Date: August 16, 2022

To: John P. Curp, Interim City Manager

From: Lauren Sundararajan, CFE, Internal Audit Manager *LS*

Copies to: Internal Audit Committee
William Weber, Assistant City Manager
Stephen J. Pacella, Interim Park Board Director

Subject: **Park Board Rental Facilities Contract Compliance Audit**

Attached is the Park Board Rental Facilities Contract Compliance audit report. The primary objective of this audit was to confirm compliance with contractual terms and assess the efficiency of internal controls applicable to the rental facilities contracts. This audit was conducted in accordance with the current audit agenda.

We would like to thank the management and staff of the Park Board for their assistance and cooperation during this audit.

If you need any further information, please contact me.

Attachment

Park Board Rental Facilities Contract Compliance Audit

August 2022

city of CINCINNATI INTERNAL AUDIT

Lauren Sundararajan, CFE
Internal Audit Manager

Ann Herzner
Senior Internal Auditor

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Executive Summary

Internal Audit (IA) conducted a contract compliance audit of the Park Board's (Park Board) rental facilities contracts. The primary objective of this audit was to confirm compliance with contractual terms and assess the efficiency of internal controls applicable to the rental facilities contracts.

The Park Board contracts with Amplio Event Production and Consulting, LLC (Contractor) to provide all rental and reservation services for its premier park facilities. Currently, the Park Board has two contracts with the Contractor. The Lodges and Pavilion Contract, awarded in 2010, and the Anderson Pavilion Contract, awarded in 2015.

The audit revealed several opportunities for improvement in the management of both contracts. For example, the Lodges and Pavilion Contract states the Contractor will forward all facility rental fees and concession revenue to the Park Board monthly. However, IA found the Contractor is not adhering to these contract terms, and instead provides payment sporadically and without the required supporting documentation. This makes it impossible for the Park Board to accurately reconcile the revenue received. Additionally, the contract terms require the Contractor to pay a late payment fee of 15% to the Park Board upon receipt of a written non-compliance notice. IA found this contract clause is not enforced.

The Anderson Pavilion Contract states the Park Board is required to pay a 15% management fee for services provided by the Contractor. However, the Park Board does not receive complete financial documentation in order to calculate the 15% management fee. The last management fee paid to the Contractor was in 2019. Additionally, the first amendment to the contract authorizes the Park Board to pay the Contractor up to $200,000 to manage the daily operations of the Carousel. The first installment of $100,000 occurred in May of 2020, per contract terms; however, IA found the second installment of up to $100,000 has not been paid.

While reviewing both contracts, the audit revealed management oversight needs strengthening. Currently, the assigned contract administrator has a background in Parks operations; however, both contracts contain precise and strong financial terms. IA found there is minimal involvement from the Park Board Finance Division with overseeing the financial terms of the contracts.

To improve performance in contract management, IA recommends enforcing the terms of both contracts, and directing the Park Board Finance Division to oversee them. Implementing these recommendations will ensure the contract is managed properly and both parties are in compliance with contractual terms.

I. Introduction

Background

Cincinnati Parks consists of 5,000-plus acres sprawled around the City that includes multiple regional parks, neighborhood parks, natural areas, neighborhood nature centers, and miles of hiking and bridle trails.[1] In May of 2022, Cincinnati was ranked 4th out of 100 US cities for its parks.[2]

The Park Board contracts with Amplio Event Production and Consulting, LLC to provide all rental and reservation services for its premier park facilities. Currently, the Park Board has two contracts with the Contractor.

The first contract, referred to as the Lodges and Pavilion Contract, was awarded to the Contractor in 2010. This contract contains three amendments and will expire on October 16, 2022. This contract covers ten City-owned lodges or pavilions located in the City parks. The ten facilities, as listed in the contract, consist of Alms Pavilion, Ault Pavilion, Mt. Echo Pavilion, French House, Krohn Conservatory, Theodore M. Berry International Friendship Park Pavilion, Maple Ridge Lodge, Oak Ridge Lodge, the Gibson House, and the Schmidlapp Event Lawn at Smale Riverfront Park.

The second contract, referred to as the Anderson Pavilion Contract, was awarded to the Contractor in 2015. This contract contains one amendment and will expire in 2025, if not renewed.[3] The Anderson Pavilion contract allows the pavilion and other venues located at Smale Riverfront Park to be managed by a full-time professional. The “Facility”, as defined by the contract, is the lower level of the Anderson Pavilion, which is managed by the Contractor. The “Co-Managed Facilities,” which include the Carousel, Pichler Fountains, Roebling Arcade and Tunnel, and Rose Garden,[4] are to be co-managed with the Park Board. All of these facilities are available to rent through the Contractor.

[1] https://www.cincinnati-oh.gov/cincyparks/news/cincinnati-once-again-ranked-top-10-city-in-the-nation-for-parks/
[2] Ibid.
[3] The contract may be renewed for three consecutive periods of five years, per section 2 (C).
[4] Section 1 (B) and Section 1 (D).

Audit Selection
IA conducted this audit in accordance with the Audit Work Plan.

Audit Objective
The primary objective of this audit was to confirm compliance with contractual terms and assess the efficiency of internal controls applicable to the rental facilities contracts.

Audit Scope and Methodology
In order to achieve the audit objective, IA interviewed appropriate staff, reviewed financial spreadsheets and contract terms, and obtained copies of payments made to the Park Board to determine the accuracy of the recorded revenue. Records reviewed included financial data from fiscal year (FY) 2018 through FY 2022.

Statement of Auditing Standards
As required by the Cincinnati Administrative Code Article II §15, this audit was conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS), except for standard 5.60 pertaining to external peer review requirements. This exception did not have a material effect on the audit.

IA continues to conduct internal quality reviews to assure the conformance with applicable GAGAS. IA performed the fieldwork between April of 2022 and June of 2022.

Commendations
IA commends the staff of the Park Board for their cooperation throughout the audit.

II. Audit Findings and Recommendations

Lodges and Pavilion Contract

The Contractor is not adhering to the payment terms of the contract.

The Park Board establishes the rental rates used by Amplio (Contractor) to charge clients who rent premier park facilities.[5] Premier park facilities are ten City-owned lodges or pavilions located in the City parks. These ten facilities, as listed in the contract, consist of Alms Pavilion, Ault Pavilion, Mt. Echo Pavilion, French House, Krohn Conservatory, Theodore M. Berry International Friendship Park Pavilion, Maple Ridge Lodge, Oak Ridge Lodge, the Gibson House,[6] and the Schmidlapp Event Lawn at Smale Riverfront Park.[7]

According to the contract, clients pay all reservation fees and deposits to the Contractor.[8] The Contractor then pays the Park Board seventy percent (70%) of the collected rental fees. Due by the 25th of each month is all facility rental fees and concession revenue.[9] Concession revenue is the fee collected from the catering, equipment rentals or other ancillary sub vendor charges.[10]

Additionally, the contract terms require the Contractor to submit a revenue report with its rental payments.[11] A revenue report consists of "dates of reservations, accounts paid, accounts receivable, and rental events completed during the report period (prior calendar month)."[12] Further, the contract states, "proper financial documentation, including but not limited to cash receipt schedules (rental fees, forfeited deposit fees, damage fees, equipment concessions) and rental history (client name, event description, rental hours, cancellations) and service invoices must accompany all payments made to the Park Board."[13]

IA found the Contractor is not adhering to the terms of the contract. Monthly payments, revenue reports and supporting documentation are not submitted by the 25th of each month. Payment is received only after Park Board management meets with the Contractor to discuss non-payment. However, no supporting documentation is provided, and only in the memo field of the check does it indicate where to direct payment. Consequently, the Park Board has no evidence that the payment received is accurate.

The last meeting between the Park Board and the Contractor, when payment was obtained, was in November of 2021. Park Board management stated, "they were happy to receive any payment" from the Contractor. IA inquired if Park Board management contacted the Law Department on how to proceed legally, due to a breach of contract, and they had not.[14]

IA was informed by Park Board management that the inconsistent payments began in FY 2018. However, based upon the documentation received, IA could not verify when the monthly payments ceased, due to incomplete records.

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[5] The rental rates for the premier park facilities are listed on the website www.premierparkevents.com
[6] First amendment to the contract allows the Gibson House to be added as a premier facility.
[7] Second amendment to the contract allows the Schmidlapp Event Lawn at Smale Riverfront Park to be added as premier rental facility.
[8] Section 1 (B) (1).
[9] Ibid and Section 2 (B).
[10] Section 2 (A) (4).
[11] Section 2 (B).
[12] Ibid.
[13] Ibid.
[14] During the course of the audit, IA informed the Law Department of the breach of contract.

Figure 1 below outlines the last four payments the Park Board received.

CHECK NUMBER	DATE	AMOUNT	MEMO
8225	FEBRUARY 4, 2020	$300,000.00	N/A
8538	MAY 3, 2021	$114,600.50	MARCH - JULY
8539	MAY 3, 2021	$95,373.95	19 – ALCOHOL[15]
9392	NOVEMBER 17, 2021	$192,326.63	2020

Figure 1: Last four payments received from the Contractor.

When revenue is received from the Contractor, the Park Board Finance Division tracks the payment in their check log and deposits it into Fund 330. Fund 330 accounts for the deposits, expenditures, damages and refunds to City lodges and pavilions. IA inquired about the impact missed payments have on the cash flow, and was informed by Park Board management that there is enough money in the fund to cover the annual operating costs.

Recommendation 1: The Park Board should work with the Law Department to determine legally how to proceed. Additionally, going forward, the Park Board should enforce contract terms and immediately involve the Law Department for assistance.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Non-compliance notices to collect the 15% late fee are not issued.

The contract states, "the Contractor will pay a late fee of 15% to the Board for any rental reservation payments not post marked or hand delivered to the Park Board by the 25th day of the month. This fee will be paid by separate check to the Board upon receipt of written non-compliance notice, not as a deduction from monthly revenue/receipts."[16] IA found the Park Board is not issuing non-compliance notices to the Contractor to specifically collect the 15% late fee.

Recommendation 2: Enforce the terms of the contract by issuing non-compliance notices to collect the 15% late fee.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

The contract expires on October 16, 2022, and a request for proposal (RFP) has not begun.

The contract went into effect on January 1, 2011 and contains three amendments. Through Park Board interviews, IA was informed the third amendment will expire in 2023. IA attempted to verify this information by reviewing the contract amendments and could not confirm the end date. Therefore, IA contacted the Law Department, and they determined the contract will expire on October 16, 2022.

[15] Section 3 of the Second Amendment to the contract states: In 2011, Contractor and Park Board entered into an Agreement whereby Parks will pay Contractor an amount equal to 49% of liquor revenues generated at Contractor's events.
[16] Section 2 (B) Method of Payment to Contractor and Payment to Park Board, Contractor Non-Compliance Fees.

Recommendation 3: Work with the Purchasing Department to begin the RFP process. Additionally, contact the Law Department to determine if an extension is required on the current contract.

Department Response: Agree. Department started with the RFP process in July, and no discussion about an extension at this time.

The Accounts and Audits Division has not been provided a copy of the third amendment.

The Finance Department's policy requires all departments to forward copies of their contracts and amendments to the Accounts and Audits Division to maintain on file. Through an email exchange with the Finance Manager of Accounts and Audits, IA found the division does not have a copy of the third amendment.

Recommendation 4: Ensure copies of all contracts and amendments are forwarded to the Accounts and Audits Division, as required.

Department Response: Agree. Department currently shares all contracts with A&A, this agreement was process by a prior administration.

The facility checklist is not utilized by the Contractor.

The Lodges and Pavilion Contract requires the Contractor to "…inspect premier managed facilities for damage using the Facility Checklist…" within 24 hours of a facility usage or prior to the next scheduled rental.[17] Through staff interviews, IA found the facility checklist has not been utilized by the Contractor. Although the Park Board conducts their own internal checks after events, due to staffing shortages, this internal inspection process stopped last year.

Recommendation 5: Enforce the contract terms by requiring the Contractor to submit a facility checklist either before or after each event.

Department Response: Agree. Department needs to create a process to implement this recommendation.

<u>Anderson Pavilion Contract</u>

The Park Board is not adhering to the payment terms of the contract.

Adhering to the terms of the contract is essential for maintaining validity and integrity of a legally binding document. Section 6 (A) of the contract states "…a monthly revenue report for the previous calendar month" is to be submitted to the Park Board by the 2nd business day along with all deposit tickets made by the Contractor into the City account.

According to section 6 (B) of the contract, it states:

> The City shall pay Manager a monthly management

[17] Section 1 (D) (1) (b).

> fee as compensation for services rendered under this agreement (Management Fee) in an amount equal to: 15% of the City revenue deposited into the City Account for such month, as verified by Manager's deposit slips and Monthly Revenue Report.[18]

The contract further states the management fee shall be paid "…in arrears, 30 days after receiving the deposit slips and Monthly Revenue Report."[19] IA found the Park Board does not receive complete financial documentation in order to calculate the 15% management fee. A review of the Cincinnati Financial System (CFS) reflects the Park Board last paid the management fee in 2019.

Recommendation 6: The Park Board should request and obtain the Monthly Revenue Reports, per the contract terms. Additionally, upon receipt of the required documentation, the 15% management fee should be paid monthly.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

The Park Board has not authorized payment of up to $100,000 to the Contractor.

The first amendment to the contract allows the Contractor to manage the daily operations of the Carousel. The amendment allows the Park Board to pay "…up to $200,000 in compensation" to the Contractor.[20] As such, the Park Board issued the first installment of $100,000 in May of 2020. However, IA found that the Park Board has not authorized the additional payment of up to $100,000 for the management of Carousel operations.

Recommendation 7: The Park Board should determine the amount to be authorized and paid to the Contractor to manage the daily operations of the Carousel, per contract terms.

Department Response: Agree. Department made final payment in July after $400K back payment was made from PPE.

Not all contract terms are enforced.

Enforcing the terms of the contract is essential for maintaining compliance. IA found that not all contract terms are enforced by the Park Board. These include, but are not limited to, the following:

- Contractor shall provide a budget for the upcoming fiscal year for the facility and co-managed facilities, on or before May 1st of each year;[21]

- Contractor shall provide a detailed and professionally prepared statement of income and expenses for the facility and co-managed facilities within 45 days of the fiscal year that

[18] The contract further states: For purposes of calculating the management fee, damage fees, liquor revenue, and other excluded revenue shall not be included in City revenue, and therefore shall not be calculated with the management fee.
[19] Ibid.
[20] First Amendment Section B.
[21] Section 7 (ii).

just ended, and it shall be prepared by a certified public accountant and certified by the chief fiscal officer of Manager as being accurate and complete;[22]

- Contractor shall conduct, prepare, and submit an annual inventory of furniture, fixtures, and equipment at the facility (and if requested by the Director of Parks, at the Co-Managed Facilities) that was provided or paid for by the City ("FF&E") no later than 60 days after the fiscal year;[23]

- Contractor shall provide an Annual Attendance Report that sets forth the estimated attendance at each Scheduled Event within 45 days after the end of each fiscal year.[24]

Recommendation 8: The Park Board should enforce all contract terms.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

<u>Both Contracts</u>

Contract management oversight needs strengthening.

The primary responsibility of contract management oversight is to protect the City from fraud, waste, and abuse by monitoring the services performed and seeking verification of actions through documented reports. Based on staff interviews and the findings previously discussed, IA found contract management oversight needs strengthening. Both contracts contain precise and strong financial terms; however, the current administrator has a background in Parks operations, and there is minimal involvement by the Park Board Finance Division with overseeing the financial terms of the contracts.

Recommendation 9: To improve oversight, the Park Board Finance Division should manage the terms of both contracts.

Department Response: Agree. Department oversight will move under Park Finance versus Operations.

The contracts are not properly signed.

To ensure a contract is valid and legally binding, it must be signed by all parties listed on the document. Through a careful review of the Lodges and Pavilion Contract and its three amendments, IA found the first and second amendments are not signed by all parties. Additionally, IA found the first amendment to the Anderson Pavilion contract is missing the City Manager's signature.

Recommendation 10: The Park Board should ensure all contracts and amendments on file are properly signed.

[22] Section 7 (iii).
[23] Section 8 (J).
[24] Section 8 (K).

Department Response: Agree. This agreement was process by a prior administration and final executed agreement was not distributed.

The Park Board files are incomplete.

Maintaining complete and accurate files is essential to managing City contracts. To determine if the Park Board files accurately reflect the Contractor's compliance with the insurance policies as stated in section 14 of the Lodges and Pavilion Contract and section 10 (A) of the Anderson Pavilion Contract, IA requested the following: property insurance certificates, general liability insurance certificates, worker's compensation insurance certificates, and fidelity bond certificates for each employee who handles City revenue, liquor liability insurance certificates, and automobile liability insurance certificates. IA found that the Park Board does not maintain on file any of the required certificates.

Recommendation 11: The Park Board should ensure all contract files are complete and easily accessible.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Joint inspections are incomplete and not well documented.

Performing joint inspections with the Contractor is critical for assessing the general condition of the facility and managing contract terms. These inspections allow the Park Board to be aware of the general condition of the equipment kept onsite, its age, and the need for possible repairs or replacement. These inspections also allow the Contractor the opportunity to discuss their concerns with the rental facilities and the impact they have on customer experience.

Both contracts require joint inspections to occur three times per year.[25] However, through staff interviews, IA found the joint inspections may occur once per year, and not all of the facilities are inspected. Further, when inspections do occur, there is no formal documentation completed by both parties and maintained, providing evidence that the inspection occurred. Without adhering to the contract terms and carefully documenting joint inspections, the Park Board is not ensuring the City assets are safe and properly maintained.

Recommendation 12: Perform joint inspections three times per year, as required. Additionally, provide and maintain formal documentation as evidence that the inspection occurred.

Department Response: Agree. This agreement was process by a prior administration and did not follow the proper procedures.

The Park Board has not requested to inspect or audit the Contractor's financial books.

According to both contracts, the Park Board has the right to request and inspect accounting, financial, operational, and administrative reports, records, and statements from the Contractor to

[25] Lodges & Pavilion Contract, Section 1 (D) (C) and Anderson Pavilion Contract, Section 8 (X).

determine if errors or discrepancies exist.[26] Through staff interviews, IA found the Park Board has not exercised this right. The failure to inspect or audit the Contractor's financial books increases the Park Board's risk of loss revenue and inaccurate payments.

Recommendation 13: The Park Board should periodically audit the Contractor's financial records to ensure they are fair and an accurate representation of the transactions they claim to represent.

Department Response: Agree. Department oversight will move under Park Finance versus Operations.

[26] Lodges & Pavilion Contract, Section 1 (B) (2) and Anderson Pavilion Contract, Section 7 (IV).

III. Conclusion

The audit revealed several opportunities for improvement over the management of both contracts. For example, IA found the Contractor is not adhering to the terms of the Lodges and Pavilion contract. This includes submitting monthly revenue payments and supporting documentation to the Park Board. IA also found the Park Board is not issuing non-compliance notices to the Contractor to collect the 15% late fee.

Additionally, IA found the Park Board is not adhering to the payment terms of the Anderson Pavilion contract and not enforcing all contract terms.

To improve performance in contract management, IA recommends enforcing the terms of both contracts, and directing the Park Board Finance Division to oversee them. Implementing these recommendations will ensure the contract is managed properly and both parties are in compliance with contractual terms.

IV. Park Board Response

Recommendation 1: The Park Board should work with the Law Department to determine legally how to proceed. Additionally, going forward, the Park Board should enforce contract terms and immediately involve the Law Department for assistance.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Recommendation 2: Enforce the terms of the contract by issuing non-compliance notices to collect the 15% late fee.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Recommendation 3: Work with the Purchasing Department to begin the RFP process. Additionally, contact the Law Department to determine if an extension is required on the current contract.

Department Response: Agree. Department started with the RFP process in July, and no discussion about an extension at this time.

Recommendation 4: Ensure copies of all contracts and amendments are forwarded to the Accounts and Audits Division, as required.

Department Response: Agree. Department currently shares all contracts with A&A, this agreement was process by a prior administration.

Recommendation 5: Enforce the contract terms by requiring the Contractor to submit a facility checklist either before or after each event.

Department Response: Agree. Department needs to create a process to implement this recommendation.

Recommendation 6: The Park Board should request and obtain the Monthly Revenue Reports, per the contract terms. Additionally, upon receipt of the required documentation, the 15% management fee should be paid monthly.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Recommendation 7: The Park Board should determine the amount to be authorized and paid to the Contractor to manage the daily operations of the Carousel, per contract terms.

Department Response: Agree. Department made final payment in July after $400K back payment was made from PPE.

Recommendation 8: The Park Board should enforce all contract terms.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Recommendation 9: To improve oversight, the Park Board Finance Division should manage the terms of both contracts.

Department Response: Agree. Department oversight will move under Park Finance versus Operations.

Recommendation 10: The Park Board should ensure all contracts and amendments on file are properly signed.

Department Response: Agree. This agreement was process by a prior administration and final executed agreement was not distributed.

Recommendation 11: The Park Board should ensure all contract files are complete and easily accessible.

Department Response: Agree. Department is working with City Law on enforcement of the contract.

Recommendation 12: Perform joint inspections three times per year, as required. Additionally, provide and maintain formal documentation as evidence that the inspection occurred.

Department Response: Agree. This agreement was process by a prior administration and did not follow the proper procedures.

Recommendation 13: The Park Board should periodically audit the Contractor's financial records to ensure they are fair and an accurate representation of the transactions they claim to represent.

Department Response: Agree. Department oversight will move under Park Finance versus Operations.