December 2, 2016

John Chan  
Phoenix Convention Center Director

SUBJECT: COMERICA PARKING CONTRACT AUDIT

This is our final report. A summary of the work is presented in the Executive Summary, which immediately follows. The department’s responses to our recommendations immediately follow the Executive Summary.

Sincerely,

Bill Greene  
City Auditor

Audit Team: Irene Larkin, Deputy City Auditor  
Sara LeBeau, Senior Internal Auditor

Attachment

cc: City Manager’s Office  
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Comerica Parking Contract Audit

Phoenix Convention Center

December 2, 2016

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This report can be made available in alternate format upon request.
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Comerica Parking Contract Audit
Executive Summary

PURPOSE

We reviewed contract monitoring and performance measures related to Comerica Theatre event parking at the Adams Street Garage to ensure compliance with contract terms.

BACKGROUND

The City of Phoenix (City) and Phoenix Downtown Theatre, LLC (PDT) entered into two agreements related to the Comerica Theatre site in the year 2000:

1) The Development and Operating Agreement governed the development and operation of a 5,000-seat performing arts facility in downtown Phoenix. The theater opened April 2002 and the Development and Operating Agreement is effective for 40 years after the Certificate of Occupancy date.

2) The Garage Use Agreement (Agreement) provided access to 1,200 of the 1,700 parking spaces in the Adams Street Garage for evening, holiday and weekend events. The City receives fees for garage maintenance costs and a portion of event parking revenues. The Garage Use Agreement remains in effect for the term of the facility development and operating agreement.

Although the Agreement was signed by the Community and Economic Development Department, the Public Works Department has historically monitored the parking contract. The Agreement was transferred from Public Works (PW) to Phoenix Convention Center (PCC) staff beginning July 1, 2016.

For the past three fiscal years, the City of Phoenix has received garage use and garage maintenance fees for Comerica Theatre (facility) events as follows:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/14</td>
<td>$67,500</td>
</tr>
<tr>
<td>2014/15</td>
<td>$67,500</td>
</tr>
<tr>
<td>2015/16</td>
<td>$70,000</td>
</tr>
</tbody>
</table>

RESULTS IN BRIEF

Overall, contract monitoring was limited which resulted in an underpayment of fees, insurance non-compliance, and minimal reporting. Following are specifics summarizing these results.
Approximately $8,125 in garage maintenance fees were not paid in accordance with the Agreement as the contracted fee was not adjusted timely. Garage use fees appeared to be correctly invoiced and received based on PDT-provided information. Automated internal controls would aid City staff in monitoring parking activity during events to ensure that garage use fees are accurately invoiced.

The garage maintenance fee was based on an annual schedule including an escalation clause. City staff did not adjust this fee from contractual year 11 through year 13 resulting in a $8,125 underpayment to the City. Invoices were modified starting July 2015 but staff stated that they opted not to recover the missing fee.

A review of PDT-provided information showed that fiscal year (FY) 2015/16 quarterly garage use fees appeared to be correctly invoiced as revenue-sharing thresholds were not reached. The City’s lack of internal controls (manual or automated) did not allow staff to adequately monitor event parking activity which corresponds to accurate invoicing for garage use fees.

The certificate of insurance was not compliant with the Agreement in regards to required provisions and named insureds. Required insurance needs to be obtained to limit the City’s liability.

Non-compliance issues identified based on a review of the PDT-provided certificate of insurance included, but was not limited to, the following: the City was not one of the certificate holders or named as an additional insured; liability insurance appeared to only be for the facility and there was no indication that activities within the Adams Street Garage were covered; and no indication that Garage Keeper Liability was included.

Contractually-required reporting has not been requested by City staff nor submitted by PDT staff. Reporting requirements should be reviewed to ensure that what was contractually defined in 2000 is still relevant and aids in monitoring the Agreement.

Monthly facility event notifications were the only required reports received by City staff. Although required monthly and daily tally reports were not requested by City staff, PDT staff were able to provide these reports for the three months reviewed. Post-event inspection reports were not provided directly from PDT staff but submitted by ACE Parking representatives although this may be in violation of the Parking Garage Management Services Agreement as the contract did not specify any monitoring duties associated with facility events.

The following section includes our recommendations and the department’s response.
## Department Responses to Recommendations

NOTE: This table will be completed after the responses are received by the department. The complete table will appear in the final audit report.

<table>
<thead>
<tr>
<th>Rec. 1.1:</th>
<th>PCC staff request payment of non-adjusted garage maintenance fees of $8,125 from Phoenix Downtown Theatre, LLC.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Response:</strong></td>
<td>PCC staff will send a separate billing to the client for these past charges of $8,125 based on the contract billing terms. This differs from PW decision not to pass charge on to client since the billing increase was overlooked by City personnel invoicing the client.</td>
</tr>
<tr>
<td><strong>Target Date:</strong></td>
<td>2/28/17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rec. 1.2:</th>
<th>PCC staff identify and implement appropriate internal controls to monitor event parking activity at the Adams Street Garage to ensure garage use fees are invoiced in accordance to the Agreement.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Response:</strong></td>
<td>PCC Contract Administrator will request in writing for PDT/Comerica/LiveNation to provide all daily &amp; monthly event parking tally reports so PCC staff can monitor revenue based on the contract terms in Article 7. PCC will also request that the current monthly event report provided be updated to include all items requested in the contract Article 6.3</td>
</tr>
<tr>
<td><strong>Target Date:</strong></td>
<td>2/28/17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rec. 2.1:</th>
<th>PCC staff consult with Risk Management to define adequate insurance coverage provisions related to the use of Adams Street Garage and request contractually required insurance from PDT.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Response:</strong></td>
<td>PCC Contract Administrator will send a letter to PDT notifying them they must obtain &amp; comply with insurance requirements in the Garage use agreement #87250 Article 4.5 and Article 11. (Agreement references 10 instead of 11 in 4.5 verbiage.) PCC will also request an updated client contact list.</td>
</tr>
<tr>
<td><strong>Target Date:</strong></td>
<td>2/28/17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rec. 2.2:</th>
<th>PCC staff review existing written standard operating procedures, determine if changes are necessary, and if so, work with PDT staff to update these procedures.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Response:</strong></td>
<td>PCC staff reviewed. When new parking equipment is installed these will be revised to include additional terms.</td>
</tr>
<tr>
<td><strong>Target Date:</strong></td>
<td>12/1/16</td>
</tr>
<tr>
<td>Rec. 2.3: PCC staff determine what external reporting is necessary and request submission of required reports to ensure proper documentation of facility conditions and event summarization.</td>
<td><strong>Response:</strong> PCC staff has reviewed and updated the current parking form utilized by the City Parking Contractor for the Adams St. Garage/Comerica events.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Rec. 2.4: PCC staff review and define oversight requirements for Adams Street Garage parking during facility events and, if necessary, modify the Parking Garage Management Services Agreement.</td>
<td><strong>Response:</strong> PCC has a new Parking Contract with ACE Parking which goes into effect on 01/01/17. The new contract addresses these findings.</td>
</tr>
</tbody>
</table>
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Scope, Methods & Standards

Scope and Methods

We reviewed the Garage Use Agreement and associated amendments for elements specific to the use of the Adams Street Garage by the PDT for facility events. Using a risk-based approach, we identified contractual requirements related to revenue, contract monitoring, and required reporting for further testing.

We reviewed all payments submitted by PDT from April 2002 through June 2016 and recalculated revenue owed to the City. We limited event transaction testing to FY 2015/16.

We did not review or test any elements specific to the ACE Parking Management, Inc. contract which governed parking management services for select City parking garages and lots, including the Adams Street Garage.

The following methods were used to complete this audit:

• Interviewed appropriate City staff
• Obtained and reviewed contractual documentation including contracts, policies and/or procedures
• Obtained and reviewed insurance certifications and required reporting documentation
• Obtained and reviewed financial SAP reports and invoices
• Obtained and reviewed select PDT monthly and daily event tallies, event listing, and parking revenue totals
• Tested revenue reporting for accuracy, adequacy of supporting documentation and compliance with contract provisions

Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the performance 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.
1 – Revenue

BACKGROUND

The Agreement identified PDT financial obligations consisting of two annual fees as well as excess use fees, interest and late charges. The *garage use fee* was based on a percentage of the gross receipts from facility event parking or $50,000, whichever was greater. The *garage maintenance fee* covered the proportionate share of garage maintenance costs in accordance with an annual schedule including an escalation scale. Both annual fees were payable quarterly in arrears.

Other fees were dependent on reporting deadlines, excess use or facility condition and included the following:
- Cancellation of facility event(s)
- Excess garage usage (space violations, overtime)
- Repairs and restoration

For FY 2015/16, PW invoiced PDT $70,000 which included $50,000 for garage use fees and $20,000 for garage maintenance fees.

We reconciled invoices and payments from April 2002 through June 2015 to ensure quarterly totals were paid in accordance with contract terms. We also reviewed PDT-provided FY 2015/16 parking revenue to determine if invoiced amounts were appropriate and adequately supported.

RESULTS

*Approximately $8,125 in garage maintenance fees were not paid in accordance with the Agreement as the contracted fee was not adjusted timely. Total garage use fees reconciled to payments posted in SAP.*

We reconciled the City revenue records to the Agreement fee schedule for the period of April 2002 through June 2015. City staff did not adjust garage maintenance fees from contractual year 11 through year 13 resulting in a $8,125 underpayment to the City. PW’s staff modified invoices starting July 2015 with the correct quarterly amount due and stated that they opted not to recover the missed fee.

*City staff invoiced the garage use fee at the base rate without verifying actual use via an external source (manual or automated). Parking estimations and review of PDT-provided information supported that the base quarterly garage use fees invoiced during FY 2015/16 correctly corresponded to revenue-sharing thresholds.*

Based on the garage use fee structure, we determined that quarterly revenue would need to be at least $83,333 in order to invoice a percentage of gross receipts. We
reviewed PDT accounting reports, estimated parking activity based on projected event attendance, and recognized that parking revenue did not exceed the quarterly threshold during FY 2015/16, hence a percentage of gross revenue would not have been expected.

We requested and received from PDT monthly and daily tally reports for events held during December 2015, February 2016, and May 2016. We quantified parking revenue based on monthly, daily and accounting data and noted inconsistencies between the reports as follows:

<table>
<thead>
<tr>
<th>Month Tested</th>
<th>Monthly Tally</th>
<th>Daily Tally</th>
<th>PDT Accounting</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2015</td>
<td>$23,020</td>
<td>$21,410</td>
<td>$23,510</td>
</tr>
<tr>
<td>February 2016</td>
<td>$19,405</td>
<td>$19,090</td>
<td>$19,670</td>
</tr>
<tr>
<td>May 2016</td>
<td>$22,505</td>
<td>$22,160</td>
<td>$22,505</td>
</tr>
</tbody>
</table>

Although daily and monthly tallies are required reporting, the following inconsistencies make it difficult for staff to utilize these reports to estimate garage use fees:

- Monthly reporting totals were not supported by the provided daily tally sheets.
- Parking revenue was identified for a February 2016 event that was not supported by a daily tally or post-event checklist totaling $3,100.
- Daily tallies note VIP parking access; it is unknown if or how parking revenue is accounted for VIP attendance or the number of vehicles utilizing the complimentary access.

**Manual or automated internal controls did not exist to monitor the number of parking spaces utilized by PDT within the Adams Street Garage. Automated internal controls would aid staff in monitoring parking activity during events to ensure garage use fees are accurately invoiced.**

Contractually, the number of parking spaces used by PDT during any single event may not exceed 1,200 parking spaces. A “Parking Space Violation” occurs whenever the parking space limitation is exceeded. The Agreement outlined monetary penalties related to parking space and overtime violations. Per the Agreement, “PDT garage personnel are responsible for the tally of vehicles utilizing PDT parking spaces and transmitting that information to the City Parking Representative on a monthly basis.”

Although City staff stated that they are unaware of any time that PDT has not returned the garage to the City by 6:00 a.m. or utilized more than 1,200 spaces, we were not able to verify the total number of parking spaces used in the Adams Street Garage for any event due to the following:

- No automation or monitoring equipment within the garage to assess the number of vehicles entering during facility events.
- City staff were not in attendance during facility events.

PCC staff intends on releasing a Request for Proposals to install automated measures to monitor parking activity.
RECOMMENDATIONS

1.1 PCC staff request payment of non-adjusted garage maintenance fees of $8,125 from Phoenix Downtown Theatre, LLC.

1.2 PCC staff identify and implement appropriate internal controls to monitor event parking activity at the Adams Street Garage to ensure garage use fees are invoiced in accordance to the Agreement.
2 – Contract Monitoring

BACKGROUND

COSO\(^1\) broadly defines internal control “as a process designed to provide reasonable assurance regarding the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.”

The Agreement contained requirements and deliverables that help the City determine if the parking facility was properly managed. This included the following:

- Monthly notification of facility events and parking reservations
- Written notification of event cancellations
- Documented facility inspections at the conclusion of each event
- Submittal of monthly vehicle tallies
- Development and implementation of facility operating procedures
- Provision of required insurance coverage

PW’s operational and accounting staff were initially responsible for monitoring and invoicing PDT for the use of the Adams Street Garage during weeknight and weekend facility events; starting July 1, 2016, PCC’s Parking Venue Manager and PCC’s accounting staff assumed this responsibility. Communication between PDT and City staff has occurred mainly between the PW’s Property Manager (PCC’s Parking Venue Manager) and PDT’s General Manager, through emails and informal discussions.

We interviewed PW and PCC staff to obtain an understanding of monitoring procedures for the facility parking agreement. We also reviewed policies, proof of insurance and other documents to determine contract compliance.

RESULTS

PDT’s provided certificate of insurance was not compliant with the Agreement in regards to required provisions and named insureds. Required insurance needs to be obtained to limit the City’s liability.

The Agreement noted PDT’s obligation to insure and required minimum limits for commercial general liability, workers’ compensation and employers’ liability, and garage keeper liability; that the City was named as an additional insured; and that insurance was placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a “Best’s” rating of not less than A-:VIII.

\(^1\) Committee of Sponsoring Organizations of the Treadway Commission whose mission is to provide comprehensive frameworks and guidance on enterprise risk management, internal control and fraud deterrence.
Non-compliance issues identified based on the review of the PDT-provided certificate of insurance included the following:

- City of Phoenix was not one of the certificate holders.
- Liability insurance appeared to only be for the facility and there was no indication that activities within the Adams Street Garage were covered.
- City was not named as an additional insured for commercial general liability.
- No indication that Garage Keeper Liability was included either within commercial general liability or as a separate line item.
- Excess or Umbrella Liability did not meet the required limit per occurrence.
- "Primary and noncontributory" language was not included.
- Waiver of subrogation for any of the policies including workers’ compensation was not shown.

Both named insurers were actively listed with the Arizona Department of Insurance and met the minimum Best Rating as per the Agreement.

**PDT has Theatre Event Parking Procedures as per the Agreement. Due to City staff turnover, it is unknown if PDT’s operating procedures were co-developed between City and PDT staff and if the procedures support the current work environment.**

The Agreement noted that “PDT and City shall cooperate to develop specific operating procedures, as necessary and appropriate, to implement the provisions of this agreement”.

Upon request, PDT staff provided standard operating procedures for facility event parking. The procedures noted that the garage will be open for events starting at 6:00 p.m. Monday through Friday and anytime on Saturday and Sunday depending on the event. The procedures also detailed the arrival of staff, the selling/reconciliation of ticket sales, and garage clean-up. After the event, parking management supervisors are to complete a walkthrough of the garage to verify the cleanliness. City staff reported that they did not have a copy of PDT’s standard operating procedures.

**Contractually-required reporting has not been requested by City staff nor submitted by PDT staff. Reporting requirements should be reviewed to ensure that what was contractually defined in 2000 is still relevant and aids in monitoring the Agreement. Specific findings are summarized below:**

<table>
<thead>
<tr>
<th>Reporting Requirement</th>
<th>Compliant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Event Notifications</td>
<td>√</td>
</tr>
<tr>
<td>Event Cancellations</td>
<td>No</td>
</tr>
<tr>
<td>Monthly (Event) Tally Report</td>
<td>No</td>
</tr>
<tr>
<td>Daily (Event) Tally Sheets</td>
<td>No</td>
</tr>
<tr>
<td>Post-Event Inspection Reports</td>
<td>√*</td>
</tr>
</tbody>
</table>

*Completed and submitted by ACE Parking Representatives*
Notification of facility event cancellations were not submitted per the Agreement. Minimal loss was identified for non-reported cancelled events.

Per the Agreement, “PDT shall provide at least two business days prior written notice to the City of the cancellation of a facility event and corresponding parking reservation. In the event that such advance notice is not possible, PDT shall pay for one hour of City parking staff time in an amount equivalent to the hourly rate set forth.” City of Phoenix staff reported that there were no copies of cancellation notices received or held by staff.

Based on staff interviews, the contractual clause regarding cancellation notices was not required by City staff nor submitted by PDT staff. Based on our limited review of required reporting and revenue testing, two event cancellations were identified for a potential loss of $200.

Monthly and daily event parking space tallies were not submitted per the Agreement.

Per the Agreement, “PDT garage personnel shall be responsible for the tally of vehicles utilizing PDT parking spaces (and the collection of parking charges, as appropriate) for each facility event and transmitting that information to the City Parking Representative on a monthly basis.” City staff reported that they did not receive any reports from PDT’s parking management company or PDT that provided daily (event) vehicle tallies.

We requested and received from PDT monthly and daily tallies completed for events held in December 2015, February 2016 and May 2016. All 14 daily tally parking sheets received corresponded to garage availability as noted on the monthly event calendar.

Completed post-event parking inspection reports were not provided directly from PDT staff but submitted by ACE Parking representatives. This may be in violation of the Parking Garage Management Services Agreement as that contract did not specify any monitoring duties at the Adams Street Garage associated with facility events.

Contractually, garage “inspections will be conducted by PDT garage personnel and, at the option of the City Parking Representative, a representative of City in order to document conditions at the beginning and the conclusion of each facility event and to record the time PDT’s use of the garage begins and ends. The foregoing information shall be contained in a report to be prepared during each inspection and provided by PDT to City no later than the end of the next business day following the facility event. If the City Parking Representative elects not to have a City representative present at a particular inspection, then City may not dispute the condition of the garage documented by PDT during that inspection absent independent evidence to the contrary. Whenever the actual time exceeds the reserved time by more than 15 minutes, PDT shall pay to City an hourly fee for the excess time (overtime fee).

City staff reported that no formal reports were provided directly from PDT staff or PDT’s parking representative after an event although emails and post-event checklists were provided by ACE Parking staff. Post-event checklists focused on facility clean-up, facility condition, and brief notes of 305 Garage (actual) and Adams Street Garage
(estimated) usage. These forms were signed by City and PDT parking representatives noting the date and time utilized for Adams Street Garage.

We requested and received from PDT post-event checklists completed for events held in December 2015, February 2016 and May 2016. Thirteen of 14 (93%) post-event checklists were provided by PDT staff and deemed completed per policy.

Upon review of the post-event checklists, it appears that ACE Parking representatives have been acting as the City's representative although this may be in violation of the Parking Garage Management Services Agreement as that contract did not specify any monitoring duties associated with any facility events.

RECOMMENDATIONS

2.1 PCC staff consult with Risk Management to define adequate insurance coverage provisions related to the use of Adams Street Garage and request contractually required insurance from PDT.

2.2 PCC staff review existing written standard operating procedures, determine if changes are necessary, and if so, work with PDT staff to update these procedures.

2.3 PCC staff determine what external reporting is necessary and request submission of required reports to ensure proper documentation of facility conditions and event summarization.

2.4 PCC staff review and define oversight requirements for Adams Street Garage parking during facility events and, if necessary, modify the Parking Garage Management Services Agreement.