The Auditor of the City and County of Denver is independently elected by the citizens of Denver. He is responsible for examining and evaluating the operations of City agencies for the purpose of ensuring the proper and efficient use of City resources and providing other audit services and information to City Council, the Mayor and the public to improve all aspects of Denver’s government. He also chairs the City’s Audit Committee and oversees the City’s Comprehensive Annual Financial Report (CAFR).

The Audit Committee is chaired by the Auditor and consists of seven members. The Audit Committee assists the Auditor in his oversight responsibilities of the integrity of the City’s finances and operations, including the integrity of the City’s financial statements. The Audit Committee is structured in a manner that ensures the independent oversight of City operations, thereby enhancing citizen confidence and avoiding any appearance of a conflict of interest.

Audit Committee

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Maurice Goodgaine
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Dear Mr. Finlaw and Mr. Rice:

Attached is the Auditor’s Office Audit Services Division’s report of their audit of Theatres and Arenas’ Management and Operations. The purpose of this performance audit was to examine and evaluate the management and operations of the Theatres and Arenas Division and determine whether internal controls in place were adequate under the circumstances. The Division plays an important role in furthering the cultural aspects of the Mile High City and providing citizens the opportunity to expand their appreciation for the fine arts. Operating the largest arts complex in the world is not a trivial task and requires the utmost attention to detail to managerial systems and internal controls. I hope you find the attached report helpful in assisting your agency with its important mission.

Audit work identified several opportunities for improvement. These included inadequate contract monitoring, an inefficient labor request and payroll process, and policies and procedures surrounding booking agreements that need improvement. The findings and recommendations presented in this report are offered to assist Theatres and Arenas in addressing and improving these program areas.

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

Sincerely,

Dennis J. Gallagher
Auditor

cc: Honorable John Hickenlooper, Mayor
    Honorable Members of City Council
    Members of Audit Committee
    Mr. Claude Pumilia, Chief Financial Officer

To promote open, accountable, efficient and effective government by performing impartial reviews and other audit services that provide objective and useful information to improve decision making by management and the people.
We will monitor and report on recommendations and progress towards their implementation.
Mr. Jack Finlaw, Chief of Staff
Mr. Kent Rice, Director
December 16, 2010
Page Two

Mr. David Fine, City Attorney
Mr. L. Michael Henry, Staff Director, Board of Ethics
Ms. Lauri Dannemiller, City Council Executive Staff Director
Ms. Beth Machann, Controller
AUDITOR’S REPORT

We have completed an audit of the Theatres and Arenas Division’s Management and Operations for the audit period January 1, 2009 through December 31, 2009. The purpose of the audit was to examine and assess Theatres and Arenas’ management and operations of venues which included, contract monitoring and revenue collections to identify possible inefficiencies and opportunities for improvement.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, General Powers and Duties of Auditor, and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit revealed several areas for improvement. Specifically, consistent with prior Auditor’s Office audit reports, the Department of Theatres and Arenas should improve contract monitoring practices. The current audit found that Theatres and Arenas does not thoroughly monitor revenue amounts and commissions paid to the City through a concessionaire agreement with Centerplate at the Colorado Convention Center and the Denver Performing Arts Complex. Additionally, the Department did not adequately review and monitor activities and related documentation for capital improvements required of the contractor. Audit work also determined labor request and payroll processes could be improved, as could policies and procedures surrounding booking agreements.

We extend our appreciation to both personnel within the Theatres and Arenas Division and the contractors who assisted and cooperated with us during the audit.

Audit Services Division

Kip Memmott, MA, CGAP, CICA
Director of Audit Services

To promote open, accountable, efficient and effective government by performing impartial reviews and other audit services that provide objective and useful information to improve decision making by management and the people.

We will monitor and report on recommendations and progress towards their implementation.
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Theatres and Arenas Division Management Should Take Action to Address Substantive Management Deficiencies

Audit work identified significant management deficiencies within Theatres and Arenas. Specifically, Division management is not effectively managing certain provisions of the $13 million dollar annual anchor concessionaire contract. Further, Division payroll processes are inefficient and strained labor relations exist between Theatres and Arenas management and the Local Stagehand Union. This friction has resulted in an active government investigation by the U.S. Department of Labor. Finally, audit testing indicated booking agreements are not executed in accordance with Executive Order 8 resulting in unnecessary legal risks for the City.

Audit work also determined that Theatres and Arenas management do not maintain performance measures and related data. Such measures, especially related to revenue maximization and customer relations, are critical for assessing the performance of the Division and for identifying opportunities for improvement and possible revenue enhancement. Currently, Division management primarily judge agency performance based on the level of General Fund support required to maintain operations. Unlike prior years, Theatres and Arenas does not require support from the City’s General Fund to operate, therefore Division management considers the Division’s performance to be successful.

Audit work determined that this sole performance measure is not sufficient to assess Division performance and to identify areas for improvement. Specifically, as a result of the current strained economic state of the City, Theatres and Arenas management should focus on maximizing revenues. City owned entertainment venues should continually be monitored and assessed to determine if revenues can be enhanced. Theatres and Arenas management should conduct a cost benefit analysis of venue revenue streams, including: sponsorship, advertising, concessions, merchandise, and booking revenue. If the results are not favorable, Theatres and Arenas should develop revenue maximizations strategies that could include co-sourcing or outsourcing the management of selected venues. Regardless of the results of the analysis, Division management should develop and maintain performance measures focused on venue revenue maximization going forward.

Theatres and Arenas Improperly Monitored a Key Contract and is Unable to Determine if the City is Being Paid Properly

The concessionaire contract between Centerplate and the City and County of Denver has not been adequately monitored by Theatres and Arenas resulting in noncompliance. For example, the contract requires Centerplate to remit payments to the City; however, the concessionaire pays SMG (the contracted management company). As a result,
owing to incomplete records maintained and provided, auditors were unable to verify whether the correct commission amounts were paid to the City for the audit period.

As noted by previous audits, Theatres and Arenas management has historically failed to properly monitor capital improvements required of concessionaires. Audit work found that of the $2.5 million capital improvement investment required by the Centerplate contract, $424,804 remains outstanding even though the time allotted for such developments has elapsed. Although Theatres and Arenas management maintains this amount has been spent, they were unable to provide documentation indicating otherwise and have not completed an assessment of capital improvements made. Instead, management solely relies on the concessionaire’s self-reported information. These contract monitoring weaknesses increase the City’s risks of not receiving all improvements and assets in accordance to contract requirements.

Audit work also determined that Theatres and Arenas lacks effective guidance and policies and procedures for managing the Colorado Convention Center’s Special Revenue Fund (SRF). Specifically, no clear guidance exists regarding the amount of excess working capital that should be maintained in the account. As a result, any additional capital is maintained in the account and not transferred back into the General Fund or offset for the following year transfers meaning, these funds are not available for the City’s use for General Fund purposes. Additionally the Colorado Convention Center’s utilities are paid through the SRF and not by SMG, which is non-compliant with current contract terms.

**Strained Labor Relations May Have Contributed to an Active Government Investigation and Inefficient Payroll Processes Exist**

A lack of communication and unclear roles and responsibilities hinder effective management of the labor request and payroll processes. Specifically, labor requests must filter through Theatres and Arenas to SMG (stagehand payroll manager) before a final request reaches the Stagehand Employee Labor Union (Local 7). This process must be repeated as labor changes occur before the shows arrive. Additionally, Theatres and Arenas personnel review SMG stagehand payrolls and billings before this information is submitted to the various shows for final invoicing. However, the format required by Theatres and Arenas is not the same as the format produced by SMG’s system, meaning this data must be specially formatted, requiring additional resources by both stakeholders. This process may not be fully warranted since SMG is able to invoice and bill their clients at the Colorado Convention Center directly from their payroll system.

Theatres and Arenas management have not made any significant changes to address these issues despite related findings being identified by an independent analysis conducted in 2008. Therefore, the conditions noted by the consultant continue unmitigated, such as a lack of clearly defined roles, the untimely transfer of information
and ambiguity between which entity manages and interprets contract agreements with the Local 7. Additionally, a grievance filed by a stagehand at the Denver Performing Arts Complex (DPAC) has resulted in an ongoing U.S. Department of Labor investigation of overtime practices.

**Many Booking Agreements are in Violation of Executive Order 8 and Related Policies and Procedures are Vague and Need Improvement**

Audit work identified two areas of concern surrounding booking agreements. Specifically, booking agreements are not always executed in accordance with Executive Order 8, which requires proper authorizing signatures prior to an event. In addition, Theatres and Arenas’ policies and procedures manual lacks specific criteria and guidance related to waiving event fees.

Management cannot effectively monitor contracts without properly executing contracts in accordance with City procurement rules and the failure to adhere to these requirements results in unnecessary legal risks for the City. Theatres and Arenas management incorrectly considers an agreement executed when the promoter’s signature is obtained. This can result in a liability to the City if issues occur with the event since City contracts are officially executed when all of the authorizing signatures have been secured, including the Mayor’s and Auditor’s signatures.

In addition, without established criteria and guidance related to waiving event fees, inconsistencies occur as to when fees are allowed to be waived and the opportunity for misconduct or fraud related to such waivers increases. Establishing specific and detailed criteria and guidance related to waiving fees protects employees, contractors, and the City and ensures that such fees are handled consistently and equitably.
INTRODUCTION & BACKGROUND

Theatres and Arenas Division

The City and County of Denver currently owns several public assembly facilities including but not limited to: Red Rocks Amphitheatre, the Denver Coliseum, the Colorado Convention Center (CCC), and the Denver Performing Arts Complex (DPAC). The Theatres and Arenas Division (Division) manages and is responsible for the renovations, construction, maintenance, repair, management and operations for some of these facilities including Red Rocks Amphitheatre, Quigg Newton Denver Municipal Auditorium (Ellie Caulkins Opera House, Chambers Grant Salon, and Kevin Taylor’s at the Opera House), Boettcher Concert Hall, Temple Hoyne Buell Theatre, the Galleria, and the Sculpture Park. This audit focused on the management and operations of the theatres section of the Division, which includes the Colorado Convention Center and the Denver Performing Arts Complex.¹

History of the Colorado Convention Center – The Colorado Convention Center opened in July 1990 and has been operated by a private management firm since 1994. The management firm collects all revenues generated from activity at the CCC and directly pays for all operating expenses. The City, through a Theatres and Arenas Special Revenue Fund, provides funds to account for the difference between operating expenses and operating revenue. The management entity is guaranteed an annual base management fee and may receive an additional incentive fee if designated criteria metrics are met as defined in the contract, such as excellent customer service and financial goals.

The CCC hosts hundreds of local, community, and citywide events each year such as the Colorado Spelling Bee, American Idol, Denver Auto Show, various concerts and much more. The CCC is located within easy walking distance of over 7,000 hotel rooms, and it is also within safe walking distance of 300 restaurants, 9 theatres of the Denver Performing Arts Complex and a wide variety of shopping opportunities.

A $310 million voter approved expansion was completed in 2004, which doubled the size of the facility to almost 2.2 million gross square feet. The facility now consists of 584,000

¹ Theatres & Arenas is a Division of the City and County of Denver’s Department of General Services. Retrieved from http://www.denvergov.org/Theatres_and_Arenas (accessed on October 19, 2010).
square feet of exhibit space, 100,000 square feet of meeting rooms, and 85,000 square feet of ballroom space. The expansion of the facility also included the 5,000 seat Wells Fargo Theatre. The CCC also boasts an attached 1,000 space, 3-level parking structure as well as its own RTD (Regional Transportation District) Light Rail stop for even easier accessibility.\(^2\)

**History of the Denver Performing Arts Complex** – Per DPAC’s website, in December 1974, construction began on a project that would forever change the quality of life for Denverites: a four-square-block area in downtown Denver was transformed into a comprehensive performing arts complex. The centerpiece of that facility was the much-anticipated Boettcher Concert Hall, which opened to the public in March 1978. The building was customized for Colorado and modeled after the exceptional Berlin Philharmonie in Germany.

The complex also included the historic Auditorium Theatres (now the Quigg Newton Denver Municipal Auditorium/Ellie Caulkins Opera House), a multi-theatre building (now the Helen Bonfils Theatre Complex), and a new parking facility joined together by an elevated walkway underneath a glass arch called the Galleria. The facility continued to grow as the Temple Hoyne Buell Theatre opened its doors in 1991, followed by the addition of the Seawell Grand Ballroom. This multi-venue site is now known as the Denver Performing Arts Complex and serves as Denver’s premier destination for performances ranging from symphonies to touring Broadway shows.

Music, theatre and dance are a year-round, essential part of Denver’s culture, and the performing arts complex provides the climate to develop and attract outstanding performances and top-notch cultural institutions. The first-class facilities at the DPAC help to support and promote the constant evolution of, and growing demand for, the arts in the Mile High City.

The force behind creating the DPAC was driven by the desire to construct a home for the nationally recognized Denver Symphony Orchestra. Designed with the charge of serving a world-class symphony, Boettcher Concert Hall was the first 360-degree concert hall in-the-round in the United States. With the passage of the City of Denver’s 2007 “Better Denver” bond initiative, which provides public funding to support City assets and infrastructure, Boettcher Concert Hall – now home to the Colorado Symphony Orchestra – will receive a critical renovation in the coming years. The creation of a new symphony center will revitalize the Speer Boulevard “face” of the performing arts complex, and continue the development of an essential component in Denver’s cultural landscape.\(^3\)

\(^2\) For detailed information regarding the CCC, see [http://www.denvergov.org/Theatres_and_Arenas](http://www.denvergov.org/Theatres_and_Arenas) (accessed on October 4, 2010) and [http://www.denverconvention.com](http://www.denverconvention.com) (accessed on October 4, 2010).

\(^3\) For detailed information regarding DPAC, see [http://www.artscomplex.com](http://www.artscomplex.com) (accessed on October 4, 2010).
Management and Operations of Venues

Theatres and Arenas generates revenue primarily through facility rentals, percentage commissions paid by concessionaires on all food, beverage and merchandise sold, and parking fees. Additional sources of revenue include funds derived from corporate sponsorship and advertising sales. The management and operations of venues involve various sections of the Division, contractors, and a labor union. A few of those entities are described in more detail below.

**Marketing Section** – The marketing section within the Division consists of three individuals who are responsible for marketing the various venues by making potential users aware of City facilities and enticing marketing opportunities, including sponsorship and advertising. The unit’s ultimate goal is to maximize occupancy for all City venues. In order to accomplish these goals, the marketing section utilizes PROXY PARTNERS, LLC (Proxy).

In general, Proxy is responsible for all aspects of sponsorship and advertising sales for DPAC and the CCC including sales procurement and development, proposal writing and pricing, and sale closings. In addition to the actual sales function, Proxy is responsible for short-term contract development, negotiation, and execution. Short-term contracts must: be for terms of six months or less, be for an amount less than $499,999, and cannot be executed with the same vendor for two consecutive years. All short-term contracts must be approved and signed by the Director of Marketing and due to the agreement with Proxy, these contracts are exempt from the City’s standard procurement process. In 2009, sponsorship contracts averaged $70,000 and advertising contracts averaged $7,000.

Furthermore, Proxy conducts due diligence reviews and market research, post-sales analysis, site customer service which includes assistance in sponsorship set-up, handling customer service issues, and monitoring terms of contracts established by Proxy and the vendor. Proxy is paid for its services based on monies actually received from sponsorship sales, sponsor consultant fees, and reimbursement for expenses it incurs in delivering general sponsorship sales. Marquee sponsorship sales are not eligible for reimbursement.\(^4\) Expenses are not allowed to exceed 15% of the total cash sponsorship amount received from a sponsor. In 2009, Proxy was paid approximately $271,000 for advertising and sponsorship commissions.

**Centerplate** – The Division has a contract with Centerplate, one of the largest hospitality companies in the country. The original contract, initiated in 1989, expires in 2013. Centerplate provides food service to sporting events, entertainment events, and convention centers. They provide service to both the CCC and the DPAC. The contract requires Centerplate to pay the City a commission based on a percentage of sales of various products and services provided. In 2009, Centerplate’s sales totaled over $13 million.

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\(^4\) Marquee sales are defined in the contract as sales where the only benefit received by the sponsor is advertising or other content on the marquee signage owned by the City and the DPAC and CCC.
million with commissions to the City amounting to $2.7 million. Additionally, Centerplate is required to invest in various capital improvements throughout the term of the contract.

**Stagehand Employee Labor Union** – Stagehands for all of Theatres and Arenas venues and facilities are provided by the Denver Theatrical Stage, Film and Exhibition Employees Union #7 (Local 7). There are two collective bargaining agreements with the Local 7, one governing the DPAC and the other the CCC. As noted below, both agreements are managed by a third party contractor, SMG, on behalf of the City. There are 16 full time stagehands employed throughout the year between Theatres and Arenas’ DPAC and Coliseum/Red Rocks Amphitheatre. Additionally, the Local 7 is responsible for providing competent, qualified, and technically skilled stagehands as requested by the City.

**Colorado Convention Center**

The CCC is managed and operated by SMG. Founded in 1977, SMG is one of the leaders in venue management, marketing and development. SMG manages convention centers, as well as arenas, stadiums and other venues both nationally and internationally. Specific to the City and County of Denver, SMG facilitates management of the CCC, which includes maintenance, lead generation, tradeshow exposure and the attraction of shows and performances from both local and national sources. SMG also provides convention sales and marketing support on behalf of Theatres and Arenas.

The CCC had an operating loss of $2,163,962 for Fiscal Year End 2009. Studies have shown that convention centers rarely break even financially. For example, a 2006 survey conducted by the International Association of Assembly Managers showed only 7% of convention center managers expected to generate a profit. Although, monies spent by CCC visitors help support both local and state economies. In fact, Denver Travel Year’s May 2009 report stated that tourists and business visitors spent $230 million in 2007 at the city’s paid attractions and on other recreational and sight seeing activities. Business and marketable leisure visitors spent on average $102 and $96 per person per day, respectively. The Denver Alliance, which includes Theatres and Arenas, SMG, Visit Denver, Centerplate, and Hyatt Regency Hotel was created to help key stakeholders analyze and prepare for the various issues confronting the CCC and the City.

SMG and the Denver Metro Convention and Visitors Bureau, now known as Visit Denver, facilitate marketing and booking for the CCC. Specifically, SMG manages and books shows planned for less than 18 months away; Visit Denver schedules shows over 18 months. Visit Denver receives the majority of its support from the City’s 2.75% Lodger’s Tax. This appropriation totaled $11,206,916 in 2009. According to a third-party study commissioned by Visit Denver, the two most visited websites for the City are [www.Colorado.com](http://www.Colorado.com) and Visit Denver’s own [www.Denver.org](http://www.Denver.org).

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Denver Performing Arts Complex (DPAC)

The Theatres and Arenas Division operates three of the largest venues in DPAC, which includes the Ellie Caulkins Opera House, Boettcher Concert Hall, and the Temple Hoyne Buell Theatre. SMG manages union stagehand labor and payroll services for each of these venues. The DPAC regularly hosts the Colorado Ballet, the Colorado Symphony Orchestra, Opera Colorado, and the Denver Center for the Performing Arts’ theatrical divisions – Denver Center Attractions, the Denver Center Theatre Company and the National Theatre Conservatory.

The DPAC also houses Garner Galleria Theatre, the Conservatory Theatre and the Helen Bonfils Theatre Complex including the Stage, Space, Ricketson and Jones Theatres, and the Sewall Grand Ballroom, which are managed and booked by The Denver Center for the Performing Arts (DCPA). DCPA is a mix of Broadway shows, professional theatre, and provides amateur and graduate-level acting instruction.

Theatres and Arenas is responsible for the management and booking of events for the venues they operate at DPAC. There are several individuals involved with the booking of shows and events for the various DPAC venues. These include but are not limited to the Booking Specialist, Director of Operations, and Settlement Accountant.

The Booking Specialist is responsible for booking and scheduling events for various DPAC venues including developing and executing contract terms and price negotiations. The Booking Specialist is also responsible for ensuring all required contract obligations are met prior to an event, including obtaining an event deposit and a Certificate of Insurance, as well as signing the agreement. No event can occur without these minimum requirements being fulfilled.

The Theatres and Arenas Director of Operations oversees the use of the facilities, which includes supervision of the Booking Specialist, Event Managers, and Production & Guest Services. The Director of Operations also meets with members of Theatres and Arenas management to ensure all aspects of operations are managed efficiently.

Finally, Theatres and Arenas strives to invoice the promoter within two weeks after the event’s final performance date. The Settlement Accountant must ensure the final invoice or settlement sheet captures all expense detail and support documentation for the event including all related expenses incurred prior to or after an event which includes load-in and load-out activities. Ensuring all expenses have been captured in the final settlement sheet is crucial to avoid re-invoicing the promoter and the possible delaying of revenues due the City.
Booking agreements differ from regular contracts mainly due to the short duration of the events. As such, these agreements do not follow the same process as other City contracts. However, booking agreements still need the same signatures required per Executive Order 8, which includes: Initiating Authority, City Attorney, Mayor, Clerk & Recorder, Manager of Finance, and Auditor.

Theatres and Arenas employees directly manage the maintenance activities at the DPAC. Some of their primary responsibilities include HVAC repairs, painting, landscaping, and custodial work for booked events. Sub-contractors are used to perform specialized tasks such as elevator and fire system repairs.

Each venue within DPAC has an assigned supervisor who is responsible for ensuring proper maintenance and preventative maintenance schedules are completed. This is accomplished through regular preventive maintenance work such as filter and belt replacements, machine greasing, and inspections. Each supervisor is also responsible for the condition and any ongoing issues or concerns with specific venue equipment including plans for any anticipated repairs.

In addition, the plan and schedule for custodial activities is also driven by the various events. For custodial activities a detailed calendar is created that lists the event, venue, custodial staff, and hours needed. This allows supervisors to effectively plan for and manage custodial activities.

Benchmarking of Comparable Venues

As part of our audit, we conducted benchmarking and research activities that included examining convention centers and theatres similar to Denver’s, sending survey questionnaires, and analyzing recent industry reports, which included the 2009 Convention Center Report.7 The purpose of this methodology was to determine how the CCC and DPAC compared to similar venues throughout the nation in a number of areas.

Specifically, we inquired on whether the majority of venues were managed by a third party, how marketing and advertising sales were managed, if the venues were union represented, the event booking processes, and total employees.

According to the 2009 Convention Center Report, large convention centers (greater than 500,000 square feet) have used an exclusive third-party provider for catering and concession services. In fact, 94% of large convention centers have “exclusive contractors.”8 Similar to the large centers indicated in the report, the Colorado

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7 The 2009 Convention Center Report completed by PricewaterhouseCoopers included results of surveyed convention center management which included responses from 105 participating convention center in the United States, Canada, and Mexico. The survey information reports present results in both exhibit hall size and destination type.
8 Third-party provider for catering and concession services for events.
Convention Center utilizes Centerplate as their “exclusive contractor.” Additionally, the following is a breakdown of participating convention center management approaches:

- 35% are managed by a private company (similar to SMG)
- 23% are managed by quasi-public convention center authority
- 32% are managed by local government

Unlike the CCC, DPAC is very unique in that it houses and manages a cluster of venues. As such, it was difficult to conduct a true comparison of DPAC to other similar venues because of DPAC’s set-up, various square foot areas, utilization of full-time versus part-time staff and employees versus volunteers, demographics (which may effect the type of show from location to location), and limited survey responses and data regarding benchmarking of theatres.

Overall, our benchmarking and research activities were able to determine that the Colorado Convention Center’s operation is similar to other convention centers in regards to the services provided by a third-party as noted in Table 1 below. Our work also indicated that there are many factors that can influence where an event or show appears, such as city demographics, location, type of event, venue amenities, and promoter preference.

Some challenges that Theatres and Arenas encounters include: issues associated with market opportunities, competition regionally and nationally, changing economics of various touring products, age of facilities and user needs/requirements. These factors all affect an ever evolving set of operating conditions and approaches. Our survey resulted in the following data:

**Table 1: Convention Centers Benchmark Results**

<table>
<thead>
<tr>
<th>Venue</th>
<th>City Owned</th>
<th>Managed by 3rd Party</th>
<th>Union Represented</th>
<th>Marketing &amp; Advertising Sales Managed by 3rd Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado Convention Center</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Long Beach, CA - Long Beach Convention Center &amp; Entertainment Center</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>San Francisco, CA - Moscone Convention Center</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Atlanta, GA - Georgia World Congress Center</td>
<td>*</td>
<td>*</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>San Antonio, TX - Henry B. Gonzalez Convention Center</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

* Owned by the State of Georgia and operated by the Georgia World Congress Center Authority.
Table 2: Theatres Benchmark Results

<table>
<thead>
<tr>
<th>Venue</th>
<th>City Owned</th>
<th>Managed by 3rd Party</th>
<th>Union Represented</th>
<th>Marketing &amp; Advertising Sales Managed by 3rd Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denver Performing Arts Complex</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>San Diego, CA - San Diego Civic Theatres and Balboa Theatre</td>
<td>Yes</td>
<td>**</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Detroit, MI - Detroit Opera House</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

** The San Diego Theatres is a 501 (c) 3, non-profit, public benefit corporation. San Diego Theatres is a subsidiary corporation of the San Diego Convention Center Corporation that manages the San Diego Convention Center and is a non-profit agency of the City of San Diego.
SCOPE

This audit examined and evaluated the management and operations of the Theatres and Arenas Division. This included a review of financial data, contract monitoring practices, and venue promotion and management. The audit period was January 1, 2009 through December 31, 2009. In addition, we conducted an evaluation of the most up to date policies and procedures.

OBJECTIVE

The objective of this audit was to determine if Theatres and Arenas effectively managed City venues, monitored and established booking agreements and contracts, and maximized revenues to the City.

METHODOLOGY

We utilized several methodologies to achieve the audit objectives. These evidence gathering techniques included, but were not limited to:

- Reviewing City rules and regulations
- Interviewing Theatres and Arenas’ management and staff
- Interviewing SMG Executive Management
- Interviewing Local 7 management and personnel
- Verifying Theatres and Arenas maximized utilization of City venues
- Reviewing financial data compiled and maintained by Theatres and Arenas, SMG, and select third party contractors
- Reviewing contract requirements and amendments
- Verifying evidence of contract compliance
- Ensuring Theatres and Arenas maximized and accounted for all revenues to the City
- Researching best practices and performance measurements
- Conducting benchmarking to similar sized venues in cities and counties from around the country.
Theatres and Arenas Division Management Should Take Action to Address Substantive Management Deficiencies

Audit work identified significant management deficiencies within Theatres and Arenas. Specifically, Division management is not effectively managing certain provisions of the $13 million dollar annual anchor concessionaire contract. Further, Division payroll processes are inefficient and strained labor relations exist between Theatres and Arenas management and the Local Stagehand Union. This friction has resulted in an active government investigation by the U.S. Department of Labor. Finally, audit testing indicated booking agreements are not executed in accordance with Executive Order 8 resulting in unnecessary legal risks for the City.

Audit work also determined that Theatres and Arenas management do not maintain performance measures and related data. Such measures, especially related to revenue maximization and customer relations, are critical for assessing the performance of the Division and for identifying opportunities for improvement and possible revenue enhancement. Currently, Division management primarily judge agency performance based on the level of General Fund support required to maintain operations. Unlike prior years, Theatres and Arenas does not require support from the City’s General Fund to operate, therefore Division management considers the Division’s performance to be successful.

Audit work determined that this sole performance measure is not sufficient to assess Division performance and to identify areas for improvement. Specifically, as a result of the current strained economic state of the City, Theatres and Arenas management should focus on maximizing revenues. City owned entertainment venues should continually be monitored and assessed to determine if revenues can be enhanced. Theatres and Arenas management should conduct a cost benefit analysis of venue revenue streams, including: sponsorship, advertising, concessions, merchandise, and booking revenue. If the results are not favorable, Theatres and Arenas should develop revenue maximizations strategies that could include co-sourcing or outsourcing the management of selected venues. Regardless of the results of the analysis, Division management should develop and maintain performance measures focused on venue revenue maximization going forward.

FINDING 1

Theatres and Arenas Improperly Monitored a Key Contract and is Unable to Determine if the City is Being Paid Properly

Audit work determined that Theatres and Arenas management does not monitor the Centerplate contract for revenue amounts and commissions paid to the City. The current Centerplate contract requires the concessionaire to pay the City directly. Instead Centerplate currently provides revenue payments for the Colorado Convention Center (CCC) directly to SMG, a third party contractor utilized by the City. SMG uses these
payments to offset operating expenses. Division management is aware that Centerplate does not pay the City directly but does not believe this non-compliance with contract terms is problematic. However, the risk of Centerplate incorrectly reporting revenue and commissions is increased since payments are not being made directly to the City and because of the lack of monitoring by Theatres and Arenas. SMG does not manage the Centerplate contract and is not required or obligated to ensure revenue and commissions are accurate.

Inadequate Monitoring of Commission Payments from Centerplate

Auditors conducted detailed revenue testing of Centerplate events at both CCC and Denver Performing Arts Complex (DPAC). Audit work found that the Division does not monitor Centerplate’s revenue collection and remittance process. Specifically, commission payment records were incomplete because event files did not contain supporting documentation such as receipts and deposits for each day of the event. In addition, Daily Event Summaries did not consistently reconcile with Weekly Sales and Cash Reports. As a result, auditors were unable to verify that accurate commission payments have been paid to the City. In addition, when the Auditor’s Office requested copies of the statement of income, the Division was only able to provide an email acknowledging receiving the reports but could not provide the actual statements. As such, it is clear that the Division is not monitoring this revenue-related process.

Therefore, not only is Theatres and Arenas management not properly monitoring the contract, the Division is out of compliance with Executive Order 8 Section VI, which holds that, responsibilities of the Initiating Authority includes:

- Ensuring that the terms of the contract are met.
- Monitoring the contract for the life of the contract.
- Ensuring that the bonding and insurance requirements continue to be met throughout the life of the contract.
- Reporting contract performance as required.
- Ensuring that the contract is paid in a timely manner.

Although Theatres and Arenas has a Contract Administrator it appears the Division lacks an effective process for monitoring contracts.

Non Compliance with Capital Improvement Contract Terms

Theatres and Arenas management failed to properly monitor and document capital improvements made by Centerplate as required by contract. Specifically, the contract requires Centerplate to expend a total of $2.5 million dollars on capital improvements for CCC and DPAC. Records show that Centerplate received the approval of the Finance
Director of Theatres and Arenas to expend a total of $2,620,000. Theatres and Arenas management believes that Centerplate has met the capital commitment due to the excess approval amount provided and have requested that Centerplate update their accounting records supporting the investment. However, documents provided to the Auditor’s Office indicate that Centerplate has only accounted for a total of $2,075,196, leaving an additional $424,804 in required capital improvement expenditures due by June 30, 2010 per contract terms. As a result, Theatres and Arenas management cannot verify that Centerplate has fully complied with the contract capital improvement requirements.

Additionally, auditors found that the Division either did not record or did not record in a timely manner assets acquired by Centerplate. Two previous audits conducted by the Auditor’s Office found that Theatres and Arenas failed to properly account for various city assets. For example, the Aramark Audit issued in January of 2010, stated “Theatres and Arenas failed to conduct a thorough asset inventory and correct their asset listing which is required for review every year by the Controller’s Office to ensure assets are accurately recorded on the City’s year-end financial statements. The failure to properly record, label and inventory assets does not comply with City Fiscal Accountability Rules.” Based on prior and current audit work it has been determined that the Division fails to conduct an assessment of capital improvement requirements and properly monitor City assets and instead relies solely on the concessionaires’ self-reported information.

The Division’s inability to fully resolve these issues is of great concern. The absence of an adequate contract monitoring process and improper management and safeguarding of assets has resulted in terms of the contract not being met and assets not being accounted for properly. These control weaknesses increase risks that the City is not receiving all improvements and assets required of concessionaires.

Theatres and Arenas Lacks Effective Guidance and Policies and Procedures for Managing the Special Revenue Fund

The Division lacks adequate guidance regarding accounting procedures for managing the Special Revenue Fund (SRF). SRFs account for revenue sources that are restricted by law or administrative action to expenditures for specific purposes. The primary sources of revenue are federal, state, local and private grants. The SRFs are separated by source of fund but the City’s Budget and Management Office (BMO) views them as part of the overall operating budget. Theatres and Arenas operates many SRFs. Auditors specifically reviewed the Colorado Convention Center’s SRF. The following chart shows the process of money flow from the SRF to SMG.

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9 Additional information regarding Theatres and Arenas Division audits performed by our office: Aramark Sports and Entertainment Services, Inc. Red Rocks Amphitheatre Location, January 2010 and Department of General Services Theatres and Arenas Division Review and Evaluation of Internal Controls and Compliance Audit, November 2006. These audits are available online at: www.denvergov.org/auditor.
According to the contract between the City and County of Denver and SMG, the City is responsible for the operating costs of the CCC. SMG, a component unit of CCC SRF 15607, had a cash balance of approximately $4.2 million for 2009. Additionally, the SMG CCC financial statements retained an accumulated General Fund transfer balance of $465,588. SMG’s external auditors advised the Division and SMG to maintain excess cash in the SRF to cover operating expenses, which may include advanced deposits and accounts payable. However, an analysis has not been performed to determine the amount that should be maintained, whether the balance should be capped, or if transfers should occur on an as needed basis. Although the transfer of monies from the SRF back to the General Fund would require a special ordinance, it is in the best interest of the City to either transfer the additional money back to the General Fund so that the City earns the interest or ensure that the following year General Fund transfers are reduced to account for the existing capital.

In addition to unclear guidance related to excess cash in the SRF, auditors found that the current contract indicates the City is to reimburse SMG for operating expenses such as,
payroll, repair and maintenance, and utilities. Previously, Theatres and Arenas reimbursed SMG for all of CCC’s operating expenses through the SRF. In 2009, SMG paid $2,708,018 in utilities, one of their largest operating expenses. Theatres and Arenas began paying CCC’s utilities to prevent SMG from having sales tax assessed but the contract was not amended to reflect this change in practice. Theatres and Arena’s takeover of responsibility for this expense in 2010 will allow SMG to generate an operating surplus, which they will remit to the City using the established Colorado Convention Center Special Revenue Fund.

Auditors met with the Treasurer’s Office to verify the reassignment of utility costs is compliant with relevant City tax requirements. The Treasurer’s Office confirmed that the City conducted a Tax Compliance audit of SMG. The audit found that since SMG is not a tax-exempt entity they are required to pay taxes on all purchases. Therefore, the Treasurer’s Office recommended Theatres and Arenas assess purchases made by SMG to determine the best course of action for the City. Subsequently, as noted, Theatres and Arenas management elected to take over payments of utilities because of the high costs. The Treasurer’s Office confirmed this reassignment is allowed because the City owns the CCC and SMG is only a contract management entity. As a result, Ordinance No. 222 was created to allow SMG to deposit money they receive from events into the SRF. However, utilities are paid directly from the SRF instead of as a reimbursement to SMG, meaning the current contract is not in alignment with the ordinance. Due to the high dollar amount of the utility expense, and the impact involved regarding SMG now generating an operating surplus, the contract should be amended to accurately reflect the new payment structure.
RECOMMENDATIONS

We recommend Theatres and Arenas improve its contract monitoring processes. We offer the following recommendations to improve this oversight process:

1.1 Theatres and Arenas management should conduct a cost benefit analysis of venue revenue streams, including: sponsorship, advertising, concessions, merchandise, and booking revenue. If the results are not favorable, Theatres and Arenas should develop revenue maximizations strategies that could include co-sourcing or outsourcing the management of selected venues. Regardless of the results of the analysis, Division management should develop and maintain performance measures focused on venue revenue maximization going forward.

1.2 The Theatres and Arenas Contract Administrator should implement policies and procedures to ensure all investment and statement of income contract requirements are met by concessionaires.

1.3 The Theatres and Arenas Contract Administrator should conduct a thorough review of Centerplate’s revenue process to make certain commission payments are complete and accurate.

1.4 The Theatres and Arenas Finance Director should initiate an amendment to the Centerplate contract to properly reflect that commission payments are remitted to SMG in order to offset Colorado Convention Center operating expenses.

1.5 The Theatres and Arenas Finance Director should communicate with the Budget and Management Office and SMG to determine a specified amount of cash, based on historical operating expenses, which should be maintained in the Colorado Convention Center’s Special Revenue Fund. Any excess funds should be transferred to the City’s General Fund or future General Fund transfers should be reduced to offset the surplus.

1.6 The Theatres and Arenas Finance Director should amend the current SMG contract to properly document the reassignment of utility payments at the Colorado Convention Center from SMG to Theatres and Arenas. In addition, a specific reimbursement timeframe should be implemented.

1.7 The Theatres and Arenas Finance Director should ensure the remaining $424,804 in capital improvements to the Denver Performing Arts Complex and Colorado Convention Center are completed as soon as possible.

1.8 The Theatres and Arenas Finance Director should follow City Fiscal Accountability Rules 4.2 and 4.3 by properly recording assets as they are acquired and obtain asset proof of payment from Centerplate in a timely manner.
FINDING 2

Strained Labor Relations May Have Contributed to an Active Government Investigation and Inefficient Payroll Processes Exist

Audit work found that a lack of communication and undefined roles between stakeholders involved in satisfying labor requests and payroll processing hinders effective management of these processes. An independent consultant reviewed these processes in 2008 but the Division has not implemented any of the consultant’s recommendations for enhancing these processes. These recommendations included defining clear roles and responsibilities and improving communication flow and working relationships between each entity. As a result, issues identified by the consultant’s report remain. Additionally, the U.S. Department of Labor has initiated an investigation of DPAC’s payroll practices due to grievances filed by DPAC stagehands.

Lack of Communication Contributes to Staffing Issues

Ineffective communication between the various stakeholders involvement in stagehand staffing has resulted in conflict. For instance, the Division communicates directly with Production Shows management but not with the Local 7, which provides stagehand labor. As a result of the current procedures, the Division must submit all requests for stagehands through SMG. Theaters and Arenas personnel attempt to review labor requests with the House Crew (full-time permanent stagehands) before the show arrives. However, any official changes to crew calls must filter through all the various parties, which can lead to a breakdown in timely communication. For example, a June 2009 showing of Rent resulted in a dispute on the number of required stagehands and parties did not reach resolution before the show arrived. In fact, audit work found that the Division and the Local 7 continue to disagree on the final disposition of this crew call.

In accordance with the contract, Theaters and Arenas requires SMG to format payroll reports in an Excel spreadsheet that can be reviewed for potential discrepancies. However, the current format is not compliant with SMG’s payroll processing system, resulting in additional and unnecessary work activities. Additionally, this particular format may increase inefficiencies and risks because it introduces another step in the process, is conducted manually and may introduce errors into the transaction.

In addition, the payroll process is time consuming for both SMG and the Division and at times results in disagreements on final payroll billing and invoicing. For example, Theaters

Recommendations from an independent study were not implemented by Theaters and Arenas

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10 A crew call is the formal document Theaters and Arenas uses to request stagehands through SMG.
and Arenas Operations Management may dispute SMG’s interpretation of stagehand pay rates as defined in their collective bargaining agreements with the Local 7. In some cases, SMG has already paid stagehands for services performed and is seeking an expedient reimbursement from the Division. Although reimbursements are often received in a timely manner, Theatres and Arenas’ reconciliation process may identify discrepancies for amounts already remitted to SMG; therefore, additional follow-up and reconciliation is required.

In 2008, SMG, on behalf of Theatres and Arenas, hired an independent consultant to review and assess the stagehand labor request and payroll process and to recommend areas for improvement. The consultant recommended that Theatres and Arenas allow SMG to either bill the shows directly or be allowed to process and invoice the Division using the same system. Local 7 officials noted there have been no grievances filed at the Colorado Convention Center where SMG manages the payroll process in its entirety using this recommended process.

No Significant Changes to the Payroll Process Despite On-Going Issues

Despite the consultant’s prior recommendations and on-going problems, Division management maintains managerial and review control of stagehand billing before it is presented to the shows for final invoicing. They perform this same review for other vendors, such as Police and Fire. Division management disagrees that SMG’s payroll system can provide sufficient detailed information to allow for adequate review during payroll processing. Audit work noted that SMG’s system is based on manual timecards completed by individual stagehands, which are then converted into automated billing codes. As a result, some discrepancies in the payroll process may be inherent to this manual process. However, SMG maintains their system is compliant with Generally Accepted Accounting Principles and capable of providing the necessary back up support. SMG also provides reports generated directly from their payroll system to their clients for payroll processing at the CCC. Therefore, the additional support required by the Division may be extraordinary and unnecessary in order to provide accurate billing.

Audit work determined that the roles and responsibilities between stakeholders as it pertains to contract compliance, scheduling, and dispute resolution remain undefined. The Stagehand Process & Procedure Study found ambiguity in the contract between SMG and Local 7 caused confusion of which entity manages and interprets the contract (SMG or the City). The study found that this confusion results in issues and resentment by all parties. The study also reported that communication paths are inconsistent and information is not always transferred in a complete and timely manner. Additionally, the Division is the only party that has direct contact with Production Show Management. SMG must depend on the Division to provide accurate and timely information concerning stagehand and crew call requests. Theatres and Arenas management noted that SMG is welcome to attend production meetings; however, SMG believes more direct contact with the shows would improve service and minimize disputes.

Payroll Issues Impact all Stakeholders

The independent consultant study cost the City an estimated $30,000. Despite the report’s findings there were no major process changes and no recommendations were implemented. As a result, these underlying issues may have contributed to the complaint and on-going investigation of SMG’s Local 7 payroll overtime practices by the U.S. Department of Labor. The investigation is reviewing pay practices that have been in place within the City for over 50 years. At the close of the audit, the final disposition and cost of this investigation had not been determined. Nevertheless, the strained relations and unclear roles concerning stagehands and payroll processing and reimbursement remain.

RECOMMENDATIONS

We offer the following recommendations to assist Theatres and Arenas with the labor request and payroll processes.

2.1 The Theatres and Arenas Director of Operations should meet with SMG to develop a streamlined billing and invoicing payroll process that works efficiently for both parties.

2.2 The Theatres and Arenas Director and Director of Operations should meet with SMG to define clear roles and responsibilities pertaining to contract compliance, scheduling and dispute resolution.

2.3 The Theatres and Arenas Director of Operations should conduct periodic meetings (weekly or monthly) with SMG to increase communication and ensure all parties are collaboratively involved in developing labor requests for each show.

12 The scope of the investigation is limited to SMG’s Collective Bargaining Agreement with the Local 7 pertaining to DPAC, Red Rocks Amphitheatre and the Denver Coliseum. The Colorado Convention Center, which is governed by a separate agreement, is excluded.
FINDING 3

Many Booking Agreements are in Violation of Executive Order 8 and Related Policies and Procedures are Vague and Need Improvement

Audit work identified several areas surrounding booking agreements that need improvement. According to Executive Order No. 8, “Contracts are considered one of the highest administrative priorities within the City.” However, during the review of 14 booking agreements auditors determined that the date of execution on 43% of agreements occurred after the event started. The official date of execution is when all of the authorizing signatures, including the Mayor’s and Auditor’s have been obtained. Conversely, Theatres and Arenas management considers a contract executed once the promoter signs the contract. Auditors were unable to verify the actual date the promoter signed the agreement because a date was not included with the signature.

According to Theatres and Arenas management, the reason for the lack of compliance with Executive Order 8 regarding the execution date is due to the substantial amount of time it takes to have the booking agreement signed by the proper authorities. However, a majority of events are planned and advertised well in advance so there is an adequate amount of time to process the booking agreement.

Furthermore, auditors discovered several instances where event fees had been waived. According to Division management, fees are waived for long standing customers. However, audit work noted inconsistencies and a lack of supporting documentation related to these fee waivers. Therefore, with no established criteria surrounding waiving fees in the Theatres and Arenas policy and procedures manual the opportunity for misconduct and fraudulent activity related to these fees is increased.

Lack of Compliance with Executive Order No. 8 and Inadequate Criteria and Documentation for Fee Waivers Places the City at Risk

Inadequate documentation and the lack of criteria surrounding booking agreements may have negative impacts for the City. For example, City management cannot effectively monitor the processing of contracts without the ability to track the progress and may be at a disadvantage if any legal issues arise. Currently, the date the promoter signs the contract is considered the execution date and the Division allows the promoters to start moving in to the venues at that time. As noted, this practice is not in accordance with the execution date determined by Executive Order 8, which is the date the City’s authorizing signatures are obtained. As a result, the City is at a risk of losing revenue if events are not executed properly.

Although audit work did not identify any misconduct or fraudulent activities, having a specific and detailed set of criteria related to waiving fees protects employees, customers, and the City. In fact, the median loss due to fraud and abuse across the

13 Audit work found 21% of the booking agreements tested had deposit fees waived that amounted to approximately $7,000.
nation costs an organization an average of $160,000 and Corruption in Government and Public Administration accounts for approximately 32.4%\(^\text{14}\). Thus, the importance of executing booking agreements properly and establishing a specific and detailed set of criteria related to waiving fees, including sound internal controls, is essential.

**RECOMMENDATIONS**

We offer the following recommendations to assist Theatres and Arenas improve policies and procedures governing booking agreements.

3.1 The Theatres and Arenas Director of Operations should ensure booking agreements are properly executed in accordance to Executive Order 8, prior to the occurrence of events.

3.2 The Theatres and Arenas Director of Operations should enhance the policies and procedures related to waiving fees. The policy should include the following:

- Criteria for fees to be waived to provide consistency.
- Support documentation required to waive fees, which includes an authorized signature.

\(^{14}\) James D. Ratley, President ACFE, 2010 ALGA Conference, Fraud in Government presentation and Association of Certified Fraud Examiners, 2010 *Report to the Nations on Occupational Fraud and Abuse.*
December 3, 2010

Mr. Kip R. Memmott, MA, CGAP, CICA
Director of Audit Services
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept 705
Denver, Colorado  80220

Dear Mr. Memmott:

This letter provides a written response for each reportable condition noted in the Auditor’s Report final draft that was sent to us on November 9, 2010. This response complies with Section 20-276 (b) of the Denver Revised Municipal Code (DRMC).

The Office of the Auditor conducted a performance audit of Theatres and Arenas’ Management and Operations for the audit period beginning January 1, 2009 through December 31, 2009. The audit examined and evaluated the management and operations of the Theatres and Arenas Division (the “Agency”), including a review of financial data, contract monitoring practices, and venue promotion and management. In addition, the auditors evaluated current agency policies and procedures.

With a staff of 59 full-time employees and several contract service providers, the Agency oversees the management of seven venues. Those venues are: the Colorado Convention Center (“CCC”), Boettcher Concert Hall, the Temple Hoyne Buell Theatre, the Ellie Caulkins Opera House, Crossroads Theatre, the Denver Coliseum and Red Rocks Amphitheatre. During the period of the audit, Theatres and Arenas recorded record revenues, hosting over 2.5 Million patrons who enjoyed a diverse offering of events in a schedule that included more than 930 events.

With the exception of the Colorado Convention Center, the agency generated an operating surplus for the City, which resulted in the Agency needing no General Fund support. Management accomplished this goal in the face of the collapse of the corporate sponsorship market nationwide by retaining over $1 million in venue sponsorships during 2009, a program that is unique among cities that own and operate cultural and entertainment venues. At the same time, the Agency worked with constituent arts organizations to ensure that none failed during the worst recession in recent memory.
During 2009, the CCC received LEED certification, an essential credential for convention marketing efforts. The CCC remains one of the busiest convention centers in the US and the operating deficit at the CCC is smaller than most, if not all, similarly-sized convention centers. In addition, the Sales and Use Taxes, Lodger Taxes, and FDA Taxes generated by visitors to the facility far exceed the debt service and operating deficit of the CCC, providing millions in surplus revenue to the City’s General Fund.

The Division of Theatres and Arenas continues to support Denver’s keystone goals of: living within our means; making the city a better to place to live and work; and providing high quality service to citizens and patrons.

AUDIT FINDING 1: Theatres and Arenas Improperly Monitored a Key Contract and is Unable to Determine if the City is Being Paid Properly

RECOMMENDATION 1.1: Theaters and Arenas management should conduct a cost benefit analysis of venue revenue streams, including: sponsorship, advertising, concessions, merchandise, and booking revenue. If the results are not favorable, Theatres and Arenas should develop revenue maximization strategies that could include co-sourcing or outsourcing the management of selected venues. Regardless of the results of the analysis, Division management should develop and maintain performance measures focused on venue revenue maximization going forward.

➤ RESPONSE/ACTION PLAN:
Theatres and Arenas management disagrees with this recommendation. The Agency’s publicly-stated mission does not include revenue maximization. Consistent with Denver’s goals and strategic outcomes, Theatres and Arenas mission includes: “enhancing civic life” through proper management of its venues; “making Denver a better place” by entertaining and educating citizens; and “promoting economic development” by stimulating private sector employment in the arts and entertainment sectors. Were the City to explore having the Agency outsource management of its venues to achieve a goal of maximizing revenue, the likely result would be the inability of key cultural assets of the city to thrive, e.g. the City’s opera, ballet and symphony. All of these entities benefit from the Agency’s current mission as it is translated through the day-to-day operation of the venues.

In the regular management of the venues, the Agency has a sophisticated cost accounting system that allows measurement of financial performance at both the venue and event level. When booking each event, the Agency uses discrete criteria such as: the supply of competitive venues the presenter has available; the opportunity to get added revenue from food and beverage sales and parking; seasonality; whether the presenter is for profit or non-profit, e.g. the Ballet.

Because of the high cost of upgrading and maintaining its many venues, the Agency (like all venue operators) has a significant incentive to generate revenue, which is necessary to operate and upgrade the facilities. This is a core financial driver for the Agency and always has been, so that would not change if the management of any of the venues were outsourced.
RECOMMENDATION 1.2: The Theatres and Arenas Contract Administrator should implement policies and procedures to ensure all investment and statement of income contract requirements are met by concessionaires.

➤ RESPONSE/ACTION PLAN:
Theatres and Arenas management agree with the recommendation. Attached to this letter is a memo documenting the agency’s policies and procedures to account for contract concessionaire’s capital improvements and cash grants to the agency. The Auditor is encouraged to comment on this policy and to recommend any improvements to the current policy and procedures. Also attached is the final schedule of the $3.5M capital improvements related to the current Centerplate contract amendment (RC9X011(5)). Finally, the Finance Director and the concessionaire are aware of the requirement to provide a statement of income and expense within 60 days of the fiscal year end in accordance with provision 8.1 of the contract.

<table>
<thead>
<tr>
<th>State your agreement or reason for disagreement with Recommendation</th>
<th>Target date to complete implementation activities (Generally expected within 60 to 90 days)</th>
<th>Name and phone number of primary individual responsible for implementation</th>
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</thead>
<tbody>
<tr>
<td>Disagree</td>
<td>Kent Rice, Director 720-865-4202</td>
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RECOMMENDATION 1.3: The Theatres and Arenas Contract Administrator should conduct a thorough review of Centerplate’s revenue process to make certain commission payments are complete and accurate.

➤ RESPONSE/ACTION PLAN:
The Agency agrees with the recommendation. The Auditor did not find a material misstatement in the commission payments to SMG or to Theatres and Arenas; rather the auditor’s staff was not able to tie out the commission payments to the concessionaire’s revenue records. According to the Auditor, the concessionaire’s incomplete records were responsible for the Auditor’s inability to verify whether the correct commission amounts were paid to the City for the audit period. The Agency’s Finance and

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Accounting staff members subsequently examined two of the events that the Auditor’s staff could not verify commission payments from the concessionaire’s revenue reports and were able to confirm the commission payments were accurate and in accordance with the contract terms and conditions. We did not conduct subsequent testing of all events reviewed by the auditor’s staff during the audit engagement.

The Agency’s Finance Director contacted the CPA firm that audits the gross receipts of the concessionaire at the CCC, DPAC, and the Limelight Café to request an expanded scope of the 2010 audit engagement to include commission payments in order to provide additional assurance that the 2010 payments are complete, accurate, and in accordance with the contract terms. The Agency Finance Director also requested an estimate from a different CPA firm to audit the concessionaire’s 2010 gross receipts and commission payments to evaluate the cost and benefit of the current concession audit. Finally, Theatres and Arenas and SMG management are implementing quarterly sample testing procedures of selected events to provide additional assurance that gross receipts and commission payments are properly recorded and reported. A copy of these new procedures is attached to this letter. The Auditor is encouraged to comment on these procedures and to recommend any improvements to the document.

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<tr>
<td>Agree</td>
<td>Audit of concessionaire’s gross receipts and commission payments will be complete by 1/30/2011; sample testing will be conducted on select events at the end of each fiscal quarter.</td>
<td>Colin Lewis T&amp;A Finance Director 720-865-4233</td>
</tr>
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</table>

RECOMMENDATION 1.4: The Theatres and Arenas Finance Director should initiate an amendment to the Centerplate contract to properly reflect that commission payments are remitted to SMG in order to offset Colorado Convention Center operating expenses.

> RESPONSE/ACTION PLAN:
The Agency agrees with the recommendation. Because food and beverage concession payments are an important component of the financial presentation of a convention center, these payments must be included in the financial statements of the CCC to fairly present the financial operations of the Center. Food and Beverage concessions represent important ancillary revenue that minimizes the operating deficit of the CCC. SMG, a private management company, currently oversees the operation of the CCC and maintains the accounting records for the Center. The current CCC management agreement was initiated after the original food and beverage concession contract with the City. As a result, Theatres and Arenas is amending the concessionaire’s original contract to require CCC food and beverage concession payments are paid directly to the management company and not the City.
The Agency initiated a Form 42 with the City Attorney to amend the concession contract to require the CCC concessionaire to pay qualifying food and beverage commissions to the manager of the CCC.

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<tbody>
<tr>
<td>Agree</td>
<td>The contract amendment will be fully executed by 2/28/2011</td>
<td>Colin Lewis T&amp;A Finance Director 720-865-4233</td>
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</table>

RECOMMENDATION 1.5: The Theatres and Arenas Finance Director should communicate with the Budget and Management Office and SMG to determine a specified amount of cash, based on historical operating expenses, which should be maintained in the Colorado Convention Center’s Special Revenue Fund. Any excess funds should be transferred to the City’s General Fund or future General Fund transfers should be reduced to offset the surplus.

➤ RESPONSE/ACTION PLAN:
Agency management agrees with the recommendation. Theatres and Arenas, BMO and SMG adopted a policy whereby the fourth quarter General Fund Transfer is delayed until after the fiscal year end when the CCC operating results, CCC utility expenditures, and management incentive payment are known and final working capital (current assets less current liabilities) is determined prior to determining the final transfer amount. This policy will enable BMO to reduce the General Fund transfer if SMG operating results exceed budget and/or if utility expenditure is less than budget and/or if working capital available is deemed sufficient to fund CCC operating activities. In summary, this policy will ensure the optimal GF support to SRF 15/07. The Auditor is encouraged to comment on this policy and to recommend any improvements to the document.

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<tbody>
<tr>
<td>Agree</td>
<td>2/7/2011 and each year thereafter</td>
<td>Colin Lewis T&amp;A Finance Director 720-865-4233</td>
</tr>
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RECOMMENDATION 1.6: The Theatres and Arenas Finance Director should amend the current SMG contract to properly document the reassignment of utility payments at the Colorado Convention Center from SMG to Theatres and Arenas. In addition, a specific reimbursement timeframe should be implemented.
RESPONSE/ACTION PLAN:
Agency management agrees with the recommendation. Theatres and Arenas and BMO recognize that it is in the best interest of the City to minimize utility expenditures and not pay sales tax for this expenditure if it can be avoided. As a result, Theatres and Arenas initiated a Form 42 with the City Attorney to amend the CCC management contract to explicitly state that the agency is responsible for paying utility payments through an annual appropriation in SRF 15607 and not the management company. The contract also was amended to state that each year the management company will budget and pay any CCC revenue surplus directly to the SRF 15607 to offset the cost of the utility payment and other CCC related expenditures after consulting with Theatres and Arenas management and the BMO. This new procedure will be incorporated into the annual appropriation cycle.

<table>
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<tbody>
<tr>
<td>Agree</td>
<td>2/7/2011 and each year thereafter</td>
<td>Colin Lewis T&amp;A Finance Director 720-865-4233</td>
</tr>
</tbody>
</table>

RECOMMENDATION 1.7: The Theatres and Arenas Finance Director should ensure the remaining $424,804 in capital improvements to the Denver Performing Arts Complex and Colorado Convention Center are completed as soon as possible.

RESPONSE/ACTION PLAN:
Agency management agrees with the recommendation. Agency Finance and Accounting staff met with the concessionaire to ensure all capital improvement accounting records are complete and sufficient accounting records are now available to support the remaining $424,804 was expended in accordance with the contract terms. Prior to the fiscal year end, Agency Finance and Accounting staff met with the Controller’s Office to ensure the assets are properly reflected in the City’s financial accounting records.

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<td>Colin Lewis T&amp;A Finance Director 720-865-4233</td>
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RECOMMENDATION 1.8: The Theatres and Arenas Finance Director should follow City Fiscal Accountability Rules 4.2 and 4.3 by properly recording assets as they are acquired and obtain asset proof of payment from Centerplate in a timely manner.
RESPONSE/ACTION PLAN:
Agency management agrees with the recommendation. It takes time to complete capital improvements in our venues to minimize conflicts with scheduled events. The timeline to finalize accounting for the improvements increases when expenditures are made by a third party and accounting records must be obtained from a third party. Theatres and Arenas management acknowledge the need to follow City Fiscal Accountability Rules 4.2 and 4.3 and account for all CIP and CEP expenditures on an annual reporting cycle.

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</table>
| Agree | Immediately | Colin Lewis  
T&A Finance Director  
720-655-4233 |

AUDIT FINDING 2: Strained Labor Relations May Have Contributed to an Active Government Investigation and Inefficient Payroll Processes Exist.

For clarification, the government investigation refers to a Department of Labor review of SMG payroll practices related to overtime calculation based on a complaint by an SMG stagehand employee.

RECOMMENDATION 2.1: The Theatres and Arenas Director of Operations should meet with SMG to develop a streamlined billing and invoicing payroll process that works efficiently for both parties.

RESPONSE/ACTION PLAN:
Agency agrees with this recommendation. SMG contracted with the Agency beginning in 2006 to be a service provider for stagehand labor. The billing arrangements for this have naturally fluctuated over time, with occasional disagreements about how best to simultaneously meet Agency needs and provide management efficiencies to SMG. The City's new P2P system will facilitate improvements in the payment of stagehand payroll reimbursements. Additionally, there is a new stagehand contract and over the next several months, the Agency will collaborate with SMG to facilitate communication in the implementation of the new work rules.

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</tr>
</thead>
</table>
| Agree | 03/31/11 | Tad Bowman  
720-865-4244 |
RECOMMENDATION 2.2: The Theatres and Arenas Director and Director of Operations should meet with SMG to define clear roles and responsibilities pertaining to contract compliance, scheduling and dispute resolution.

RESPONSE/ACTION PLAN:
Over time, the parties have addressed a number of issues such as timing and review of invoices, work rule interpretations, and the roles of both day to day personnel and upper management. Now that the audit has pointed out this deficiency, it’s reasonable to address this matter at the same time as we resolve the issue identified in 2.1.

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<td>03/31/11</td>
<td>Tad Bowman 720-865-4244</td>
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RECOMMENDATION 2.3: The Theatres and Arenas Director of Operations should conduct periodic meetings (weekly or monthly) with SMG to increase communication and ensure all parties are collaboratively involved in developing labor requests for each show.

RESPONSE/ACTION PLAN.
Agency management agrees with this recommendation. The parties have developed procedures to assist in the communication of labor calls. SMG has instituted special forms used for this purpose which have been adopted by Theatres and Arenas production personnel. In addition to these forms, the Theatres and Arenas and SMG personnel use emails, mobile and landline telephones, and face-to-face meetings to communicate labor calls. Most important, the Agency has instituted monthly meetings with relevant levels of management at both the Agency and SMG.

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<tr>
<td>Agree</td>
<td>11/30/10 and ongoing</td>
<td>Tad Bowman 720-865-4244</td>
</tr>
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AUDIT FINDING 3: Many Booking Agreements are in Violation of Executive Order 8 and Related Policies and Procedures are Vague and Need Improvement

RECOMMENDATION 3.1: The Theatres and Arenas Director of Operations should ensure booking agreements are properly executed in accordance to Executive Order 8, prior to the occurrence of events.
RESPONSE/ACTION PLAN:
Agency management partially agrees with this recommendation. Theatres and Arenas agrees that it should and will review its booking agreement policies and procedures to ensure that booking agreements are issued in a timely manner to its clients to best facilitate the full execution of the agreements prior to the occupancy of the Theatres and Arenas venues by the tenants. However, due to the nature of the industry, we cannot ensure all booking agreements will be fully signed by the City prior to an event. Even if we send contracts immediately upon agreeing to terms, there is no means to ensure that our clients will return the contract in a timely manner. The Agency does enforce a policy that no tenant can move into one of its venues until that party has signed the required booking agreement, paid required deposits and provided appropriate certificate of insurance.

We disagree with the statement that the Agency is not booking events in accordance with Executive Order 8. Executive Order 8, Section 6.2 specifically excludes “Rental agreements for the booking of specific events into city facilities (venues) for periods of thirty days or less Charter Section 3.2.6(D).”

<table>
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<th>Name and phone number of primary individual responsible for implementation</th>
</tr>
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<tbody>
<tr>
<td>Partial agreement</td>
<td>The updated booking agreement policy and procedures 2/17/2011</td>
<td>Tad Bowman 720-865-4244</td>
</tr>
</tbody>
</table>

RECOMMENDATION 3.2: The Theatres and Arenas Director of Operations should enhance the policies and procedures related to waiving fees. The policy should include the following:
- Criteria for fees to be waived to provide consistency.
- Support documentation required to waive fees, which includes an authorized signature.

RESPONSE/ACTION PLAN:
The Agency disagrees with item one and agrees with item two in this recommendation. Regarding item one, the Auditor noted rent waivers for DPAC tenants. Most of these exceptions were granted for not-for-profit organizations that expanded the diversity of the event offerings in the theatres. Because our agency mission is to support these organizations, the infrequent rent waivers noted are within the discretion of agency management and consistent with the agency mission, but difficult to capture in policy and procedure documents. The Agency relies on the Director of Operations to oversee the negotiation and approval of non-standard deals in the best interest of the agency—based on ancillary revenue, competitive offers available to the promoter, seasonality and so on. Using a specific set of criteria for booking every event is very problematic, given the event booking milieu described in Finding 1.1.
With regard to item two, the Agency agrees that it can be more systematic in documenting the approvals. This includes ensuring that each booking agreement is signed by the agency Director of Operations prior to being routed for other city signatures. Additionally, the agency Finance Director monitors and tracks the revenues and expenses from each booking agreement and prepares reports for review by the agency director. The Agency has instituted a new policy that requires all rental waivers to be signed by the Agency Director.

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<td>11/30/10</td>
<td>Tad Bowman 720-865-4244</td>
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</table>

Please contact Kent Rice at 720 865 4202

Sincerely,

[Signature]

Kent Rice
Director, Theatres and Arenas

cc: Jack Finlaw, Mayor’s Office
    Tad Bowman, Director of Events
    Colin Lewis, Director of Finance
    Ed Scholz, Budget Director
Date: November 1, 2009,

TO:        Jack Finlaw, Tad Bowman, Pat Vasquez, Joe Truong,
FROM:     Colin Lewis, Director of Finance
RE:       Accounting for Concession Contract Asset Purchases (Aramark and Centerplate)

The purpose of this memo is to document Theatres and Arenas policies and procedures for accounting for capital improvements, equipment and other asset purchases made using grant funds provided by food and beverage contract concession partners (Aramark and Centerplate).

Theatres and Arenas oversees food and beverage concession contracts with Aramark (RC 55005 and RC 31020) and Centerplate (RC 9X011) that require each concessionaire to make specific, mutually agreed upon capital investments at recommended times during each contract term. Prior to initiating a capital improvement, equipment, or asset purchase, the concessionaire must first submit a letter to the Director of Theatres & Arenas (or his/her designee) with a description of the proposed purchase and an estimated amount of the purchase. Once the purchase or investment is approved, the concessionaire acquires the asset and retains a record of the final invoice amount and proof of payment. These accounting records are to be kept on site in the concessionaire’s office for review by Theatres and Arenas or other City personnel.

Upon receiving documentation that the concessionaire has completed the contractual investment, equipment, or asset purchase, Theatres and Arenas accounting personnel must ensure that the fixed asset is properly accounted for, inventoried and safeguarded throughout its useful life, and properly accounted for at the time of disposal. The agency Controller and Fixed Asset Custodian will ensure that all capital improvements and purchased assets are accounted for in accordance with Fiscal Accountability Rules 4.2 – Fixed Assets and 4.3 – Capital Improvement Projects. When appropriate, agency accounting staff will complete an Asset Input Form or Capital Asset Reporting Form, including all relevant supporting documentation, and submit to the Controllers’ Office to enter the assets into the PeopleSoft Asset Management system.

At least annually, the agency controller and Fixed Asset custodian will review each concession contract capital accounting report to ensure that the requisite investment was made in accordance with the contract terms and conditions and that the assets are properly reflected in the PeopleSoft Asset Management (PS AM) system.

At least annually (mid-year), the Fixed Asset Custodian will review the annual inventory report for all agency assets and compare to the contract investment accounting reports, reconciling any differences. Any additions should be included on an Asset Input Form and any retirements should be included on a Surplus Property Form 13. In addition, all tracked assets purchased from concession grant funds will be inventoried and tagged to ensure that they are included in the Report of Annual Physical Inventory of Fixed Assets (Form PS5).
DATE: November 28, 2010
TO: Kent Rice, Director, Pat Vasquez, Controller
FROM: Colin Lewis, Director of Finance
RE: General Fund Transfer to SRF 15607 – The Colorado Convention Center

The purpose of this memo is to document Theatres and Arenas policies and procedures concerning limited testing of Centerplate food and beverage concession gross receipts and commission payments. The objective of the testing is to provide reasonable assurance that cash receipts are complete and accurate in accordance with the terms and conditions of the concession contract.

Scope of Examination

At the end of each fiscal quarter, Theatres and Arenas Finance and Accounting personnel will selectively choose events from the concessionaire's monthly DPAC and Limelight gross receipts and commission report and perform the procedures described below.

- Review the Banquet Event Order (BEO) Summary report to ensure it is completed for all revenue collected and billed for selected event.
- Review the Catering Summary Report and verify that it includes all BEO's by customer for the daily sales, including the selected event.
- Review the Daily Sales Summary Report, agreeing the total revenue by customer for the selected event.
- Review the Weekly Sales & Cash Report and agree amounts from the selected event. Trace and agree amounts to bank deposit slips.
- Review the Weekly Sales report and agree amounts from the Weekly Sales & Cash report for the selected event.
- Review the Commissions Monthly Event Recap report and agree amounts from the selected event.

It is important to note that these procedures rely on records and data generated by the concessionaire. Agency personnel will document testing in writing. These procedures are limited in scope and testing may not necessarily disclose all significant errors, fraud, or other illegal acts that may exist.
DATE: November 28, 2010
TO: Kent Rice, Director
CC: Ed Scholz, BMO
FROM: Colin Lewis, Director of Finance
RE: General Fund Transfer to SRF 15607 – The Colorado Convention Center

The purpose of this memo is to document policies and procedures concerning General Fund transfers to SRF 15607 to support Colorado Convention Center (CCC) operating deficits, other related expenditures, and working capital requirements.

Background

SMG is the private management company that oversees the Colorado Convention Center on behalf of Theatres and Arenas through contract CE93003. SMG’s CCC financial operations are reported as a component of Special Revenue Fund 15607 and are audited by EKS&H each year. Prior to 2010, SMG CCC operating revenues were less than expenditures, resulting in an operating deficit that was funded by a transfer from the City’s General Fund to SRF 15607 and subsequent transfer to SMG. In addition to the SMG CCC component, SRF 15607 also includes appropriated expenditures for CCC capital equipment purchases, SMG’s annual incentive compensation payment, and other miscellaneous intergovernmental expenses.

After a 2008 sales and use tax audit of SMG at the CCC, the City’s Treasury Department determined that the CCC utility expenditure was subject to sales and use tax if paid by SMG because the management company was not an exempt tax payer. Theatres and Arenas management, in consultation with the Treasury Department, determined that no sales and use tax was due if the CCC utility expenditures were paid directly from SRF 15607 to the utility provider. As of 1/1/2010, SMG no longer pays the CCC utility invoices, which results in a net revenue surplus from SMG CCC operations (CCC revenues are now greater than operating expenses). Theatres and Arenas is amending the management agreement with SMG to document the utility payment change and to require SMG to transfer the annual revenue surplus to SRF 15607 to fund CCC utility expenditures, thereby minimizing General Fund support of the CCC.

GF Transfer to SRF 15607

The GF transfer to SRF 15607 occurs in four equal quarterly payments through the year. As of 12/31/2009, the accumulated transfers from the City’s General Fund to SRF 15607 were almost equal to the amount required to fund CCC operating deficits and expenditures in SRF 15607. This is evidenced by a small deficit fund balance for SRF 15607 of $14,025 as of 12/31/2009.

Each year, BMO, Theatres and Arenas, and SMG prepare an operating forecast for SRF 15607 that includes SMG’s estimate of CCC revenues and expenditures, Capital Equipment, SMG’s annual incentive fee, and the CCC annual utility expenditure. Furthermore, it is necessary to ensure adequate cash and working capital exists in the CCC component of SRF 15607. In 2007, SMG’s external auditor EKS&H recommended that SMG should maintain sufficient cash balances to ensure that advance deposit collections were not used to fund CCC operating expenditures because of the requirement to refund this cash if a convention is cancelled prior to the event date. In addition, the auditor recommended that SMG should try to maintain sufficient cash to fund three
months operating expense. As of 12/31/2009, SMG had only $465,588 in working capital (current assets less current liabilities), well below the recommended amount.

Beginning in 2010, Theatres and Arenas and the BMC agreed to delay the final fourth quarter transfer from the GF to SRF 15607 until after year end (late January) when SMG’s CCC operating results, the SMG incentive payment amount, and the final CCC utility expenditures are known. This policy will enable BMC to reduce the General Fund transfer if SMG operating results exceed budget and/or if utility expenditures is less than budget and/or if working capital amounts are deemed sufficient to fund CCC operating activities. In summary, this policy will ensure the optimal GF support to SRF 15607.