

Miami-Dade County

Office of the Inspector General



OIG Appendix A

Internal Services Department Response

**Audit of the Agreements Between Miami-Dade County and
Basketball Properties, Ltd., et. al., to Operate the American Airlines Arena**

IG11-34



miamidade.gov

Internal Services
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May 15, 2012

Mr. Christopher Mazzella, Inspector General
Miami-Dade County Office of the Inspector General
19 W. Flagler Street, Suite 220
Miami, FL 33130

RE: Miami-Dade County's Response to OIG Draft Audit Report IG11-34 - Audit of the Agreements Between Miami-Dade County and Basketball Properties, Ltd., et. al. to Operate the American Airlines Arena

Mr. Mazzella:

Miami-Dade County is in receipt of the Office of the Inspector General's (OIG) Draft Audit Report of the agreements between Miami-Dade County and Basketball Properties, Ltd., (BPL) to operate the American Airlines Arena (Arena).

In this response to the draft report, our focus is on how to improve the existing budgetary review processes instead of trying to address the actions taken by previous administrations. To that end, we have addressed each of your recommendations with an initial corrective plan of action which will be expanded once your final report is released and our review of this year's proposed budget submission from BPL has been completed.

The County recognizes the importance and value the Arena has for Miami-Dade County, its role in residential and commercial development in our downtown core, as well as its impact on local tourism through the enhancement of the 'Miami' brand. Notwithstanding the positive impacts the Arena has brought to our community, it is a County-owned facility operated by a private entity pursuant to a management agreement. This Administration, on behalf of the County, is fully committed to fulfilling our contractual obligations and providing the necessary oversight to ensure the facility serves the community as a first-class venue.

Mayor Gimenez has assigned the Internal Services Department (ISD) the function of overseeing the management of the agreements. ISD has been in communications with BPL and is developing an ongoing working relationship. It is important to maintain a strong partnership with BPL to guarantee that the remaining years of the agreements are beneficial for both parties. Below you will find your draft recommendations in blue font and our initial plan for corrective action in black font:

OIG Recommendations for Section 1

1. The County should become familiar with the accounting details and reporting methodology underlying BPL's budgets and its Schedules of Management Agreement Computations and how they relate to the definitions for Arena Revenue and Arena Operating Expenses listed in the Management Agreement.

This Administration has engaged BPL in multiple discussions related to the existing agreements. Once the upcoming year's budgets have been received, the County will meet with BPL staff to request documents needed to have a clear understanding of the projections for the upcoming year.

2. The County should create written procedures that detail a review process to be followed for each financial report provided by BPL. These procedures should include an explanation as to why the report needs to be reviewed, along with the steps necessary to complete the review.

The County will establish protocols for review of all documentation submitted by BPL to include recurring meetings with BPL throughout the year. Documentation will be retained to support the results of those reviews.

3. The County should require BPL to submit its annual operating and capital budgets to the designated County Representative via email or hand delivery. BPL should also obtain a receipt of delivery to maintain for its records.

The County will notice BPL of the individuals who will be receiving the budgets and will request that the budgets be sent to them via e-mail with the originals hand delivered.

4. The County should require BPL to include its leased equipment expenses in its operating /capital budgets.

The County will ask BPL to include a list of its leased systems, equipment and furnishings as part of their Annual Operating and Capital Budget submittal and include the relationship of the lessor to BPL and its affiliated parties.

5. The County's process to review BPL's annual budgets should encompass formal steps, such as:

- Comparing the current year's proposed budget detail to prior years' approved budget detail to determine whether there are variances and, if necessary, obtain additional data from BPL to determine the cause of and justification for the variances.
- Requesting, as "additional detail", that BPL to submit a pro forma Schedules of Management Agreement Computations with its annual budget submissions using the amounts taken from the submissions to project whether BPL expects to reach the Net Cash Flow level necessary to share profits with the County.
- Visiting BPL to review its financial records and interview BPL about its budget preparation process and proposed budget amounts.

The County's budget review process for the Arena will include a comparison of previous year's budgets, Audited Financial Statements, and the Schedules of Management Agreement Computations and other trend analysis as needed. When warranted and based on the review, additional details will be requested of BPL in order to fully understand the budget submittal. The County will be meeting with BPL in the coming days to discuss aspects of next year's proposed budget.

6. As providing a written response within the five-business day deadline seems unreasonable, the County should negotiate a longer period. In addition, the County should obtain BPL's agreement on what constitutes the start date, (i.e. budget submission date) for measuring the duration of the County's review period.

BPL has agreed to provide the County with additional time in order to allow for a thorough review of the budget submittals. This additional time will give us the opportunity to meet with BPL as well as to request additional details as needed for our review.

7. The County needs to periodically review BPL trial balances, vendor payment reports, and source documentation (such as invoices, receipts, and contracts) to gain an understanding of specific expenses being incurred for Arena operations.

Gaining an understanding of specific operating and capital expenses being incurred for Arena operations will be mainly accomplished through recurring meetings and communications with BPL as well as our review of the financial reports and computations submitted by BPL. We do reserve the right to specifically audit source documentation when questions arise. Additionally, we will continue to rely upon the independent external audit and the compliance report as to adherence by BPL of the terms of the management agreement, as amended, annually conducted by PricewaterhouseCoopers, LLC.

8. The County should request that BPL provide interim period (unaudited) financial statements showing its actual revenues and costs through a stated date (e.g., through the first 3 quarters of the fiscal year) and the projected revenues and costs for the remainder of the year, along with the coming year's budgets.

The County will discuss this matter with BPL. However, once the new protocols are implemented we will be able to better gauge the overall operations of the Arena. Our annual review of the budgets will include the necessary information to be able to determine if revenue sharing goals are expected to be met.

OIG Recommendations for Section 2

9. BPL should take whatever steps are necessary to produce its Annual Operating Budget and submit it to the County within the timeframe required by the Management Agreement.

The County has discussed this matter with BPL and expects submittals of the Annual Operating Budget in accordance with the agreements.

10. The County should ensure that prospectively, it receives from BPL its Annual Capital Budget, inclusive of equipment leases, within the timeframe required by the Management Agreement.

The County has discussed this matter with BPL and expects submittals of the Annual Capital Budget in accordance with the agreements which will include a list of equipment leases.

11. The County should seek to claim these amounts (Capital Expenses) from BPL, via an adjustment to a future Schedules of Management Agreement Computations, BPL capital expenditures in excess of its capital budget, totaling \$3.3 million over fiscal years 2005-2010.

The agreements set forth a process for approval of the capital budgets. This process includes a presumption of reasonableness, as described in section 5.11.3.3 of the Management Agreement, for expenses that meet certain standards inclusive of those expenses that exceed the Annual Capital Budget. The County will review the expenses incurred during this period and will work with BPL to understand the needs and impacts of each expense (e.g. were they necessary to maintain a first-class facility or were they incurred to increase revenues, something the County would look favorably upon). We will determine whether the expenses are presumed reasonable and customary pursuant to the provisions of the agreement while consulting with the County Attorney's Office as needed. It should also be noted that any disagreements between the County and BPL, with respect to this issue, are subject to mediation/arbitration.

12. The County should review BPL's fiscal year 2011 results to determine if BPL's actual capital expenditures exceeded its capital budget and, if a similar over expenditure is found to have occurred, the County should seek recoupment.

Please see response to OIG Recommendations for Section 2 - Recommendation # 11 above.

13. The County and BPL should agree to a protocol that would ensure that the County receives timely notice of BPL capital expenditures in excess of its approved capital budget amount.

The County will work with BPL to establish protocols to ensure timely notice of BPL capital expenditures in excess of its approved capital budget amount.

14. The County should request from BPL that it provide a personal property and equipment inventory listing as of the end of the most recent fiscal year, and require that every year hereafter that BPL automatically provide such a listing to the County, as part of its required fiscal year end reporting.

Annually, the County will review the personal property and equipment inventory list provided by BPL as part of the budgetary review process.

15. The County should request that BPL provide a separate budget for its annual leases of systems, equipment, and furnishings, as part of its required budget submission process or include it in either its annual operating or capital budgets.

Please see response to OIG Recommendations for Section 1 - Recommendation # 4 above.

16. The County should require BPL to disclose the main terms of all of its equipment lease, including the relationship of the lessor to BPL and its affiliated parties.

The County will ask BPL to include a list of its leased systems, equipment and furnishings as part of their budget submittal and include the relationship of the lessor to BPL and its affiliated parties.

17. The County and BPL should meet to discuss how they will go about implementing the consulting engineer option and to formally agree, in future years, that they will periodically call upon an independent engineer to inspect the Arena and site.

The County has discussed this matter with BPL and we will work to identify a third party engineer to periodically provide an independent assessment of the physical condition of the Arena.

18. The County should meet with BPL to develop procedures detailing how BPL will provide the County with written notice of future legal actions. In addition, BPL should disclose to the County how it handles legal actions, including whether it uses in-house or outside counsel and how it selects outside counsel. The County and BPL should establish regularly scheduled meetings as one means of ensuring that the County is properly noticed of new and ongoing BPL legal actions related to Arena operations.

County staff will consult with the County Attorney's Office to discuss how current and future legal actions will be addressed. The purpose will be to address the needs of the County in relation to these actions, if any.

OIG Recommendations for Section 3

19. The County should be more informed about the Arena Revenue that is included in the Schedules of Management Agreement Computations used to derive the "Arena Distributable Net Cash Flow" upon which the County's share of Arena profits is calculated. Steps that the County should consider include:

- Perform variance analyses between current year's actual revenues with prior year's actual revenues, and written requests to BPL asking for explanations and supporting detail, as necessary.

The County will compare current year's actual revenues with prior year's actual revenues and work with BPL to understand significant variances.

- Develop an understanding of BPL revenue details, such as: main contract terms of the sales agreements; Premium Inventory sold versus unsold; pricing

comparisons for the sold inventory and remaining contract periods for this inventory; and competition with other local venues for booking events.

With the formalization of the budgetary review process and the establishment of recurring meetings with BPL, a deeper understanding of revenue details will be developed.

- Request that a County representative attend the annual committee meetings held by BPL and the Miami Heat personnel to set pricing, budgeting, and contract terms pertaining to the Arena. Implement reviews of BPL's actual contracts for sales of Premium Inventory.

The County will discuss with BPL the possibility of having County staff at these meetings.

- Periodic audits of event basis sales that would include a review of the sales terms and conditions of this Premium Inventory.

The County reserves the right to audit any facet of the management agreement, when warranted. It should be noted however that a 'compliance report' as to BPL's adherence to the "terms, covenants, provisions, or conditions of Section 5.1 to 5.6" of the management agreement as amended, is annually provided by PricewaterhouseCoopers, LLP. Such reports have indicated that BPL is in compliance with the management agreement.

- Meet with BPL regarding its handling of complimentary tickets and to ascertain the financial impact of dispensing these tickets, i.e., impact on Use Fee.

How BPL and/or the Miami Heat issue complimentary tickets and the impact on Use Fee will be discussed with BPL at an upcoming meeting.

OIG Recommendations for Section 4

20. The County and BPL should meet to discuss the methodologies utilized to allocate costs between BPL and the Miami Heat, so that the County can approve the allocation percentages directly attributing to the Arena's annual operating costs as part of the budget process. Once allocation percentages have been established and approved, periodically, as part of future audits or other in-depth reviews, the County should examine BPL's accounting records to ensure that the cost allocations are still reasonable and based on actual costs.

The County will meet with BPL in the near future to review the cost allocation methodologies used between BPL and the Miami Heat.

21. The County needs to periodically review BPL trial balances; vendor payment reports; and source documentation (such as invoices, receipts, and contracts) to gain an understanding of specific operating and capital expenses being incurred for Arena operations.

Please see response to OIG Recommendations for Section 1 - Recommendation # 7 above.

22. For legal fees relating to the architect lawsuit, the County and BPL should determine whether or not expended funds should be reclassified, i.e., reclassified into something other than Arena operating expense, and how potential future recoveries will be classified.

The County will discuss the matter with BPL to make certain that the charges are being applied correctly and make any necessary adjustments if they are not properly classified.

23. The County should seek to review the OIG's work papers (both in the OIG's possession and at BPL's offices) regarding the questioned expense amounts identified by the OIG. The County should seek to claim these amounts (executive compensation, lobbyist fees, and political and charitable contributions) via an adjustment to a future Schedules of Management Agreement Computations.

County staff is looking forward to meeting with the OIG and BPL to review the audit documents. Any warranted adjustments will be discussed with BPL.

Thank you for the opportunity to review your draft report and provide a response. We look forward to meeting with the OIG and BPL to review the various audit documents. Should you have any questions, please feel free to contact me.

Sincerely,



Lester Sola, Director
Internal Services Department

c: Edward Marquez, Deputy Mayor

Miami-Dade County

Office of the Inspector General



OIG Appendix B

Basketball Properties Ltd. Response

**Audit of the Agreements Between Miami-Dade County and
Basketball Properties, Ltd., et. al., to Operate the American Airlines Arena**

IG11-34

Eric S. Woolworth
President, Business Operations

May 15, 2012

Mr. Christopher Mazzella, Inspector General
Miami-Dade County Office of the Inspector General
19. W Flagler Street, Suite 220
Miami, FL 33130

Re: Basketball Property, Ltd.'s Response to the OIG Draft Audit Report
IG11-34

Dear Mr. Mazzella:

Basketball Properties, Ltd. ("BPL") is pleased to provide this response to the draft report of the Miami-Dade County office of the Inspector General ("OIG").

Although we take seriously all of the comments of the Inspector General and respect the role the OIG plays in County government, we would point out that after almost nine months of detailed work by the OIG team, virtually all of the comments in the report relate to matters of communication, budgetary process, contractual interpretation and accounting methodologies. As outlined in our attached responses to the specific recommendation and findings, BPL disagrees with the report in many specific areas; more importantly, the report shows a fundamental lack of understanding with regard to three major areas as follows:

1. The report fails to acknowledge the overall success of the County's involvement in the American Airlines Arena in achieving its two major goals as stated at the outset of the Management Agreement between the parties; retention of the Miami Heat basketball franchise in Miami and using the establishment and operation of the American Airlines Arena as a catalyst for the revitalization of downtown Miami.
2. The report mischaracterizes the involvement of Miami-Dade County and its administration in overseeing Arena operations as opposed to outlining the close partnership between Miami-Dade County and BPL.
3. The report, which is intended as an authoritative document, repeatedly and inaccurately references the concept of "profit" or "profit sharing" under the Agreement. These references are indicative of a lack of understanding of the complex nature of the relationship as provided for in the Agreements and of the fact that the County's opportunity to share in "excess" Arena revenues is dependent not upon the traditional definition of profits but upon a detailed and specifically negotiated formula, which

appropriately accounts for the facts that the Arena was privately funded by BPL and that all construction-related risks and operating risks were and are borne by BPL.

Moreover, the report fails to highlight a key fact that is of paramount importance in providing context to virtually all of its findings and recommendations. And that is that while it is true that the County has not yet received any distributions from Arena Distributable Net Cash Flow, it is equally true that BPL has never taken any distributions from the Arena's operations. To date, all funds generated by the Arena have been used to pay Arena Operating Expenses, the costs of necessary repairs and improvements and to repay a portion of the money due BPL for its costs of developing, constructing and financing the Arena.

I. Retention of the Miami Heat and Revitalization of Downtown Miami

The Agreements between the parties make it very clear at the outset that the County had two primary objectives in entering into its partnership with BPL; keeping the Heat in Miami and encouraging the "resurgence and revitalization" of downtown Miami. On both counts there can be no argument that the County has been incredibly successful in achieving its stated ends. Since the Arena opened, the Miami Heat has been to the NBA Playoffs 9 out of 12 years, has participated in 3 Eastern Conference Championships, 2 NBA Finals, and has won an NBA Championship (in 2006). The resurgence and revitalization of downtown Miami is obvious to even the most casual observer; what was a decaying and derelict area in 1997 when the Agreements were entered into is now a thriving downtown neighborhood where thousands upon thousands live and play.

But what should also be obvious to all, is that the AmericanAirlines Arena is more than just the home of the Heat and the anchor of a new and revitalized downtown Miami. It is a gathering spot for the entire South Florida Community, and a venue that serves to unite the people that live here. It is also a showplace that puts this community's best foot forward for the entire world to see. We would posit that BPL has done much more than meet the County's objectives and expectations in entering into its partnership with us; we have exceeded them in every way.

From an economic impact perspective, the AmericanAirlines Arena has become a powerful engine in the County's economy. According to a soon to be released economic impact study recently conducted by the Washington Economics Group ("WEG"), the Miami HEAT and Arena are now combining to generate on an annual recurring basis an estimated total direct economic impact of \$218M; close to 8,000 jobs; \$145M in labor income; and \$164M in contributions to GDP. Indirect and induced impacts generate an additional \$221M on an annual recurring basis. The economic impacts generated by the Team and Arena also translate, according to WEG, into more than \$27M in additional public revenues

for state and local governments each year. And of this total, close to \$15M flow directly to local City and County governments.

Additionally, under BPLs stewardship the AmericanAirlines Arena has emerged as a force in the entertainment industry. It strives to serve the live entertainment tastes of all segments of our community (as an example, currently on the books are upcoming events in the rock (Coldplay), pop (Madonna, LMFAO, One Direction), electronica (Aviici), latin (Gigant3s, JLO and Enrique, Roberto Carlos, Serrat & Sabina), gospel (King's Men), r&b/ hip hop (Fresh Music Festival) and family show (Disney On Ice) genres). Despite having a competitive facility 30 miles away, according to Pollstar Magazine the AmericanAirlines Arena was the 10th busiest arena in the United States and 22th in the entire world in 2011 (for the first quarter of 2012 we have moved up to 3rd busiest in the nation); we are also 1st in the State of Florida. The AmericanAirlines Arena is a first class venue in every way, and BPL has firmly established itself as a world class operator. The Arena is truly a community asset.

II. Relationship Between BPL and The County

In the mid-1990's, when a new Arena was needed for the Miami HEAT, the Team had discussions with both Miami-Dade and Broward Counties. Although ultimately the financial package that was presented by Broward County was significantly more favorable, as part of ownership's long-standing commitment to the Miami-Dade community the Team made its long-term 30-year commitment to Miami-Dade. An arrangement was reached with the County for a privately financed, publicly owned arena to be built on land owned by the County --the use of which was approved by the voters of Miami-Dade County in 1996 pursuant to a County wide referendum. BPL's obligations included:

- The Team would remain in Miami and the Arena would serve as the anchor to the redevelopment of the downtown corridor.
- Financing for the construction of the Arena was to be provided by Team ownership. Ultimately, construction costs for the Arena exceeded \$240M.¹
- The Team affiliate, BPL, assumed 100% of the builder's risk (and ultimately 100% of the operating risk as well).
- BPL agreed to diligently manage and operate the Arena for a period of 30-years as a first class sports and entertainment facility in a manner so as to maximize Arena Distributable Net Cash Flow.

¹ Although no County funds were spent to construct the Arena, the Team, along with other major sports venues in the State did apply for and received a 30-year \$2,000,000/year sales tax rebate that the Arena generates through its operations. Since the opening of the Arena, The Heat Group has generated far in excess of \$2,000,000 of sales tax each year, with the best year surpassing \$9,000,000.

BPL and the County are now in year 12 of the 30-year partnership they established to create and operate the AmericanAirlines Arena summarized above (there are also two 5 year options to extend, on terms to be negotiated). BPL believes that the OIG Report mischaracterizes the extent of communications with BPL by Miami-Dade County. Having lived with the Management Agreement as I have over the past twelve years and having been part of the ongoing and substantive communications between Miami-Dade County and BPL, it is difficult to understand the Report's repeated reference to poor communication between the parties. The County at the outset engaged BPL to professionally operate and manage the Arena in its "sole discretion" subject to the provisions of the Agreements. In that regard, BPL has certain reporting requirements that we believe have been substantially complied with in all respects. In addition, we have had countless meetings on numerous and varied subjects with the County at all levels of County government since inception.² The Arena, under BPL's management and with the support of the County, has become one of the most successful and sought after venues in the country, providing the economic spark and activity which has helped to ignite the resurgence of Miami's downtown district as was hoped and then some.

Notwithstanding our feelings about this aspect of the report, as is detailed more specifically in our responses to the individual findings and recommendations, we have taken the OIG's suggestions to heart and, as a result, BPL and the County have redoubled their efforts to engage in substantive discussions about all of the Arena's operations. We have always been ready and willing to communicate with the County about any and all aspects of the Arena's operation, and remain committed to doing so. Interestingly, the OIG makes several suggestions that would require renegotiating the Agreements altogether; that is something that we will also give some thought to when the Heat season ends and we have the time to engage the County in that regard.

III. Arena Distributable Net Cash Flow

The report mistakenly and repeatedly refers to the concepts of "profits" and "profit sharing" as opposed to displaying a real understanding of the Agreements that were reached. The Agreements between Miami-Dade County and BPL consist of close to a thousand pages of legal text which detail the relationship between the parties. As part of that exercise, a formula was negotiated and developed which allows BPL to recover the money used to finance the Arena, as well as any operating losses, and continue to spend money as is customary to maintain and

² In fact, due to the broad scope of the definition of "Lobbyist" under the County code, BPL's principal liaison with the County is registered as such and BPL's expenses associated therewith are openly reported in all of its Operating Budgets. Curiously, the OIG calls attention to the legitimacy of those expenses under the Agreement while at the same time criticizing a lack of communication between the parties. The very existence of these expenses, however, are proof positive of the regularity of the routine and consistent communication between the parties.

improve the Arena in a first-class condition while at the same time ultimately giving the County the opportunity to share in the Arena's success. That formula is only accurately referred to in any substantive analysis of the Arena's operation as the defined term that it is, "Arena Distributable Net Cash Flow".

In the early years of operation, Arena revenues were not enough to cover expenses and therefore loans from BPL were necessary in order to fund on-going arena operations. This eventuality was specifically contemplated by the Agreement (the concept is defined as "Manager's Loans"). During these years, significant amounts of money were advanced on behalf of the venture by BPL without any requests for assistance from the local government. Other factors influencing Arena Revenues have included economic conditions and the success of the Heat. Ours is a cyclical business and right now, encouragingly, all of our business indicators are pointing up. If we are able to maintain the current trajectory, it is possible that the County could receive its first distribution from Arena Distributable Net Cash Flow sometime in the next several years; although it is important in assessing this possibility to note that BPL continues to bear 100% of the operating risk should the cycle take a downturn.

In the final analysis, the partnership between BPL and the County is one that the entire community can and should be justifiably proud. To that end, some of the recommendations contained in the OIG's Draft Audit Report can only improve our partnership.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. S. Woolworth".

Eric S. Woolworth
President, Business Operations

Encl.

Finding No. 1: The County has little understanding of the financial complexities related to BPL's Schedules of Management Agreement Computations, which is the key document showing whether there will be a 60-40 profit share.

BPL Response: The contractual relationship between BPL and the County is indeed complex, consisting of four primary agreements, eight amendments, several related documents (individually or collectively "Agreement(s)") and together encompass thousands of pages of legal terms and provisions. The Schedule of Management Computations referenced in Finding No. 1 is laid out in the Management Agreement in Section 5 and the related portions of Exhibit 1. The complexity of this relationship does not mean that the County has "little understanding." From the outset of the relationship, the County and BPL have conducted extensive discussions relating to Arena operations and finances. Specifically, BPL engaged a liaison whose role was to maintain direct and on-going communications with County representatives on these issues. Over the years, the communications, oftentimes at the County's request, were to address County issues, as well as to inform the County of important operational matters.

Although we understand the efforts of the OIG to present the economic concepts contained in the Agreements in the vernacular, unfortunately there is no way to express the terms and conditions of the Agreements simply. The use of the term "profit share" is wrong and mischaracterizes the nature of the relationship. The word "profit" is not used in the Management Agreement and is not defined. In fact, "profit" only appears in the definition of Charitable Event in Exhibit 1 and there only in the phrase "not-for-profit" group. With all due respect to the OIG, its failure to highlight this key fact could lead a reasonable person to evaluate BPL's performance against an improper standard.

To the extent that the reader relies on the OIG Audit Report as authoritative, using the term "profit share" as shorthand for Arena Distributable Net Cash Flow is misleading. The term "Arena Distributable Net Cash Flow" is based upon a step-by-step calculation outlined in detail in Section 5.

What the County is entitled to is a share of a very specifically negotiated term, unique to this relationship, called Arena Distributable Net Cash Flow. The County is not entitled to any share of BPL's net revenue, its EBIDTA, nor share in any other form of net profits under any generally accepted or used formula for calculating such. This distinction is of paramount importance in providing context to the OIG's report that focuses almost entirely upon this one provision of the Agreements. While it is true that the County has not as yet received any distributions under the Management Agreement, neither has BPL.

To date, all funds generated by the Arena have been used to pay Arena Operating Expenses, the costs of necessary repairs and improvements and to repay a portion of the money due BPL for its costs of developing, constructing and financing the Arena. In the early years, the Arena's cash flow was not sufficient to pay all these costs and BPL advanced these sums in the form of a Manager's Loan as provided for in the Management Agreement. In recent years, Arena cash flow has increased and the outstanding amount of Manager's Loans have now been reduced substantially.

Action(s) Taken: BPL and the County have been meeting to discuss the rights and obligations of the parties and to ensure that the parties have a clear, mutual understanding of the required calculations. BPL and the County are in the process of developing protocols to streamline the aforementioned process. See, e.g., BPL's Response to Recommendations for Section 1, Number 5 (p. 25, OIG Draft Audit Report).

Finding No. 2: The County's budget review process has been inadequate.

BPL Response: The OIG's contention that there was no on-going and active communication between the County staff and BPL is inaccurate. For the past 12 years, BPL and the County have been in regular communication regarding operations and finances.

Action(s) Taken: BPL and the County have viewed the OIG's audit process as an opportunity to review the operating and budget protocols between the parties. At a preliminary stage of the OIG audit, BPL was made aware of this concern and BPL and the County have met to address these issues to develop specific protocols as more fully described below in BPL's Response to Recommendations for Section 1, Number 5 (p. 25, OIG Draft Audit Report).

Finding No. 3: BPL financial report formats are not easily comparable, which limits the County's ability to obtain useful and relevant data.

BPL Response: All reports were generated pursuant to the Management Agreement and were provided to the County along with the end of the year audited financial reports. These reports are comprised of the Accountants Compliance Letter, the Audited Financial Statements and Schedules of Management Agreement Computations. Significantly, as required by the Management Agreement, BPL's independent certified public accounting firm PriceWaterhouseCoopers ("PwC") issued a letter each year regarding compliance with the terms of the Management Agreement and there has never been a finding of non-compliance.¹

Action(s) Taken: The OIG's concern regarding the format of the financial reports was brought to BPL's attention early in the audit process and, as a result, BPL and the County have been discussing the financial reporting process to address this observation. BPL has proposed to the County that it will provide estimates of the Schedule of Management Agreement Computations in order to forecast how the calculation will look at the end of the year. It should also be noted for purposes of

¹ The consolidated financial statements and Schedules of Management Agreement Computations have been audited in accordance with auditing standards generally accepted in the United States of America by PwC. PwC also issues an annual compliance letter attesting to the fact that nothing came to their attention during their audits that caused them to believe BPL was not in compliance with the terms, covenants, provisions and conditions of Section 5.1 to 5.6 of the Management Agreement, as amended.

this audit that reconciliations between the budgets and audited financial statements have been provided to the County and the OIG.

Recommendations for Section 1:

1. The County should become familiar with the accounting details and reporting methodology underlying BPL's budgets and its Schedules of Management Agreement Computations and how they relate to the definitions for Arena Revenue and Arena Operating Expenses listed in the Management Agreement.

Action(s) Taken: BPL has proposed to the County that the parties work together to further develop the lines of communication, including the estimates of the Schedule of Management Agreement Computations referred to in BPL's Response to Finding Number 3 above.

2. The County should create written procedures that detail a review process to be followed for each financial report provided by BPL. These procedures should include an explanation as to why the report needs to be reviewed, along with the steps necessary to complete the review.

Action(s) Taken: BPL has noted the OIG's observations regarding the review process and has been working together with the County for several months to define and develop procedures. To the extent that as part of the County's review process it determines that written procedures are in order, BPL has agreed to cooperate and work in good faith with the County.

3. The County should require BPL to submit its annual operating and capital budgets to the designated County Representative via email or hand delivery. BPL should also obtain a receipt of delivery to maintain for its records.

Action(s) Taken: BPL has proposed to the County that in the future, Operating Budgets and Capital Budgets will be transmitted via email or hand-delivery as opposed to the presently utilized methods of Federal Express or U.S. Mail. In all cases, an appropriate receipt will be obtained.

4. The County should require BPL to include its leased equipment expenses in its operating/capital budget.

BPL Response: It should be noted that operating lease expenses were included in the Operating Budgets and capital lease amounts were provided to the County annually at year's end in both the PWC audited financial statements, as well as the Schedule of Management Agreement Computations.

Action(s) Taken: BPL has proposed to the County a modification to the Capital Budget format to include the capital leases.

5. The County's process to review BPL's annual budgets should encompass formal steps, such as:

Action(s) Taken: BPL and the County have noted this request and BPL has proposed to the County the following:

Beginning of Fiscal Year

- Annual Operating Budget will be sent over by July 15th with comparisons to the prior year's approved budget along with "draft" actual results for the previous fiscal year (audit not completed until October 28th, so figures in July will be "draft"). All material variances from the previous year's budget will be explained in memo form to be attached to the budget submission.
- Allocation of Personnel Salaries will be reviewed and discussed with the County.
- Annual Capital Budget will be sent in the same submission as the Annual Operating Budget by July 15th. BPL will include all lease payments not currently shown as operating leases as part of this schedule.
- BPL Personnel will make themselves available to the County to answer any and all questions during the 5-day approval period for these budgets.
- A pro-forma schedule of Management Agreement Computations will also be provided, based upon the proposed budget, showing "Arena Distributable Net Cash Flow" and any 60/40 sharing that may arise.²

End of Fiscal Year

- Year End Audited numbers will be sent over to the County within 120 days of fiscal year end (i.e., June 30th) pursuant to the terms of the Agreement. Along with the Audited Statements, BPL will provide reconciliations from the audited financial statements back to the originally submitted Operating Budget. This reconciliation will contain explanations for all material variances.
- The originally submitted Capital Budget will also be sent over at this same time with comparisons to amounts actually spent during the fiscal year. If necessary, variances will be explained and supported.
- The "Schedule of Management Agreement Computations," as it is now, will also be included in this year-end submission. BPL will schedule meetings with the County to go over the report and answer any questions that may arise.

Recommendation continued:

- Comparing the current year's proposed budget detail to prior year's approved budget detail to determine whether there are variances and, if necessary, obtain additional data from BPL to determine the cause of and justification for the variances.

² Any reference to "profit sharing" is inappropriate. See Response to Finding No. 1.

Action(s) Taken: BPL has proposed to the County that the annual Operating Budget will be submitted by July 15th with comparisons to the prior year's approved budget, along with "draft" actual results for the previous fiscal year (draft results are necessitated because BPL's audit is not completed until October 28th). All material variances from the previous year's budget will be explained in memo form to be attached to the budget submission.

- Requesting, as "additional detail," that BPL submit a pro forma Schedules of Management Agreement Computations with its annual budget submissions using the amounts taken from the submissions to project whether BPL expects to reach the Net Cash Flow level necessary to share profits³ with the County.

Action(s) Taken: BPL has proposed to the County that it will submit a pro-forma Schedule of Management Agreement Computations by July 15th of each year. This pro-forma schedule will be based upon the proposed budgets and seek to forecast how the "Arena Distributable Net Cash Flow" calculation will look at the end of the year.⁴

- Visiting BPL to review its financial records and interview BPL about its budget preparation process and proposed budget amounts.

Action(s) Taken: BPL has proposed to the County that during the budget process it will make itself available to answer any and all questions. In fact, this week BPL will be meeting the County to discuss the budget review process. Additionally, BPL proposes quarterly meetings to answer questions as more fully described below.⁵

6. As providing a written response within the five-business day deadline seems unreasonable, the County should negotiate a longer period. In addition, the County should obtain BPL's agreement on what constitutes the start date, (i.e., budget submission date) for measuring the duration of the County's review period.

Action(s) Taken: BPL and the County have discussed an extension for the 2012-2013 FY budget review process and have agreed to negotiate an amendment to the Agreements to extend the five-business day deadline and clarify what constitutes the start date.

Note: Throughout the report, the OIG has recommended several modifications to the Agreement. BPL is amenable to exploring with the County those and other modifications, as appropriate.

³ Any reference to "profit sharing" is inappropriate. See Response to Finding No. 1.

⁴ Any reference to "profit sharing" is inappropriate. See Response to Finding No. 1.

⁵ In connection with the OIG audit and/or discussions with the County, including, but not limited to, the quarterly meetings, BPL's disclosure or discussion of any documents or other records shall be made without waiving any assertions of privilege, confidentiality, exemptions or other available protections.

7. The County needs to periodically review BPL trial balances, vendor payment reports, and source documentation (such as invoices, receipts, and contracts) to gain an understanding of specific expenses being incurred for Arena operations.

Action(s) Taken: BPL has proposed to the County a modification of the review process of BPL's expenses incurred for Arena operations. Specifically, as part of the enhanced budgeting and reporting processes noted above, BPL has proposed a quarterly meeting with the County. During these meetings, any questions the County may have regarding these expenses will be discussed.⁶

8. The County should request that BPL provide interim period (unaudited) financial statements showing its actual revenues and costs through a stated date (e.g., through the first 3 quarters of the fiscal year) and the projected revenues and costs for the remainder of the year, along with the coming year's budgets.

BPL Response: On its face this recommendation does not take into account the nature of this business and the relevant timelines associated therewith and, as a result, suggests a protocol that is not practical.

Finding No. 4: BPL has not been providing an annual Operating Budget to the County at least 45 days prior to the start of a new fiscal year.

BPL Response: BPL has provided the Operating Budget to the County annually since the inception of the Management Agreement. However in hindsight, the timelines to produce the Operating Budget are not practical in light of the schedule of the Arena's largest tenant, the Miami HEAT. This is further complicated by the team's success which expands its Arena usage due to Playoff games.

Action(s) Taken: BPL has proposed to the County revising the submission dates to more closely synchronize with the business operations of the Arena and provide the County with more time to review and approve same.

Recommendation 9: BPL should take whatever steps are necessary to produce its Annual Operating Budget and submit it to the County within the timeframe required by the Management Agreement.

Action(s) Taken: BPL agrees that providing the County with meaningful budget numbers is important and therefore has proposed to amend the Agreement to adjust the deadline to allow BPL to provide more meaningful numbers. Based upon past history and course of conduct, BPL has proposed to the County that an appropriate date would be July 15th. This would coincide with the County's annual budgeting process.

Finding No. 5: BPL has not been providing an Annual Capital Budget to the County.

⁶ See Footnote 5 for discussion of privilege, confidentiality and exemptions.

BPL Response: Capital Budgets were prepared by BPL in accordance with the Agreements. These budgets outlined expected capital expenditures during the year that BPL felt were necessary to meet its contractual obligations to:

“maximize Arena Net Cash Flow” (Sections 4.1.1, and 4.2) and maintain the Arena “as a first class sports and entertainment facility. . .including to maintain and operate the Arena in compliance with all NBA requirements in effect from time to time.” (Section 4.2.7)

Putting aside the issue of whether receipts were generated, in its finding, the OIG acknowledges that Capital Budgets were prepared and also notes BPL’s position with regard to their submission to the County. It should be further noted that in addition to the Capital Budgets, all capital expenditures were disclosed at the end of every fiscal year in both the PWC audited financial statements, as well as the audited Schedule of Management Agreement Computations reviewed. The OIG’s suggestion that the County was not aware of the capital expenditures is not supported by the facts.

Recommendation 10: The County should ensure that prospectively, it receives from BPL its Annual Capital Budget, inclusive of equipment leases, within the timeframe required by the Management Agreement.

Action(s) Taken: **As previously indicated, BPL has proposed to the County a revised timeline for submitting budgets and prospectively, the Capital Budgets will be inclusive of equipment leases.**

Recommendation 11: The County should seek to claim these amounts from BPL, via an adjustment to a future Schedules of Management Agreement Computations, BPL capital expenditures in excess of its capital budget totaling \$3.3 million over fiscal years 2005-2010.

BPL Response: The OIG is wrong. The assertion that all expenditures in excess of the Capital Budget are subject to recoupment is false and does not reflect the standard in the Agreements.

Specifically, the Management Agreement provides that:

“[E]xpenditures shall be deemed reasonable if . . .the amount and type of expenditures are customary in accordance with industry standards in connection with maintaining, managing and operating an arena in a first class manner.” (Section 5.11.3.3)

Thus, if expenditures are reasonable, no recoupment is authorized. Therefore, the only issue is whether the “amount and type” of capital expenditures made by BPL are reasonable because they are “customary in accordance with the industry standard.” They are and a review of the list of improvements to the facility confirms this analysis.

Leasehold improvements associated with BPL's main tenant, the Miami HEAT, are consistent with other first class arenas that house NBA teams. Predominantly, the capital expenditures at issue were comprised of:

- upgrades to patron areas,
- leasehold improvements such as carpeting, painting, walls, lighting and cabinetry,
- directional signage enhancements,
- concession upgrades, and
- other facility improvements such as technological upgrades.

By necessity, capital improvements must be made during time periods when the Arena is available so as not to interfere with revenue producing activities. Moreover, the windows of opportunity to do these improvements are in part dictated by the success of the Miami HEAT basketball team. During years where the HEAT season was extended due to the Playoffs (e.g., in June 2006 when the HEAT won the World Championship) the available Arena days were curtailed significantly. Upgrades made on an expedited basis increase costs due to overtime and other factors. By way of example, this shortened construction timeframe was experienced in the summer of 2006 affecting both the FY 2006 and 2007 Capital Budgets. The only significant break in the Arena schedule occurred in August.

Over the course of the audit period, the excess expenditures identified by the OIG were clearly "customary in accordance with industry standards in connection with maintaining, managing and operating an arena in a first class manner" (Section 5.11.3.3) and therefore not subject to being recouped.

Finally, BPL did, as the OIG noted, advance the County through Manager Loans \$12.1 million over the required capital expenditures. As Manager of the Arena and true to our contractual commitment to maintain the Arena "as a first class sports and entertainment facility" (Section 4.2.7) and to "maximize Arena Net Cash Flow" (Section 4.1.1 and 4.2), these investments of Manager's Loans were spent to meet these requirements.

Action(s) Taken: BPL has provided the relevant contractual standard of review to the County and will provide the County with supporting documentation substantiating our position.

Recommendation 12: The County should review BPL's fiscal year 2011 results to determine if BPL's actual capital expenditures exceeded its Capital Budget and, if a similar over expenditure is found to have occurred, the County should seek recoupment.

Action(s) Taken: BPL and the County will address the 2011 budget in accordance with the revised protocols and procedures.

Recommendation 13: The County and BPL should agree to a protocol to follow that would ensure that the County receives timely notice of BPL capital expenditures in excess of its approved Capital Budget amount.

Action(s) Taken: BPL has proposed to the County to include a discussion of the capital expenditures as part of the quarterly meetings. This proposed enhancement in conjunction with the on-going liaison function shall ensure timely submission and notice of BPL capital expenditures in excess of its approved Capital Budget amount while not inhibiting BPL's ability to make capital improvements on a timely basis in order to meet its overarching contractual obligations to maintain the Arena "as a first class sports and entertainment facility" (Section 4.2.7) and to "maximize Arena Net Cash Flow" (Section 4.1.1 and 4.2).⁷

Finding No. 6: The County has not requested that BPL provide an Arena personal property and equipment inventory listing, and BPL has not maintained copies prior years' listings.

BPL Response: While BPL has a differing view as to the requirements under Section 3.1.3, BPL has always maintained an updated Arena personal property and equipment inventory listing. In fact, the OIG acknowledges that BPL's personal property and equipment inventory listing as of June 30, 2010 totaling approximately \$5.1 million matched the precise amount disclosed in its audited financial statements for the year which contradicts the OIG's statement vis-à-vis the inventory list.

Recommendation 14: The County should request from BPL that it provide a personal property and equipment inventory listing as of the end of the most recent fiscal year, and require that every year hereafter that BPL automatically provide such a listing to the County, as part of this required fiscal year end reporting.

Action(s) Taken: BPL has proposed to the County to amend the Agreement to provide the Arena personal property and equipment inventory listing in October along with the audited financial statements.

Finding No. 7: BPL has not been submitting its annual leases of systems, equipment, and furnishing for County review and approval.

BPL Response: BPL has substantially complied with the obligations set forth in Section 3.1.1. In addition, the operating lease numbers are already included in the Operating Budget and the capital lease numbers are disclosed annually in the audited financial statements.

⁷ Although outside of the audit period, the narrative questions a six million dollar (\$6,000,000) expenditure in 2001. The nature of the expenditures was properly characterized as Arena Operating Expenses. The method of accounting for this expenditure was audited by PWC without exception.

Recommendation 15: The County should request that BPL provide a separate budget for its annual leases of systems, equipment, and furnishings, as part of its required budget submission process or include it in either its annual operating or capital budgets.

Action(s) Taken: **BPL has proposed to the County to amend the Agreement to provide for the additional inclusion of the annual leases of systems, equipment and furnishing in October along with the audited financial statements.**

Recommendation 16: The County should require BPL to disclose the main terms of all of its equipment leases, including the relationship of the lessor to BPL and its affiliated parties.

BPL Response: BPL has substantially complied with the obligations set forth in Section 3.1.1., including the specified disclosures.

Action(s) Taken: **BPL has proposed to the County to amend the Agreement to provide for the additional inclusion of a report along with the audited financial statements summarizing the outstanding list of equipment leases and all their terms and conditions.**

Finding No. 8: The County has not requested the joint selection of an independent qualified engineer to inspect the Arena and provide a written report of the inspection to the County and BPL.

BPL Response: BPL conducts regular inspections of the facility through its full-time internal maintenance engineering department (including certified licensed master electricians, certified licensed HVAC mechanics, a food and beverage equipment mechanic, plumbers and other maintenance specialists) led by our Vice President of Operations and Assistant General Manager who has over 35 years of arena construction and operations experience. Upon opening the Arena, BPL instituted a work order/preventive maintenance program that the Engineering Department is tasked with implementing. The program generates daily work order repairs and preventive equipment maintenance tasks that are specifically intended to ensure that all equipment, and the facility as a whole, is maintained in a first class manner. Expenses associated with the implementation of the work order/preventive maintenance program are included in the annual Operating and/or Capital Budgets, as applicable.

Recommendation 17: The County and PBL should meet to discuss how they will go about implementing the consulting engineer option and how to formally agree, in future years, that they will periodically call upon an independent engineer to inspect the Arena and site.

Action(s) Taken: **BPL has proposed to the County that the parties work together during the annual budget process to select an independent qualified engineer.**

Finding No. 9: BPL has not been providing the County with written notice of legal actions nor has it been consistently advising the county of the progress of such actions.

Recommendation 18: The County should meet with BPL to develop procedures detailing how BPL will provide the County with written notice of future legal actions. In addition, BPL should disclose to the County how it handles legal actions, including whether it uses in-house or outside counsel and how it selects outside counsel. The County and BPL should establish regularly scheduled meetings as one means of ensuring that the County is properly noticed o new and ongoing BPL legal actions related to Arena operation.

BPL Response: BPL is proud of its record with respect to avoiding costly and time consuming litigation. During the time the Arena has been operating, the only potentially material legal proceeding that the Arena has been involved in was commenced by BPL in an attempt to recoup cost overruns in the construction of the Arena.

Action(s) Taken: **BPL has proposed to the County to establish a formal notification process and clarify the nature and scope of progress reports.**

Finding No. 10: The County is poorly informed about Arena Revenues that are used in BPL's Schedules of Management Agreement Computations.

BPL Response: From the outset of the relationship, the County and BPL have conducted extensive discussions relating to Arena operations and finances. Specifically, BPL engaged a liaison whose role was to maintain direct and on-going communications with County representatives on these issues. Over the years, the communications, oftentimes at the County's request, were to address County issues as well as to inform the County of important operational matters. BPL recognizes the complexity of the Schedules of Management Agreement Computations and accordingly these schedules are audited by our independent registered certified public accountants, PwC.

Recommendation 19: The County should be more informed about the Arena Revenue that is included in the Schedule of Management Agreement Computations used to derive "Arena Distributable Net Cash Flow" upon which the County's share of Arena profits⁸ is calculated. Steps that the County should consider include:

- Perform variance analyses between current year's actual revenues with prior year's actual revenues, and written requests to BPL asking for explanations and supporting detail, as necessary.

Action(s) Taken: **BPL has proposed to the County that the above referenced quarterly meetings can and should be used to facilitate the County's understanding of the Arena Revenues to facilitate the County's ability to perform variance analyses.⁹**

⁸ Any reference to "profit sharing" is inappropriate. See Response to Finding No. 1.

⁹ See Footnote 5 for discussion of privilege, confidentiality and exemptions.

- Develop an understanding of BPL revenue details, such as: main contract terms of the sales agreements, Premium Inventory sold versus unsold; pricing comparisons for the sold inventory and remaining contract periods for this inventory; and competition with other local venues for booking events.

Action(s) Taken: BPL has proposed to the County that the above referenced quarterly meetings can and should be used to facilitate the County’s understanding of the aforementioned revenue details with the understanding that BPL shall continue to have the:

“[S]ole responsibility and authority and full control and discretion in the operation, direction, management, security and supervision of the Arena and its staff, subject to the terms of th[e Management] Agreement.” (Section 4.1)

- Request that a County representative attend the annual committee meetings held by BPL and MHLP personnel to set pricing, budgeting, and contract terms pertaining to the Arena. Implement reviews of BPL’s actual contracts for sales of Premium Inventory.

Action(s) Taken: BPL has informed the County that respectfully, the OIG’s recommendation falls outside of the County’s purview with regard to the Agreement. BPL has, however, proposed to the County that the quarterly meetings can serve as an opportunity for the County to implement a review of the Premium Inventory contracts.¹⁰

- Periodic audits of event basis sales that would include a review of the sales terms and conditions of this Premium Inventory.

Action(s) Taken: BPL has proposed to the County to review any and all information authorized by the Agreements in a manner that does not waive or compromise any assertions of trade secret protection. (See also Footnote 5 for discussion of privilege, confidentiality and exemptions).

- Meet with BPL regarding its handling of complimentary tickets and to ascertain the financial impact of dispensing these tickets, i.e., impact on Use Fee.

BPL Response: BPL has complied with the terms of Section 6 of the Team License with respect to, among other things, Complimentary Tickets.

Action(s) Taken: BPL has proposed to the County that the quarterly meetings will serve as an adequate platform to address this concern.

¹⁰ See Footnote 5 for discussion of privilege, confidentiality and exemptions.

FINDING NO. 11: BPL recorded expense allocations have been inconsistent and not always supported by authoritative accounting records.

BPL Response: BPL reviews its recorded expense allocations on an annual basis. These amounts are contained in the audited financial statements and BPL's payroll records are processed through the ADP system and retained in accordance with standard operating protocols.

Allocated salaries and other operating expenses are contained in the Operating Budget which were deemed approved by the County. To the extent that allocated salaries or other expenses exceed the budget in any category, the standard of review for any past allocations falls within Section 5.11.3.3 which deems expenses reasonable if they were "customary in accordance with industry standards in connection with maintaining, managing and operating an arena in a first class manner."

Recommendation 20: The County and BPL should meet to discuss the methodologies utilized to allocate costs between BPL and MHLP, so that the County can approve the allocation percentages directly attributing to the Arena's annual operating costs as part of the budget process. Once allocation percentages have been established and approved, periodically, as part of a future audits or other in-depth reviews, the County should examine BPL's accounting records to ensure that the cost allocations are still reasonable and based on actual costs.

Action(s) Taken: BPL has proposed to the County to include in the annual budget process a review of the allocated expenses.¹¹

FINDING NO. 12: Certain BPL expenses are inappropriate deductions when calculating the profit share¹² provisions.

Recommendation 21: The County needs to periodically review BPL trial balances; vendor payment reports; and source documentation (such as invoices, receipts, and contracts) to gain an understanding of specific operating and capital expenses being incurred for Arena operations.

Action(s) Taken: BPL has proposed to the County a modification of the review process of BPL's expenses incurred for Arena operations. Specifically, as part of the enhanced budgeting and reporting processes noted above, BPL has proposed a quarterly meeting with the County. During these meetings, any questions the County may have regarding these expenses will be discussed.

Recommendation 22: For legal fees relating to the architect lawsuit, the County and BPL should determine whether or not expended funds should be reclassified, i.e.,

¹¹ See Footnote 5 for discussion of privilege, confidentiality and exemptions.

¹² Any reference to "profit sharing" is inappropriate. See Response to Finding No. 1.

reclassified into something other than Arena operating expense, and how potential future recoveries will be classified.

BPL Response: The OIG cites clause (i) of the exclusions to the definition of Arena Operating Expenses to support its argument that the legal expenses incurred by BPL pursuant to a legal proceeding filed against the architect's insurer were not Arena Operating Expenses. Respectfully, the OIG is wrong.

BPL has a fundamental duty under the Management Agreement to enforce any and all rights that may exist with respect to the Arena including, without limitation, the duty to take all actions necessary to remedy any defect in design, materials or workmanship of the Arena. Indeed, the very clause (i) cited by the OIG makes that clear. That provision states: "...Arena Operating Expenses shall not include (i) costs incurred to remedy any defect in design, materials or workmanship of the Arena, **to the extent recovered** from the contractor or architect recovered from the contractor or architect performing the work or under any warranty or guaranty or under any payment or performance bond..." (Management Agreement, Exhibit 1, Definitions, 45(z)(i)). In other words, the legal expenses are in fact an Arena Operating Expense, **except to the extent that there is a recovery**. As a result, any recovery would be an offset to the amount expended. During the audit period, legal expenses totaled \$686,641 and BPL recovered \$225,000 in damages. Accordingly, the \$225,000 in recovery was offset against the amount of the expenses so as not be included as an Arena Operating Expense as of the date of recovery.

BPL has shared with the OIG the authoritative guidance for why GAAP mandates the specific method that was utilized to account for the expenses and damages awarded in this matter.

Recommendation 23: The County should seek to review the OIG's work papers (both in the OIG's possession and at the BPL's offices) regarding the questioned expense amounts identified by the OIG. The County should seek to claim these amounts (executive compensation, lobbyist fees, and political and charitable contributions) via an adjustment to a future Schedules of Management Agreement Computations.

BPL Response: The OIG acknowledges that expenses at issue are "legitimate business expenses", but argues that they are not "appropriate." In fact, whether expenses are properly included as Arena Operating Expenses is determined by the specific language of the Agreements (See Definition of Arena Operating Expenses, Exhibit 1, Management Agreement). The issue here is whether the Agreements prohibit their inclusion as Arena Operating Expenses. The Agreements do not.

Moreover, these expenses were all included in the Operating Budgets which were deemed approved by the County. To the extent the identified items exceed any budget, here again, the standard of review falls within Section 5.11.3.3 which deems expenses reasonable:

“[I]f the amount and type of expenditures [we]re customary in accordance with industry standards in connection with maintaining, managing and operating an arena in a first class manner.”

Thus, if expenditures are reasonable, no adjustment is warranted.

With regard to charitable contributions, it should be noted that of the \$43,819.58 the OIG identified under this item, \$33,319.58 was also mischaracterized. This amount includes, among other things, refund of an event deposit, payments to event promoters by the licensee and a United Way employee donation pass-through. Had the OIG questioned the matter at any point over the last nine months, BPL would have been happy to explain the difference to them.

With respect to “Legal Fees – Lobbyist” expenses, the services of a governmental affairs expert/liaison are usual and customary for a business of our size and high profile to support our in-house staff. The fees associated with these services were openly reported in all of BPL’s Operating Budgets and deemed approved by the County.

Throughout the OIG’s report, BPL and the County are criticized for lack of communication with respect to the Agreements. In fact, however, the work performed pursuant to this budget line item was in large part related to non-County regulatory and legislative initiatives, as well as a liaison function to facilitate communications between BPL and the County (oftentimes at the County’s request). The Team, on the other hand, has no active legislative agenda or a need for other more traditional functions normally associated with a “lobbyist”. Moreover, the individuals who serve the role of BPL’s lobbyists when appropriate and required, are attorneys that also provide legal consultation services to BPL on a regular basis.

With regard to political contributions, again, the standard here is whether these are permitted Arena Operating Expenses. They are. Of the \$12,300 identified by the OIG as political contributions, \$10,000 was incorrectly identified. This amount was spent on a sponsorship of the 76th Annual U.S. Conference of Mayors that was held in June, 2008 in Miami. This conference brought mayors from all over the country to our community, specifically downtown Miami, and was identified by BPL as an opportunity to support downtown commerce and community recognition. Furthermore, none of the \$2,300 in contributions was made to County officials.

Finally, with respect to executive compensation, relevant information was shared with the OIG. Although the OIG may disagree with the position that BPL has taken with regard to executive salaries, BPL stands by its conclusion which is supported by the Agreement. BPL further stands ready, willing and able to discuss the particulars with the County and is confident no recoupment is appropriate.¹³

¹³ The OIG also misstates the scope of the calculation through fiscal year 2011, rather than 2010, but BPL believes that was simply a scrivener’s error.

Action(s) Taken: BPL will make the OIG's work papers that are located at BPL's offices available to the County for its review.¹⁴ Further, BPL has provided the relevant contractual standard of review to the County and will provide the County with supporting documentation substantiating our position.

¹⁴ See Footnote 5 for discussion of privilege, confidentiality and exemptions.