



# **OFFICE OF THE AUDITOR**

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**PARKS AND RECREATION  
KLAKE GOLF PRIME II, LLC  
OVERLAND AND KENNEDY GOLF COURSES  
REVENUE AND CONTRACT COMPLIANCE AUDIT  
SEPTEMBER 2007**

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*Dennis J. Gallagher*  
*Auditor*



# City and County of Denver

201 West Colfax Ave., Dept. 705 • Denver, Colorado 80202 • 720-913-5000, FAX 720-913-5247  
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*Dennis J. Gallagher*  
Auditor

September 18, 2007

Ms. Kim Bailey, Manager  
Department of Parks and Recreation  
City and County of Denver

Mr. Jason Davis, General Manager  
KLAK Golf Prime II, LLC  
1801 S. Huron St.  
Denver, Colorado 80233

Dear Ms. Bailey and Mr. Davis:

Attached is the Auditor's Office Internal Audit Division's revenue and contract compliance audit report of the KLAK Golf Prime II, LLC concession agreements dated December 1, 1993 for Overland Golf Course and July 20, 1988 for Kennedy Golf Course. The audit was for the period January 1, 2003 through December 31, 2005. The purpose of the audit was to determine whether KLAK Golf Prime II, LLC and the City and County of Denver complied with the terms of the contract and whether internal controls in place were adequate.

The audit revealed reportable internal control weaknesses related to revenue and KLAK's non-compliance with certain sections of the contract as disclosed within the accompanying report.

If you have any questions, please contact Kip Memmott, Director of Internal Audit, at 720-913-5029.

Sincerely,

Dennis J. Gallagher  
Auditor

DJG/kh

cc: Honorable John W. Hickenlooper, Mayor  
Honorable Members of City Council  
Members of Audit Committee  
Arlene Dykstra, Acting City Attorney  
Lauri Dannemiller, City Council Staff Director  
Beth Machann, Controller  
Kelly Brough, Chief of Staff  
Chris Henderson, Chief Operating Officer  
Claude Pumilia, Chief Financial Officer

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## INTERNAL AUDITOR'S REPORT

We have completed a revenue and contract compliance audit of the concession agreement dated December 1, 1993 for Overland Golf Course and July 20, 1988 for Kennedy Golf Course between KLAKE Golf Prime II, LLC (KLAKE) and the City and County of Denver (City). The purpose of the audit was to determine whether KLAKE and the Department of Parks and Recreation (Department) complied with various terms and conditions of the contract, City rules and regulations, and whether internal controls were adequate. This audit was included in the Auditor's Office Internal Audit Division's 2006 Annual Audit Plan and is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, *General Powers and Duties of the Auditor*.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance that KLAKE and Parks and Recreation complied with the terms of the concession agreement. An audit includes examining, on a test basis, evidence supporting compliance with the concession agreement and the accounting and administrative internal controls in place.

With respect to KLAKE, we concluded from the audit there were weaknesses in internal controls, application of contract provisions related to gross revenue, timeliness of payments, and communication with Parks and Recreation personnel. With respect to Parks and Recreation, we noted weaknesses in internal controls related to reconciliation of financial reports, supervisory review, and a failure to monitor and enforce contract provisions. Our audit includes detailed Findings and Recommendations related to each of these exceptions.

We extend our appreciation to the personnel who assisted and cooperated with us during the audit.

Internal Audit Division

Handwritten signature of Kip Memmott in black ink.

Kip Memmott  
Director of Internal Audit

Date: September 18, 2007

Staff: Dick Wibbens, CPA, Audit Manager  
Philip Cummings, CPA, CFE, Audit Supervisor  
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**KLAK GOLF PRIME II, LLC  
EXECUTIVE SUMMARY  
FOR THE PERIOD JANUARY 1, 2003 THROUGH DECEMBER 31, 2005**

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This summary highlights the findings of the revenue and contract compliance audit, which are more fully described in the Findings, Recommendations, and Responses section beginning on page 7. The Findings, Recommendations, and Responses section also includes the responses of Parks and Recreation and KLAK to our findings.

**OVERLAND GOLF COURSE**

**1. Revenue Reporting, Overpayments, and Interest Penalties**

The concessionaire and Parks and Recreation failed to reconcile quarterly statements, annual statements, and CPA statements of gross receipts to accurately determine total annual percentage rental amounts due the City. As a result, for the years 2001-2005, the concessionaire overpaid the annual percentage rental by a net \$32,851. During this same time period, KLAK accrued \$12,549 in related late payment interest penalties, resulting in a net amount of \$20,302 due the concessionaire. The net amount due the concessionaire was amended by the accounting treatment of the overpayments subsequent to our exit conference with KLAK as summarized in No. 2 below.

**2. Subsequent Events – Accounting for Overpayments and Interest Penalties**

Following our exit conference with KLAK personnel, the concessionaire requested the annual percentage rental overpayments described above be treated as a credit against amounts due in subsequent years. As a result, our calculations determined the amount due concessionaire is \$36,587 for overpayments. However, the concessionaire still incurred \$8,494 for late payment interest penalties due the City. The net of these two amounts yields \$28,093 due the concessionaire for financial transactions through the end of the 2005 contract year.

**KENNEDY GOLF COURSE**

**1. Late Payment Interest Penalty**

The concessionaire failed to pay the September 2004 monthly minimum rental in a timely manner. As a result, KLAK owes the City late payment interest in the amount of \$588.

**PARKS AND RECREATION**

**1. Contract Monitoring**

The Department failed to perform analytical and reconciliation procedures to assess amounts due from concessionaire for annual percentage payments. Additionally, Parks and Recreation did not assess and collect late payment interest charges from the concessionaire according to the terms of the contract. Further, contract analyst personnel did not consistently enforce contract provisions related to insurance certificates and adequate coverage.

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**KLAK GOLF PRIME II, LLC  
BACKGROUND, SCOPE, OBJECTIVE, AND METHODOLOGY  
FOR THE PERIOD JANUARY 1, 2003 THROUGH DECEMBER 31, 2005**

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**Background**

**OVERLAND GOLF COURSE**

KLAK Golf Prime II, LLC obtained the Overland golf course contract in October 2001 from bankruptcy proceedings related to the previous concessionaire, Family Golf. The contract had been purchased by Family Golf from the original concessionaire, Even Par, who began operations in December 1993. KLAK's contract with the City expires on December 31, 2008 unless the agreement is extended.

According to the terms of the contract, KLAK receives gross revenues from the sale of golfing merchandise, cart and golf rentals, driving range fees, bar and restaurant sales, and the snack and beverage cart proceeds. The concessionaire also collects and remits green fees on behalf of Parks and Recreation and receives a 1% of total fees for this service.

KLAK is required to pay the City monthly minimum rental payments in the amount of \$4,000 per month totaling \$48,000 each year. Also, the concessionaire is required to pay a percentage rental in the amount of 8% of gross revenue per year minus the monthly minimum rental payments.

**KENNEDY GOLF COURSE**

KLAK Golf Prime II, LLC also purchased the original contract for operating Kennedy golf course through the Bankruptcy Court in 2001 from Family Golf, who in turn, had purchased the concession license from Seven Iron, LLC two years earlier. The current contract between KLAK and the City will terminate on December 31, 2009 unless the two parties agree on a contract extension.

KLAK generates gross revenues at Kennedy from cart and golf rentals, Pro Shop merchandise sales, miniature golf, food and beverage sales from the bar, restaurant, and refreshment carts, and driving range fees. The concessionaire is also responsible for collecting golf green fees and submitting these funds to Parks and Recreation in exchange for a 1% service fee.

The contract with KLAK is based on an annual fee set for five-year intervals and derived from gross sales for the last two years of the prior five-year period. The monthly payment is set at 8% of the annual fee. For the audit period 2003 through 2005, the monthly payment to the City was \$11,040.

**Scope**

Our audit of the golf course concessionaire contracts (PeopleSoft fund/org.79100/7029000) was for the period January 1, 2003 through December 31, 2005. The scope of the audit focused on payment of monthly minimum, green fees, and percentage rentals as well as compliance with insurance, performance bond, and financial reporting requirements. With respect to KLAK at Overland, we found it necessary to expand audit testing of the annual percentage rental payments and late payment penalties and interest to include the calendar years 2001 and 2002.

**Objective**

The objective of our audit was to determine whether the golf course concessionaire was in compliance with the terms of their contracts and all amounts due were paid in full and in a timely manner. We also determined Parks and Recreation's compliance with the contract terms and other City rules and regulations.

**Methodology**

To meet the audit objective the following evidence gathering and analysis techniques included, but were not limited to:

- Review of internal controls
- Verification of monthly payments
- Verification of gross revenues
- Recalculation of gross revenues and annual percentage due
- Determination of timeliness of payments
- Discussions with management and staff
- Verification of evidence of insurance
- Verification of evidence of performance bond or letter of credit
- Verification and review of required reports

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**KLAK GOLF PRIME II, LLC  
FINDINGS, RECOMMENDATIONS, AND RESPONSES  
FOR THE PERIOD JANUARY 1, 2003 THROUGH DECEMBER 31, 2005**

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**OVERLAND GOLF COURSE**

**1. Revenue Reporting, Overpayments, and Interest Penalties**

Our audit noted that the concessionaire lacked consistent and accurate accounting practices related to reporting amounts of gross revenue to Parks and Recreation. Audit tests concluded the concessionaire at Overland golf course was accurately recording daily gross revenue and conveying these amounts to the home office in Chicago.

However, KLAK accounting personnel in Chicago failed to accurately and timely report these amounts to Parks and Recreation as required in their quarterly and annual statements of gross receipts. Also, the home office personnel did not send these financial reports back to the KLAK manager at Overland for his review and reconciliation prior to submitting them to Parks and Recreation. As a result, our audit noted the following exceptions related to the reporting of gross revenue:

- Exclusion of golf merchandise sales from gross receipts reported on quarterly statements for the audit years 2002 through 2004 and annual statements for the audit years 2002 through 2005.
- Different total amounts of gross receipts reflected in the quarterly revenue reports, internal statements of gross revenue prepared by the KLAK accounting department, and the annual certificate of gross receipts prepared by an independent certified public accountant.
- Inappropriate deductions against gross receipts related to the 1% green fee service charge on their annual statement of gross receipts.
- A substantial deduction from gross revenue for credit card fees that was not reasonable or supported by source documents.
- Over and under payments of the annual percentage rental payment based upon inaccurate statements of gross revenue or changes to the original statements.
- A duplicate payment of \$31,262 from the home office for the 2002 annual percentage payment. The effects of this transaction are discussed in Finding No. 2.

Also, the concessionaire consistently submitted the annual percentage rental payment after the contract due date. Days late ranged from 16 to 365 days. Changes and adjustments made by the concessionaire to annual percentage rental payments for 2001 through 2005 required the utilization of additional audit procedures for the determination of late payment interest charges. These audit calculations determined that the concessionaire owes the City a total of \$12,549 in late payment penalties and interest for the expanded audit period of 2001 through 2005.

However, for the same time period, audit procedures determined that the concessionaire made overpayments for annual percentage rentals totaling \$32,851, resulting in a net amount due the concessionaire of \$20,302 as of the end of our audit period on December 31, 2005.

Our audit noted one exception where the concessionaire submitted the monthly rental payment four days after the contract due date. This resulted in a late payment interest charge of \$203.

Specific sections of the concession license with KLAK require three different reporting statements of gross receipts and a related due date as follows:

- Quarterly statements of gross receipts are due by the 10th day following the end of the previous three-month reporting period.
- An annual accurate statement of gross revenue certified by an authorized representative of the concessionaire is to be submitted to Parks and Recreation but there is no specific due date.
- An annual statement of profit and loss prepared by a certified public accountant is due no later than January 30<sup>th</sup> of the following year.

The concession license also provides late payment penalties and interest charges related to monthly and annual amounts due the City. The provision states “ten (10) calendar days after the day and date provided herein, the Concessionaire shall thereupon be liable for the payment of five percent (5%) of that unpaid amount in addition to the amount due and owing plus interest at the annualized rate of ten percent (10%) per year.”

### **Recommendation**

In order to prevent and correct the exceptions noted above and to accurately calculate annual percentage rental amounts, we recommend the concessionaire’s accounting personnel implement the following procedures:

- Prepare the quarterly revenue reports submitted to Parks and Recreation from the daily revenue reports generated at Overland golf course. Our audit tests determined these reports accurately reflect gross revenue from operations.
- Obtain thorough knowledge of the contract’s definition of gross receipts and allowable exclusions and apply these provisions to the preparation of all financial reports.
- Reconcile the annual statement of gross revenue to the sum of the quarterly reports and use the reconciled amount as the basis for the calculation of the annual percentage amount.
- Reconcile the annual statement amount described above to the CPA’s certified statement of gross receipts as soon as such statement becomes available. If any balance due is determined as a result of this reconciliation, submit the payment as soon as possible.
- Review the contract requirements with regard to payment due dates and implement an effective method that will generate payments to Parks and Recreation on time.
- Share financial reports with the Overland manager for his review and reconciliation prior to submitting these reports to Parks and Recreation.

Also, we recommend Parks and Recreation invoice the concessionaire for the \$203 late payment interest related to the monthly rental payment, and collect this amount in a timely manner. With respect to the overpayment amount due KLAK and the late payment penalties and interest due the City, please see Finding and Recommendation No. 2.

**KLAK's Response**

“The on-site reports are delivered to the home office on a weekly basis. These are the source documents used to generate monthly entries for the operations. The home office then makes month-end adjustments in accordance with GAAP to reflect a complete financial statement to our client. In the past, reports submitted to Parks and Recreation were based on preliminary figures and any changes or adjustments were not submitted to Parks and Recreation. We have corrected this procedure and, in working with Parks and Recreation have created a more useful quarterly report that utilizes final adjusted figures.”

**Parks and Recreation's Response**

“See response to #2 below.”

**2. Subsequent Events - Overpayments and Interest Penalties**

Based on our audit procedures in Finding No. 1, we reported that the concessionaire incurred a total of \$12,549 in penalties and interest for late payments on annual percentage rentals for the years 2001 through 2005. Our audit also reported the concessionaire made percentage rental overpayments totaling \$32,851 for this same time period including a duplicate percentage rental payment of \$31,262 in 2002. The duplicate payment was deposited by Parks and Recreation with the City Treasurer. However, Parks and Recreation did not recognize the amount as a payment from KLAK, who were also unaware they made the duplicate payment until our audit tests identified the issue in 2007.

We conveyed these findings to KLAK management at our exit conference in March 2007. The concessionaire requested that the duplicate payment of \$31,262 be treated as a credit against future payments retroactive to the time Parks and Recreation deposited the amount with the City Treasurer in 2002. The basis of their position was they were not notified of the overpayment and Parks and Recreation had use of these invested funds for approximately three years.

The concession license with KLAK does not address overpayments and how they should be applied. Normal business practices dictate the recipient entity reimburse the vendor at the time the overpayment was made or the error was discovered. The second acceptable practice is for the recipient to allow a credit against future payments. If the first alternative is applied, Parks and Recreation should issue a warrant to KLAK for \$20,302, the difference between the total overpayment amount of \$32,851 and the cumulative late payment charges of \$12,549 as of December 31, 2005.

However, if Parks and Recreation applies overpayments as credits against future payments retroactive to 2001, the cumulative effect yields a total overpayment of \$36,587 and accumulated penalty and interest charges of \$8,494. The net result of this application is a \$28,093 refund to KLAK as of December 31, 2005 or a credit to be applied to rental payments beginning with the contract year 2006.

### **Recommendation**

We discussed the two alternatives with both Parks and Recreation and KLAK management at our exit conferences in March and April 2007. We recommended both parties meet and resolve the treatment of the overpayments according to the two alternatives presented above, and include the resolution in their respective responses to our audit findings.

Additionally, we recommended the meeting between Parks and Recreation and KLAK include a discussion on their own system of internal controls, accounting procedures, financial reporting expectations and documentation, timely payments, and especially effective communication within and between their respective organizations.

### **KLAK's Response**

“The payment was received late due to an administrative oversight. The contract will be reviewed by the appropriate staff to eliminate this event happening in the future. The late payment penalty for the year 2001, 2002 and 2004 was calculated in error. Our calculation shows total interest and penalties due for the audit period 2001 – 2005 total \$7,402.30 instead of the original projection of \$8494.10(sic). The difference of \$1,091.81 needs to be reflected on the final calculations. In addition, the calculation for the 2005 Annual Total Revenue was also incorrect. It did not include the allowance for credit card processing fees as stated in Section 13(j) of the agreement. Upon making the \$23,359.15 adjustment for credit card fees, the total audited revenue amount is \$973,486.94. The corrections in the calculations result in a credit to Allgolf from Parks and Recreation in the amount of \$31,090.57, pertaining to the years 2001 to 2005.”

### **Auditor's Rebuttal**

KLAK submitted their written responses four weeks after our requested due date and after the final draft of the report was written. Therefore, we did not have ample opportunity to discuss the issues below in more detail and communicate our recommendations at our exit conference with Parks and Recreation.

With respect to KLAK's response on the payment penalties, the contract provision regarding this subject is cited on page 8 of the report. As noted in our report, KLAK paid percentage rental amounts on the “installment” basis over periods of time related to 2001, 2002, and 2004. The contract is ambiguous on how to apply the penalty assessment on unpaid amounts in these situations. We concur with KLAK's request for the \$1,091.81 credit and have recommended that Parks and Recreation include this amount as a credit in their calculations of amounts due to and

from the concessionaire. However, it is our expectation KLAK will correct their reporting deficiencies and submit payments by the contract due date to avoid these situations.

With respect to the issue of allowance for credit card fees of \$23,359.15, this issue was addressed with KLAK management in Chicago by correspondence on December 8, 2006. At that time, KLAK had submitted claims for \$25,571 and a later revised amount of \$34,184 to Parks and Recreation. Our audit procedures determined: (1) KLAK could not provide documentation to support either of these amounts; (2) the credit card fees were likely attributed to significant payments for green fees which are not part of gross revenue for the purpose of applying the credit card fee deduction; (3) the credit card fee deduction should have been included on the Schedule of Gross Receipts prepared by an independent Certified Public Accountant as was done in 2001 through 2004 but not 2005. Therefore, do not agree with their current claim for \$23,359 on the same basis as stated above and in our correspondence to KLAK in December 2006.

### **Parks and Recreation's Responses**

- “a) The audit findings and recommendations accounted for activity through December 31, 2005. We have calculated additional amounts due the City for January 01, 2006 through October 31, 2006 which total \$14,388.70. This reduces the amount the City owes KLAK for Overland to \$13,703.95. In addition, KLAK owes the City \$28,082.30 for Kennedy which results in KLAK owing the City a total of \$14,378.35. Therefore, we do not agree with the recommendation to issue a check to the Concessionaire for \$28,093. Instead, we have issued KLAK a demand letter to collect the \$14,378.35 owed to the City which combines both Kennedy and Overland.
- b) We have sent KLAK a letter requesting a meeting as recommended with the Concessionaire's on-site accounting personnel at Overland and a representative from KLAK's home office to discuss the issues discovered in the audit and ensure that there is an understanding of all Concession License requirements.
- c) We have sent KLAK a written request to receive copies of monthly revenue reports prepared by Overland's on-site accounting personnel.
- d) We will set up a procedure to reconcile the on-site monthly revenue reports with the quarterly reports issued by the home office and promptly resolve any discrepancies.
- e) We have set up a procedure to reconcile the Concessionaire's annual report to their quarterly reports, evaluate compliance with all Concession License requirements, and promptly resolve any discrepancies.
- f) We have invoiced KLAK as described in 2.a) above.”

### **Auditor's Rebuttal**

With respect to the transactions after December 31, 2005 cited above for Parks and Recreation with KLAK, we cannot comment on their propriety and accuracy since they were outside of our audit period. Also, our recommendation was for Parks and Recreation to meet with KLAK and decide how to treat the overpayments and interest charges. Issuing a check for \$28,082 was one alternative. Parks and Recreation has obviously elected to allow this credit amount to be applied against payments due from KLAK in 2006, which is another acceptable alternative.

**KENNEDY GOLF COURSE****1. Late Payment Interest Penalty**

Our audit noted that the concessionaire submitted payment for the September 2004 monthly minimum rental amount after the required contract due date. The payment was submitted 12 days late and resulted in a late payment interest charge of \$588.

The concession license requires KLAK to pay the annual amount in equal monthly installments of \$11,040 each by the first day of each month. If the payment is not received by the due date, the contract allows Parks and Recreation to assess a penalty of 5% on the unpaid amount in addition to an interest charge at 10% per year for the days late.

**Recommendation**

In order to avoid late payment penalties and interest charges, we recommend the concessionaire's accounting department implement internal controls that will identify contract due dates and process required rental payments in a timely manner to Parks and Recreation.

We recommend Parks and Recreation invoice KLAK for the \$588 in late penalties and interest and collect this amount in a timely manner.

**KLAK's Response**

"The payment was received late due to an administrative oversight. The contract will be reviewed by the appropriate staff to eliminate this event happening in the future."

**Parks and Recreation's Responses**

"a. The audit findings and recommendations accounted for activity through December 31, 2005. We have calculated additional amounts due the City for January 01, 2006 through October 31, 2006 which total \$27,494.00. This increases the amount owed to KLAK for Kennedy to \$28,082.30. In addition, the City owes KLAK \$13,703.95 for Overland (see Overland above) which results in KLAK owing the City a total of \$14,378.35. We have issued KLAK a demand letter to collect the \$14,378.35 owed to the City which combines both Kennedy and Overland."

**Auditor's Rebuttal**

With respect to the transactions after December 31, 2005 cited above for Parks and Recreation with KLAK, we cannot comment on their propriety and accuracy since they were outside of our audit period.

**PARKS AND RECREATION****1. Contract Monitoring**

Parks and Recreation did not consistently monitor and enforce numerous provisions in the golf course concessionaire contracts. This is a repeat finding from previous Parks and Recreation concessionaire contract audits. During the audit period, we noted the following:

- Agency accounting personnel did not review and reconcile required financial reports of gross revenue and allowable deductions from the concessionaire. These internal control features are designed to detect and correct accounting and reporting errors and determine accurate amounts due the City.
- Accounting personnel did not consistently record payments from concessionaire and note over and under payments at the time they were made. Maintaining accurate accounts receivable would have prevented many of the exceptions reported in Findings No. 1 and 2.
- Accounting personnel did not consistently time stamp payments from concessionaire, note late payment incidents, or invoice concessionaire for penalties and interests. Failure to monitor timeliness of payments can result in loss of revenue to the City.
- Personnel responsible for contract compliance issues did not consistently enforce provisions related to maintenance of insurance certificates and adequate coverage. Successful performance in this job responsibility helps analyze and identify risk factors and reduce potential liability to the City.
- The agency contract analyst did not consistently enforce contract provisions related to the concessionaire submitting financial reports according to the due date. Concessionaire compliance for timely reporting of financial statements would help Parks and Recreation assess amounts due the City and initiate corrective action in a more timely manner.

Executive Order No. 8 points out contracts are considered one of the highest administrative priorities in the City and each department or agency must develop a system of tracking and ensuring contract compliance from initiation through executions and expiration of the contract.

Additionally, Executive Order No. 8 assigns responsibility for monitoring and enforcing contract provisions directly to the agency initiating the contract, in this case, Parks and Recreation. Specific elements of Executive Order No. 8 require the agency to ensure contract compliance throughout the life of the agreement, including the bonding and insurance requirements.

**Recommendation**

We recommend Parks and Recreation implement a more effective and efficient system of internal and administrative controls to monitor and enforce the concessionaire's compliance with the terms of their contract. Special attention should be directed to the following responsibilities:

- Accounting personnel review and reconcile all statements of gross revenue according to the terms of the contract as soon as they are submitted by the concessionaire and independently determine the amounts due.
- Agency accounting personnel should properly record all payments received from concessionaire and invoice for any additional amounts due or refund amounts overpaid as they occur. Accounting supervisors should review the reconciliations and approve adjustments of amounts due to or from the concessionaire.
- Finance Department management should assign responsibilities to staff personnel and clearly define their duties related to monitoring the concessionaire contract. It is incumbent upon both the contract compliance analyst and the senior accountant(s) to effectively communicate with the concessionaire. Introductory and annual meetings with the concessionaire should be required to review important contract provisions and reporting formats, express expectations, and resolve noted differences.
- Agency contract analysts should closely review certificates of insurance for complete and adequate coverage. If necessary, seek assistance from the City's Risk Management division to ensure contract requirements have been satisfied.
- Agency personnel should generate reminder notices, preferably one month in advance, of impending renewals and due dates.
- Assigned personnel need to date stamp all documents and payments received from the concessionaire to ensure timeliness of submission.
- If the concessionaire does not comply with contract provisions after written notice, management should seek advice from the City Attorney for appropriate legal remedies.

### **Parks and Recreation's Responses**

- “a. We are currently developing written procedures that will identify the appropriate personnel and their duties as they relate to monitoring Concessionaire Licenses. These procedures will also include annual meetings with Concessionaires that will include field, contract compliance, and finance staff.
- b. We have already instituted procedures for Parks and Recreation to review certificates of insurance. In addition, the City's Risk Management Office has agreed to review all “first time” insurance certificates and a meeting has been scheduled for the end of April to work out the logistics to put this into place.
- c. Reminder notices are currently generated by the Contract Compliance Coordinator for some, but not all, compliance matters and we do not think that reminder notices should be sent out for all due dates. We will, however, closely examine this issue in the preparation of our written policies and procedures, identify which compliance matters should have associated reminder notices, and establish time frames for each one as appropriate.
- d. We have instituted the procedure of date stamping all payments and documents (except for emails which automatically contain a date stamp) received from the Concessionaire.
- e. We currently seek advice from the City Attorney's Office regarding legal remedies for out of compliance matters.”

**KLAK's Response**

“The contract will be reviewed by the appropriate staff to eliminate this event happening in the future.”

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**KLAK GOLF PRIME II, LLC**  
**SCHEDULES OF AMOUNTS DUE AND PAID**  
**FOR THE PERIOD JANUARY 1, 2001 THROUGH DECEMBER 31, 2005**

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	Overland Golf Course					
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Total</u>
<b>Amounts Due City (Note 1)</b>						
Green Fees	\$ -	\$ -	\$735,597	\$777,616	\$808,255	\$2,321,468
Minimum Annual Guarantee	-	-	48,000	48,000	48,000	144,000
Percentage Rental	35,705	46,740	26,010	28,734	31,747	168,937
Late Interest Penalties	<u>2,681</u>	<u>3,579</u>	<u>3,618</u>	<u>2,642</u>	<u>3,765</u>	<u>16,285</u>
<b>Total Amount Due</b>	<b>38,386</b>	<b>50,319</b>	<b>813,226</b>	<b>856,992</b>	<b>891,767</b>	<b>2,650,690</b>
<b>Amounts Paid City (Note 2)</b>						
Green Fees	-	-	735,597	777,616	808,255	2,321,468
Minimum Annual Guarantee	-	-	48,000	48,000	48,000	144,000
Percentage Rental	36,112	78,962	27,452	29,099	30,162	201,787
Late Interest Penalties	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>3,736</u>	<u>3,736</u>
<b>Total Amount Paid</b>	<b><u>36,112</u></b>	<b><u>78,962</u></b>	<b><u>811,049</u></b>	<b><u>854,715</u></b>	<b><u>890,153</u></b>	<b><u>2,670,991</u></b>
<b>Amounts Due (Overpaid)</b>	<b><u>\$ 2,274</u></b>	<b><u>\$(28,643)</u></b>	<b><u>\$ 2,176</u></b>	<b><u>\$ 2,277</u></b>	<b><u>\$ 1,614</u></b>	<b><u>\$ (20,302)</u></b>

The accompanying notes are an integral part of this schedule.

**1. Amounts Due**

- A. Green Fees – According to the second amendment to the concession agreement, KLAK is required to pay the City all monies from the sale of green fees, payable on the 26<sup>th</sup> for the period of 1<sup>st</sup> through 15<sup>th</sup>, and on the 10<sup>th</sup> day following the month for the period of the 16<sup>th</sup> through the final day of the month, in consideration for one percent (1%) of the golf fees to cover administrative costs....”
- B. Minimum Annual Guarantee – According to Section 4 of the concession agreement, KLAK is required to pay a minimum annual guarantee in the amount of \$48,000 per year. Payments are to be made in monthly installments of \$4,000, due on or before the 10<sup>th</sup> day of each month.
- C. Percentage Rental – According to Section 4 of the concession agreement, KLAK is required to pay the City 8% of annual gross revenues, less monthly minimum rental payments. Payments are to be made by January 30<sup>th</sup> of each year for the preceding calendar year.
- D. Late Interest Penalties – According to Paragraph 15, Section C of the Endorsements amended, KLAK is required to pay late interest penalties if payment is not received within ten calendar days after the due date. KLAK is liable to pay five percent (5%) of the unpaid amount, in addition to the amount due and owing, plus interest at the annualized rate of ten percent (10%) per year.

**2. Amounts Paid**

Amounts paid include those billed and/or due during the audit period and collected in the ordinary course of business whether or not within the audit period.

**3. Overland Audit Period**

Section C, Paragraph 13(a) and 13 (b) of Terms and Conditions of the agreement states “Concessionaire shall make available, upon request by the City, true and complete records and accounts of all revenue, and annually furnish an accurate statement for the preceding calendar year certified by an authorized representative of the concessionaire to be correct.” Also, the City’s Auditor shall have the right at any time, and from time to time, to audit all the books of accounts. Although, the City’s right to have such an audit shall expire three (3) years after the concessionaire’s statement for any period has been delivered to the City, KLAK submitted revised annual statements of revenue for the years 2001 through 2004 which affected amounts due and paid as well as late payment interest charges. Therefore, we extended our original audit scope to include the years of 2001 and 2002. Auditors did not examine 2001 and 2002 green fee and minimum annual guarantee amounts because previous testing found the information to be reliable.

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**KLAK GOLF PRIME II, LLC**  
**SCHEDULES OF AMOUNTS DUE AND PAID**  
**FOR THE PERIOD JANUARY 1, 2003 THROUGH DECEMBER 31, 2005**

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Kennedy Golf Course

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Total</u>
<b>Amounts Due City (Note 1)</b>				
Green Fees	\$1,347,787	\$1,471,012	\$1,522,613	\$4,341,412
Minimum Annual Guarantee	132,480	132,480	132,480	397,440
Late Interest Penalties	<u>-</u>	<u>588</u>	<u>-</u>	<u>588</u>
<b>Total Amount Due</b>	<u>1,480,267</u>	<u>1,604,081</u>	<u>1,655,093</u>	<u>4,739,441</u>
<b>Amounts Paid City (Note 2)</b>				
Green Fees	1,347,787	1,471,012	1,522,613	4,341,412
Minimum Annual Guarantee	132,480	132,480	132,480	397,440
Late Interest Penalties	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Total Amount Paid</b>	<u>1,480,267</u>	<u>1,603,492</u>	<u>1,655,093</u>	<u>4,738,852</u>
<b>Amounts Due (Overpaid)</b>	<u>\$ -</u>	<u>\$ 588</u>	<u>\$ -</u>	<u>\$ 588</u>

The accompanying notes are an integral part of this schedule.

Kennedy Golf Course**1. Amounts Due**

- A. Green Fees – According to Paragraph IV.B amended, of the concession agreement, KLAK is required to pay all except 1% of golf ticket sales as compensation and fees due, payable on the 26<sup>th</sup> for the period of 1<sup>st</sup> through 15<sup>th</sup>, and on the 10<sup>th</sup> day following the month for the period of the 16<sup>th</sup> through the final day of the month.
- B. Minimum Annual Guarantee – Paragraph IV.B states “Payment for each subsequent five (5) year period to be based on eight percent (8%) of average of previous two (2) years gross sales, as defined by Section B.12 and B.13 of the Terms and Conditions, provided however, that the rent for any five (5) year period shall not be less than the rent for the previous five (5) year period.”
- C. Late Interest Penalties - According to Paragraph 14, Section C of the Endorsements amended, KLAK is required to pay late interest penalties if payment is not received within ten calendar days after the due date. KLAK will be liable to pay five percent (5%) of that unpaid amount, in addition to the amount due and owing, plus interest at the annualized rate of ten percent (10%) per year.

**2. Amounts Paid**

Amounts paid include those billed and/or due during the audit period and collected in the ordinary course of business whether or not within the audit period.