



City of Phoenix

Mission Statement

To improve the quality of life in Phoenix through efficient delivery of outstanding public services.

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1240027

This report can be made available in alternate format upon request.

Phoenix Convention Center Downtown Theatre Garage Use Agreement

May 15, 2024

Report Highlights

Contract Monitoring

The Department monitored and tracked parking discrepancies as required by policy. However, they were inconsistent in documenting and addressing these variances with the contractor.

Insurance

The Department did not obtain current insurance certificates from the contractor and had not ensured that liability minimums were adequate for current market conditions.

Maintenance Fees

The Department accurately billed the contractor for the garage usage and maintenance fees.

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Executive Summary

Purpose

Our purpose was to determine that the Phoenix Convention Center (PCC) adequately monitored its revenue contract with Phoenix Downtown Theatre (PDT) L.L.C., now known as Arizona Financial Theatre (AFT).

Background

The City owns a 1,700-space parking garage located at 310 West Adams Street, which is used primarily for employee parking. On March 3, 2000, the City entered into a 40-year contract with PDT to allow special events parking at the garage. The contract was developed to promote economic development within a single central business district located downtown. Live Nation (LN) took over the operation of the theatre in 2007. The Public Works Department (PW) originally managed the contract, and it included both the development and operation of the 5,000-seat theatre and the garage use agreement. In 2016, PCC took over the management of the garage portion of the contract.

Monroe Street Entrance to the 310 West Adams Street Garage



Vehicles can enter the garage from entrances on either Adams or Monroe Streets.

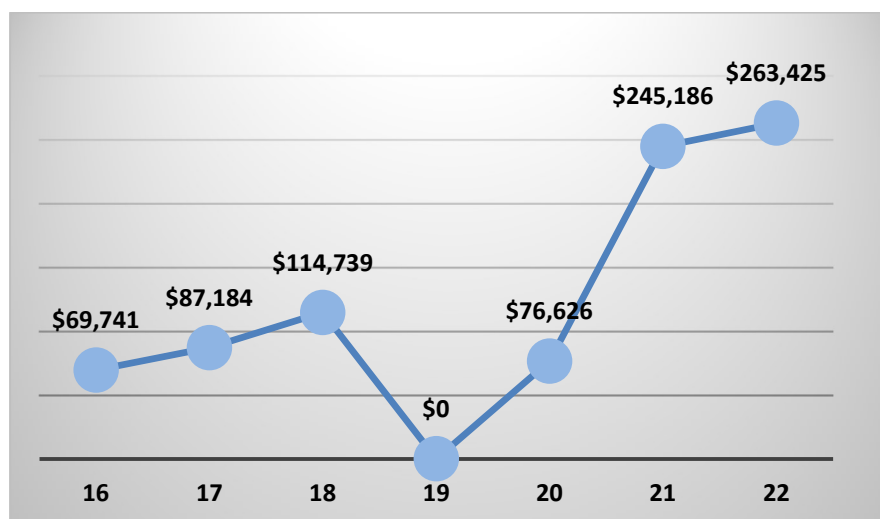
Vehicle entry to the garage is controlled with the TIBA parking system which includes scanner consoles, entry arms, and a software interface. Per the contract, LN has access to 1,200 parking slots for special events, including concerts, stage shows, meetings, seminars, or any other performances held at the theatre. LN outsources its parking operations to SP Plus Corporation (SP) during special events. ACE Parking

(ACE) is the vendor contracted by PCC to maintain the City's garage and oversee employee parking operations.

The contract states that the City will receive a minimum annual fee of \$50K and a sliding percentage of the total parking revenue earned from each event; the current rate is 20%. The City also charges a maintenance fee that increases depending on the contract year. As of 2023, the annual maintenance fee was \$23,500. The contract requires LN to provide the City with monthly parking revenue reports by event, and the City invoices LN for the prior calendar year.

Since the inception of the contract, the revenue earned for special events parking has steadily increased. The only exception was in contract year (CY) 2019, when restrictions from the COVID-19 pandemic limited or prohibited public gatherings; the City did not charge the theatre during this time since no revenue was generated. From 2016 to 2023, the contract generated over \$856K in revenue for the City's General Fund.

PDT Revenue by Contract Year



Except during the pandemic, the parking revenue has steadily increased.

We wanted to confirm that LN accurately reported parking revenues and that PCC was appropriately monitoring the contract in compliance with policy. We validated the TIBA parking counts by reviewing parking reports, garage video surveillance, and performing tests. In addition, we obtained the current Certificate of Insurance (COI) and evaluated the coverage limits. We also tested contractor invoices to determine if PCC was appropriately billing the usage and maintenance fees.

Results in Brief

PCC monitored and tracked parking discrepancies as required by policy. However, they were inconsistent in documenting and addressing these variances with the contractor.

We reviewed LN and TIBA parking reports from February through December 2023 and evaluated 124 specific theatre events. In 79% of the events, the TIBA parking totals were higher than what LN reported. Two events in October and November had variances of over 350 vehicles. PCC's contract management policy requires contract managers to immediately notify the contractor when an issue arises. The policy further states that staff should track and document issues, provide resolutions, and request contract amendments if term policy or scope changes. PCC staff confirmed that they routinely compared LN parking sales reports to the TIBA parking activity reports. Staff reported that they attempted to discuss the discrepancies with LN personnel, but discussions were unsuccessful since the contract allows LN to self-report its parking sales.

PCC did not obtain current insurance certificates from LN and had not ensured that the liability minimums were adequate for current market conditions.

We requested the current certificate of insurance (COI) from PCC for the theatre; however, none was on file since they took ownership of this contract. LN provided us with a new COI, but the minimum liability requirements were not compliant with contract terms. In addition, since PCC had not obtained the COI in recent years, they also did not review the minimum liability requirements to ensure that coverage was adequate for current market conditions.

PCC accurately invoiced LN for garage usage and maintenance fees.

The contract allows PCC to invoice LN for special events parking and maintenance fees for the garage. We ran reports in the City's accounting system, SAP, and confirmed that PCC was accurately billing for usage and maintenance fees. Further, PCC assessed late fees when appropriate.

Department Responses to Recommendations

Rec. 1.1: Review the 29 events that had parking discrepancies over 100 vehicles and work with Live Nation to ensure that parking sales were accurately reported	
Response: PCC will review events with discrepancies and verify sales were accurately reported, For sales not accurately reported, staff will work with law to determine next steps.	Target Date: 11/18/2024
Explanation, Target Date > 90 Days: Will need time to both review and reconcile reports as well as work with Law. This will most likely take quite a review from law to determine next steps given the complexity of the contract. Will need sufficient time for a proper response.	
Rec. 1.2: Train staff on Department contract monitoring policy to promptly address issues and parking discrepancies with the contractor and when to include Contract Administrators and the Law Department in communications.	
Response: In conjunction with Rec 1.1 staff will work with Law to determine what recourse we have for discrepancies, given the contract allows them to self-report the information.	Target Date: 11/18/2024
Explanation, Target Date > 90 Days: Will need time to both review and reconcile reports as well as work with Law. This will most likely take quite a review from Law to determine next steps given the complexity of the contract. Will need sufficient time for a proper response.	
Rec. 1.3: Work with the Law Department to evaluate the need to adopt the contract amendment created in 2017, or to otherwise amend the contract to allow TIBA reports to be used as primary support for calculating Garage Usage Fees.	
Response: Will work with Law and Live Nation to determine if we can come to agreement on the amendment. If not, contract will remain as is.	Target Date: 5/16/2025
Explanation, Target Date > 90 Days: This will take place after we address the issues from 1.1 & 1.2, given that counsel from both sides will be involved we anticipate a long negotiation process.	
Rec. 1.4: Update monthly reconciliation sheets to ensure Live Nation is accurately billed for the October 18 and November 8, 2023, events.	
Response: PCC will bill Live Nation for the discrepancies as reported by Live Nation.	Target Date: 8/16/2024

Rec. 2.1: Train staff on Department contract monitoring policy to ensure that they obtain, and review Certificates of Insurance as required by contract terms.

Response: Staff will document attempts to obtain Certificates of Insurance going forward as required by contract.

Target Date:
5/30/2024

Rec. 2.2: Obtain an updated Certificate of Insurance from Live Nation with insurance coverage as required in the contract.

Response: Staff will attempt to gain an updated Certificate of Insurance from Live Nation with required coverage. If unable to do so will document attempt and seek guidance from counsel.

Target Date:
8/16/2024

Rec. 2.3: Conduct a review of the liability minimum limits clause and work with Law to determine if the contract needs to be amended related to insurance requirements.

Response: Staff will contact Law to determine if the amounts need to be updated via an addendum.

Target Date:
8/16/2024

1 – Contract Monitoring

Background

In 2013, PCC created a contract management plan outlining procedures including developing a scope of work, enforcing service delivery, conducting invoice reviews, and actively addressing and resolving issues and problems. Specifically, contract issues need to be documented and resolved promptly by the contract manager. If issues persists, a Contract Administrator, an employee of the Business Service Division who assists in the contract procurement office, should be included in all communications. The Law Department (Law) should be included in the legal process, when it becomes necessary, and PCC is encouraged to seek contract amendments if performance or policy affects vendor results.

On the day of an event, LN's contracted parking agents from SP arrive at the garage and notify ACE, the City's contracted parking staff, that they are on site. They are equipped with a handheld Samsung device with a Square™ accessory to process credit card transactions. Customers can prepay for special events parking using Ticket Master. They are then provided a Quick Response (QR) code that SP agents scan to allow entry into the garage. Prepaid tickets can also be purchased for special speaker events at the theatre; these tickets do not produce a scannable QR code, so agents are provided a list of these customers before an event. Names are checked against the list before entry into the garage.

Each SP agent has an access card that they swipe on a scanner console to lift the barrier arm and allow entry into the garage. Each time the badge is swiped, it creates an entry in the TIBA system that designates it as an SP entry. At the end of each event, SP agents notify ACE that they are leaving and transfer control of the garage back to the City. Collected revenue is reconciled nightly by SP, and LN provides revenue totals monthly to PCC. PCC then uses these totals to generate the annual invoice. The PDT contract allows LN to self-report its parking revenues.

We interviewed PCC, LN, and SP staff regarding their parking processes. We validated the accuracy of the TIBA system for parking counts by comparing vehicle counts to garage surveillance videos and performing system testing. We evaluated the LN parking reports and compared them to TIBA reports to identify any significant discrepancies and to determine if PCC was monitoring the contract appropriately.

Results

We tested the TIBA system and found it to be sufficiently accurate to identify large discrepancies for specific parking events.

We confirmed the accuracy of TIBA parking reports by conducting live tests on the system. PCC staff created specific QR codes that we used on the kiosks to raise the parking arms and allow entry into the garage at both entrances. We performed 62 separate scans and confirmed that 59 (95%) entries matched TIBA reports. Three

entries were not recorded when the TIBA arm froze in the up position. The system uses vehicular weight to time entry into the garage, and since the auditors were on foot, the TIBA system would time out after multiple attempts to gain entry.

In addition, we obtained security video recordings of both vehicle entry points for six different LN events. We watched the videos, tallied the gate arm lifts, and then compared these totals to the TIBA totals for the same period.

Auditor and TIBA Count Comparison

Event Date	Auditor Count	TIBA Count	Count Difference	% Difference
9/22/2023	682	700	(18)	(3%)
9/24/2023	846	837	9	1%
11/8/2023	717	726	(9)	(1%)
11/18/2023	584	635	(51)	(8%)
11/25/2023	654	676	(22)	(3%)
11/29/2023	442	460	(18)	(4%)
		Average	(18)	(3%)

There was a 3% average difference between Auditor and TIBA counts.

Overall, the average discrepancy between the auditor counts and TIBA was 3%. Counts were never exact, and some discrepancies may be due to video quality. Another reason for variances is how SP agents interact with the TIBA system and how the system records swipes. In some videos, we observed parking agents tapping the console multiple times when one car enters the garage. This was supported by the TIBA parking reports, which showed that some entries clustered only several seconds from each other, which would not be enough time for more than one car to enter. Auditors would count only one entry while the TIBA listed multiple entries.

We conducted additional data validation by performing tests using shorter 15-minute videos. Three auditors reviewed the same three videos and tabulated the parking arm raises. In these tests, the discrepancy between the TIBA and videos averaged 5%; 131 versus 138. Overall, we found the TIBA useful for identifying large discrepancies for specific parking events.

PCC staff monitored and tracked the parking discrepancies as required by policy. However, they were inconsistent in documenting and addressing these variances with the contractor.

We reviewed 11 months of parking totals provided by LN from February 2023 through December 2023 and compared them against TIBA reports for 124 events. In 98 (79%) events, the TIBA totals were higher than what LN reported; 29 of the 98 events, or 30%, had discrepancies of 100 entries or more. Overall, there was a 4,599 net difference between the TIBA totals and LN for the 124 events.

Two events in October and November had variances of over 350 vehicles, which were supported by the surveillance videos. We asked LN staff about the differences, and they advised that they had neglected to include the prepaid parking in the totals provided to PCC for these two events. The prepaid parking sales totaled \$14,760, and the City's 20% share was \$2,952. LN provided the corrected monthly totals for these two events.

PCC's contract management policy requires that contract managers immediately notify a contractor when an issue arises. The policy further states that staff should track and document issues, provide resolutions, and request contract amendments if term policy or scope changes. PCC staff confirmed that they would compare LN parking sales reports to the TIBA parking activity reports and were aware of the differences. Staff reported that they attempted to discuss the discrepancies with LN personnel, but discussions were unsuccessful since the contract allows LN to self-report its parking sales. Staff indicated that Law was not included in these discussions.

In 2020, PCC worked with Law to draft an amendment to the contract to reconcile vehicle tallies from LN against the City's internal parking reports. Further, if there was any discrepancy between the two parties, the tally from the City would prevail and be used to calculate the garage usage fees. However, the amendment was never implemented despite multiple conversations.

PCC accurately billed LN for garage usage and maintenance fees.

Billing for Adams Street garage usage fees is done in arrears. At the annual anniversary of the contract, PCC bills PDT its share of revenue generated by special events parking. We ran two SAP reports and confirmed that PDT was properly billed and paid for garage usage.

Per contract terms, late fees were assessed for payments received 30-days after the due date. We found three months where these fees were waived due to customer requests. There was some discrepancy regarding the billing address on file and when invoices were received; therefore, Finance waived three months of late fees and updated PDT to electronic billing to avoid future issues.

The tested LN revenue reports were mathematically accurate and verified to supporting documentation.

We tested three events in September 2023 to ensure the revenue totals provided by LN were accurate and supported. LN and SP provided backup documentation including SP agent cash and credit card receipts. We confirmed all totals were mathematically accurate, and values provided for cash, credit card, and prepaid totals aligned with revenue reports. No exceptions were noted.

Recommendations

- 1.1 Review the 29 events that had parking discrepancies over 100 vehicles and work with Live Nation to ensure that parking sales were accurately reported.
- 1.2 Train staff on Department contract monitoring policy to promptly address issues and parking discrepancies with the contractor and when to include Contract Administrators and the Law Department in communications.
- 1.3 Work with the Law Department to evaluate the need to adopt the contract amendment created in 2017, or to otherwise amend the contract to allow TIBA reports to be used as primary support for calculating Garage Usage Fees.
- 1.4 Update monthly reconciliation sheets to ensure Live Nation is accurately billed for the October 18 and November 8, 2023, events.

2 – Insurance

Background

The contract requires that PDT maintain separate insurance coverage for their garage use. Specifically, the contract requires that PDT provide a Certificate of Insurance (COI) annually and that the COI satisfies the following:

- Minimum liability limits cannot be less than what is listed in the contract.
- The City and its officers are named as additional insureds.
- The selected insurance company must be licensed to do business in Arizona and have a Best's rating of A- or better.

The contract requires that the City verify and approve the coverage prior to the start of the insurance period. In addition, the City needs to conduct a periodic review on the fifth year of the contract's anniversary to ensure liability limits are adequate and align with current market conditions. The City has the right to change insurance liability minimums if they are deemed inadequate.

We interviewed PCC staff regarding their processes for monitoring insurance requirements. We obtained a copy of the current COI and reviewed it for compliance with contract terms.

Results

PCC had not obtained a COI from LN for the past seven years as the contract requires.

We requested a copy of the current COI for LN's garage usage from PCC. Staff reported that they did not have a COI on file, and could not locate any insurance documents going back to 2016, when they took over the contract from PW. PCC staff said that part of this was due to confusion regarding if PDT or LN should provide the COI. Therefore, PCC did not reach out to either PDT or LN to obtain the proof of insurance. In addition, PCC staff advised that their requests to LN would often not be responded to; however, PCC did not have documentation of its efforts. We confirmed with Law, that LN should provide the COI since they had taken over the operation of the theater and thus the contract obligations as the subcontractor.

PCC was not reviewing the COI every fifth year to ensure liability minimums were adequate for current market conditions.

On November 2, 2023, we requested a COI from LN, and later the same day, LN provided a COI which reflected that the policy commenced on November 1, 2023, one day before we requested the COI. We reviewed the COI and confirmed that the City and its officers were named on the policy and that the insurance provider selected by LN was ranked A+ by Best's and licensed to do business in Arizona. However, the garage keeper minimum was \$500,000, and the contract required \$1,000,000 for this

coverage. The contract requires that the City review the insurance minimums every fifth year to ensure adequate coverage.

Again, PCC staff explained that since they were confused as to which entity to request the COI from, they were also not reviewing the liability minimums. This contract has not been amended since it was affected in 2000, the insurance minimums may not align with current market conditions. However, liability limits are standardized across most City contracts, and not determined by individual departments. Therefore, this portion of PDT's contract may need to be amended.

Recommendations

- 2.1 Train staff on Department contract monitoring policy to ensure that they obtain and review Certificates of Insurance as required by contract terms.
- 2.2 Obtain an updated Certificate of Insurance from Live Nation with insurance coverage as required in the contract.
- 2.3 Conduct a review of the liability minimum limits clause of the contract and work with Law to determine if the contract needs to be amended related to insurance requirements.

Scope, Methods, and Standards

Scope

We evaluated the Phoenix Convention Center's (PCC) contract with Phoenix Downtown Theatre (PDT) and compared parking totals from Live Nation (LN), the garage system (TIBA), and video footage from September 2023 to December 2023.

The internal control components and underlying principles that are significant to the audit objectives are:

- Control Activities
 - Management should implement control activities through policies.
 - Management should use quality information to achieve the entity's objectives.
- Monitoring Activities
 - Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

Methods

We used the following methods to complete this audit:

- We met with and interviewed staff from PCC, PCC Fiscal, the Law Department, LN, SP Plus Corporation, and Access Professionals Systems (TIBA).
- We reviewed Administrative Regulation 3.10 – General Procurement Procedures criteria regarding the City's Procurement processes and procedures.
- We reviewed PCC contract monitoring policy and procedures.
- We obtained and reviewed Certificate of Insurance (COI) information provided by LN and SP Plus.
- We obtained and tested monthly reports from PCC and LN on parking totals.
- We ran SAP reports ZREVRPT and FBL5N to obtain revenue billing, payments, and late fees associated with this contract.
- We reviewed documentation on the specifications and setup of the TIBA system used to monitor parking revenue at the Adams Street garage.
- We observed and taped parking entrants into the East and West Ramps of the Adams Street garage for an event on September 29, 2023.
- We requested and reviewed security recordings of special events parking on September 22, 24, and 29, 2023, at Adams Street Garage; for November, we reviewed footage for the 10, 18, 25, and 29 of 2023.
- Recalculated worksheets and invoices.

Unless otherwise stated in the report, all sampling in this audit was conducted using a judgmental methodology to maximize efficiency based on auditor knowledge of the population being tested. As such, sample results cannot be extrapolated to the entire population and are limited to a discussion of only those items reviewed.

Data Reliability

We used data from SAP report ZREVRPT which was deemed reliable in prior audits. We also assessed the reliability of the TIBA system by reviewing existing information about the data, comparing totals against security video footage, and performing tests of TIBA. We determined that this data was sufficiently reliable for the purposes of this audit.

Standards

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. Any deficiencies in internal controls deemed to be insignificant to the audit objectives but that warranted the attention of those charged with governance were delivered in a separate memo. We are independent per the generally accepted government auditing requirements for internal auditors.