). During the period audited, we noted that Minimum Annual Rent was \$360,000 (or \$30,000 monthly).

Minimum Annual Rent payments are payable “in advance” on first day of each month, while any additional percentage rent is payable monthly “in arrears” on the 30<sup>th</sup> day of each month. Accordingly, along with its \$30,000 minimum rent for the month, the Lease requires RMI to submit a monthly report of its gross revenues for the preceding month and any applicable percentage rent due.

In order to determine whether RMI paid the correct amount of percentage rent during 2014 through 2018, we performed reconciliations of gross revenues reported to the City to all cash deposited by RMI into bank accounts. Accordingly, we obtained all bank deposits and adjusted for various items that should have been excluded from Gross Receipts including sales and use taxes collected and other non-revenue items such as security deposits. This resulted in a reporting shortage of \$61,845 between the total reconciled Gross Revenues and the Gross Revenues that RMI reported to the City. Based on composite rental rates (i.e., calculated as a percentage of rents paid to the City and reported gross revenues) ranging from 10.23% to 11.90%, RMI owes the City \$7,122 in additional rent (See Schedule 1 on next page).

<b>SCHEDULE 1 - RECONCILIATION OF GROSS REVENUES</b>						
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>Total</b>
Bank Deposits:	\$ 9,443,563	\$ 11,100,310	\$ 10,287,598	\$ 10,623,004	\$ 11,713,087	\$ 53,167,562
Less: Non-Revenue Deposits	(143,010)	(892,893)	(271,749)	(596,129)	(1,306,421)	(3,210,202)
Less: Total Sales & Use (SU) Tax Collected (A)	(509,872)	(559,249)	(567,471)	(564,651)	(565,824)	(2,767,067)
Less: Increase/Decrease Security Deposits	(31,656)	(44,005)	(83,119)	(97,158)	76,348	(179,590)
Less: Refunds to Customers	(27,752)	(42,335)	(37,060)	(50,685)	(42,343)	(200,175)
Plus: Increase/Decrease (A/R/Uncleared Deposits)	132,073	(161,005)	(17,308)	92,864	(44,476)	2,148
<b>Reconciled Gross Revenue</b>	<b>\$ 8,863,346</b>	<b>\$ 9,400,823</b>	<b>\$ 9,310,891</b>	<b>\$ 9,407,245</b>	<b>\$ 9,830,371</b>	<b>\$ 46,812,676</b>
Average Composite Rental Rate	10.23%	11.34%	11.77%	11.90%	11.79%	
Percentage Rent Due (B)	906,300	1,066,041	1,095,687	1,119,780	1,159,124	5,346,932
Percentage Rent Paid to City	906,805	1,059,103	1,106,217	1,114,473	1,153,212	5,339,810
<b>Percentage Rent Due based on Under Reporting</b>	<b>\$ (505)</b>	<b>\$ 6,938</b>	<b>\$ (10,530)</b>	<b>\$ 5,307</b>	<b>\$ 5,913</b>	<b>\$ 7,122</b>

(A) According to the lease, SU taxes collected are excluded from Gross Revenue

(B) Percentage rent is calculated by multiplying Reconciled Gross Revenue and the average composite rental rate

### **RECOMMENDATION 1.1: Rickenbacker Marina, Inc.**

We recommend that RMI pay the amount of \$7,122 due in Percentage Rent to the City and enhance their internal controls procedures to ensure that all “Monthly Gross Revenue Statements” and percentage rent payments are accurately calculated and consistent with the Lease.

- **Auditee Response:** Rickenbacker disagrees with the methods adopted by the auditors for the performance of the audit. The methodology used does not complement the accrual basis of accounting maintained by Rickenbacker. However, Rickenbacker has made every possible effort to provide documentation to substantiate any discrepancies caused by applying a cash basis approach to accrual basis books. We believe that the application of cash basis procedures to accrual books results in inefficiencies and reduced accuracy in the audit process. Despite these objections, Rickenbacker accepts the result of these findings.
- **Implementation Date:** Immediately

### **RECOMMENDATION 1.2: Finance Department**

We recommend that the City’s Finance department bill and collect the percentage rent due to the City from RMI in the amount of \$7,122.

- **Auditee Response:** Finance will bill RMI in the amount of \$7,122.
- **Implementation Date:** Immediately

**FINDING 2: RENTAL PAYMENTS WERE UNTIMELY RESULTING IN LATE FEES DUE TOTALING \$7,301**

The Lease stipulates that RMI shall pay in advance one twelfth or \$30,000 of the Minimum Annual Rent (MAR) to the City each month. The MAR shall be paid in advance on the first day of each and every calendar month. The Percentage Rent shall be payable in monthly installments, in arrears, on the thirtieth (30<sup>th</sup>) day of each month during the term of the Lease Agreement.

The Lease also stipulates that, in the event RMI fails to pay Rent within five (5) days after it becomes due, RMI shall pay a late fee equal to five percent (5%) of the unpaid amounts inclusive of any accrued late fees for each thirty (30) day period or fraction thereof in which payments remains unpaid.

For 4 months out of the 60 (7%) months of lease years beginning January 1, 2014 through December 31, 2018, we noted that RMI submitted rent payment checks that were dated after the due date stipulated in the Lease (days late ranged from 5 to 18 days). As a result, and after applying the 5% late fee stipulated in the Lease, RMI owes the City \$7,301. (See Schedule 2 below).

SCHEDULE 2 - CALCULATION OF LATE FEES								
Lease Year	Check #	Rent Paid	Payment Date	Due Date	# Months Late	% Late Fee - Monthly	Amount Due	Late Fees
Dec. 2015	24668	86,340	12/8/2015	12/1/2015	0.23	5%	87,329	\$ 989
Apr. 2016	25929	96,181	4/6/2016	4/1/2016	0.17	5%	96,966	785
Apr. 2018	33032	95,849	4/17/2018	4/1/2018	0.53	5%	98,376	2,527
Sept. 2018	33020	101,012	9/19/2018	9/1/2018	0.6	5%	104,012	3,000
<b>Total Late Fees Due to City</b>								<b>\$ 7,301</b>

**RECOMMENDATION 2.1: Rickenbacker Marina, Inc.**

We recommend that RMI shall pay the late fee due of \$7,301 to the City and that RMI enhance their internal control procedures to ensure that the Minimum and Percentage Rents are paid to the City in a timely manner consistent with the Lease Agreement.

- **Auditee Response:** RMI will remit the late fee of \$7,301 due to the City.
- **Implementation Date:** Immediately

**RECOMMENDATION 2.2: Finance Department**

We recommend that the City's Finance department bill and collect the late fee due to the City from RMI in the amount of \$7,301.

- **Auditee Response:** Finance will bill RMI the late fee due in the amount of \$7,301.
- **Implementation Date:** Immediately

**FINDING 3: RICKENBACKER MARINA, INC. (RMI) SHOULD OBTAIN WRITTEN CONFIRMATION FROM THE FLORIDA DEPARTMENT OF REVENUE REGARDING THEIR COMPLIANCE WITH STATE SALES TAX REQUIREMENTS**

The lease agreement between the City and RMI requires RMI to comply with any local, state, and/or federal law, ordinance or regulation, including the payment of tax, to the State of Florida.

Currently, RMI rents a full facility operating marina from the City providing wet and dry storage and other related services for the use by the general public. As per the lease agreement, RMI is required to pay Minimum and Percentage rent plus Florida State Use Tax to the City. Under these lease terms and based on our calculations, RMI may owe an additional \$307,964 in sales tax for the current audit period. However, RMI collects sales tax from subtenants (i.e., restaurant and slip tenants) and remits the proceeds directly to the State of Florida. RMI provided the Annual Resale certificate for sales tax which indicates that re-rental as commercial property and re-rental as transient rental property (both applicable to the boaters) satisfies their sales tax obligations.

RMI has taken the position that Florida Statute § 212.031(2)(b) prohibits the collection of more than one tax on the rental of nonexempt real property. Under FAC Rule 12A – 1.070(7) when a tenant that is subject to tax on rental charges sublets the property and, as sublessor, collects rentals on the taxable portion of the leased premises, the tenant as sublessor must usually register as a dealer and collect and remit sales tax on all subrentals. The sublessor may elect to either collect and remit the sales tax from sublessees, or to pay the tax on the prime lease or license. In this case, RMI sales taxes have been collected from subtenants (i.e., the restaurant and slip tenants) and remitted directly to the State of Florida.

RMI paid the City percentage rent of \$5,339,810 and Sales Tax of \$60,134 for the period January 1, 2014 to December 31, 2018. The City has remitted all sales tax received from RMI to the state. However, based on our calculation of Sales Tax (See Schedule 3 below) RMI may owe an additional \$307,964 in Sales Tax.

SCHEDULE 3 - SALES TAX						
Year	2014	2015	2016	2017	2018	Total
Sales Tax calculated on Percentage Rent	\$ 63,476	\$ 74,137	\$ 77,435	\$ 75,784	\$ 77,265	\$ 368,098
Sales Tax Paid to City	12,977	11,991	11,679	11,302	12,185	60,134
Sales Tax due to City	50,499	62,146	65,757	64,482	65,080	\$ 307,964

RMI reached out to the Florida Department of Revenue (DOR) and obtained written confirmation that they are in compliance with Florida State Sales tax laws/requirements by using Annual Resale Certificates to bill subrentals sales tax. However, the Letter of Technical Advice (LTA) that they obtained “constitutes the opinion of the writer only and does not represent the official position of the Department”.

**RECOMMENDATION 3.1: Rickenbacker Marina, Inc.**

After consultation with the City Attorney’s Office, we recommended that RMI obtain a Technical Assistance Advisement (TAA) that represents the official opinion of the Florida Department of Revenue on whether or not RMI is in compliance with Florida State Sales tax laws/requirements, and if their use of Annual Resale Certificates to bill subrentals satisfies their sales tax liability to the State.

Subsequently, on November 5<sup>th</sup>, 2020 RMI requested under Chapter 12-11, F.A.C., a formal TAA clarifying the official position of the DOR. We are awaiting their response and based on the information received we will determine if any action should be taken.

- **Auditee Response:** RMI has fully satisfied its sales tax obligations to the State of Florida, and there is absolutely no evidence to the contrary. RMI has provided the City with the relevant statutory and regulatory authority in support of RMI's position, which reflects settled law. At the City's request, RMI contacted the Department of Revenue and obtained a Letter of Technical Advice, which confirmed RMI's compliance. The City further requested that that RMI request a formal TAA from the Department of Revenue, which RMI has done. The City's position is unsupportable.
- **Implementation Date:** Immediately

#### **FINDING 4: RICKENBACKER MARINA, INC. (RMI) WAS NOT IN COMPLIANCE WITH AUDITED FINANCIAL STATEMENT REQUIREMENTS**

In accordance with Section 8 of the First Amendment to the Lease Agreement, RMI shall deliver annually to the City, within 90 days following the expiration of RMI's fiscal year, audited financial statements for the preceding calendar year prepared by an independent Certified Public Accountant (CPA). If RMI shall fail to deliver such annual audited statements to Lessor within said ninety (90) day period, Lessor shall have the right thereafter to audit or cause an audit to be performed, including without limitation an audit of all records required by Section 11B herein, as may be necessary to certify the amount of Gross Revenues for such rental year, and RMI shall pay to Lessor the cost of the audit within ten (10) days of receipt from Lessor of the cost thereof.

In response to our inquiry, RMI provided a compilation of financial statements for the audit period (2014-2018). According to AICPA AR-C Section 80 (.03), a compilation engagement is not an assurance engagement and does not require the accountant to verify the accuracy or completeness of the information provided by management, or otherwise gather evidence to express an opinion or a conclusion on the financial statements. In the absence of audited financial statements, RMI failed to provide assurance that the gross revenue reported, and the percentage rent paid to the City were accurate.

The cost of auditing RMI for the period January 2014 to December 2018 was \$67,427 and is due to the City.

#### **RECOMMENDATION 4.1: Rickenbacker Marina, Inc.**

We recommend that RMI pay the audit costs of \$67,427 and submit annually to the City audited financial statements prepared by an independent CPA in accordance with the terms of the lease.

- **Auditee Response:** While it is not a lease requirement to pay the City for their own audit which is performed periodically, we will concede to this payment as a gesture of good faith.
- **Implementation Date:** Immediately

#### **RECOMMENDATION 4.2: Real Estate and Asset Management Department**

We recommend that the Department of Real Estate and Asset Management (DREAM) adequately monitor all lease agreements and ensure that each lessee provides an audited financial statement when required by the lease terms.

- **Auditee Response:** DREAM will require the statement from the CPA that the financials have been audited and collect the cost of the audit as stated above.
- **Implementation Date:** Immediately

#### **RECOMMENDATION 4.3: Finance Department**

We recommend that the City's Finance department bill and collect the audit costs due to the City from RMI in the amount of \$67,427.

- **Auditee Response:** Finance will bill RMI the audit costs due in the amount of \$67,427.
- **Implementation Date:** Immediately