



# City of Chattanooga

Stan Sewell  
Director

INTERNAL AUDIT  
City Hall  
Chattanooga, Tennessee 37402

Ron Littlefield  
Mayor

June 29, 2012

Mayor and City Council  
City of Chattanooga  
Chattanooga, TN 37402

RE: Parks and Recreation Friends of the Festival Contract, Audit 11-14

Dear Mayor Littlefield and City Council Members:

Attached is the Internal Audit Division's report on Parks and Recreation Friends of the Festival Contract, Audit 11-14.

We thank the management and staff of the Parks and Recreation Department and Friends of the Festival for their cooperation and assistance during this audit. Overall, Friends of the Festival seems to be managing events on the City's waterfront in a very efficient manner with written procedures established. The Parks and Recreation Department needs to carefully review all agreements before they are executed and follow all the applicable City Codes when sponsoring events with other organizations.

Sincerely,

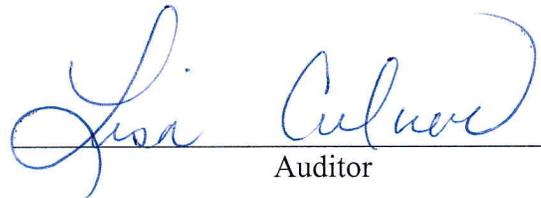
Stan Sewell, CPA, CGFM  
Director of Internal Audit

Attachment

cc: Dan Johnson, Chief of Staff  
Audit Committee Members  
Larry Zehnder, Parks and Recreation Administrator  
Chip Baker, Executive Director of Friends of the Festival

**PARKS AND RECREATION  
FRIENDS OF THE FESTIVAL CONTRACT  
AUDIT 11-14  
MAY 23, 2012**

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Auditor

  
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Audit Director

**PARKS AND RECREATION  
FRIENDS OF THE FESTIVAL CONTRACT  
AUDIT 11-14**

**INTRODUCTION**

The City's waterfront has developed into a mecca for large festivals, concerts, walks, and parades with its numerous parks, bridges, and green spaces. In 2008, the City contracted with Friends of the Festival (FOF) to manage events on the waterfront with expected attendance over 500. Friends of the Festival is a nonprofit organization that manages and produces premier events which unite and enrich our region with an emphasis on the vitality of our community. During the last three years, FOF has managed, on behalf of the City, approximately 84 events on the waterfront.

The management contract requires FOF to assist the promoters of these events with the logistics and guidelines when planning their events. This includes reviewing each event for the necessity of road closures, amount of manpower needed by the City, the economic impact to the community, any adverse effect on the site or businesses, and other criteria to evaluate the event. The City collects the rental payments and FOF coordinates all the details and develops the license agreements for each event. The license agreement is signed by the Administrator of Parks and Recreation and the event representative.

Both Parks and Recreation management and FOF work together to set the fee structure for these events and recommend it to the Council. The fee structure is determined by the type of event and location desired on the waterfront. In April 2011, a revised fee structure was approved by Council to set the rental rates. Event types are broken down into 5 major categories. These categories range from the event being free to the public (such as a run/walk for pledges) events closed to the public, festival-type events, run/walk with entry fees, and events with limited access and entry fees.

In addition to the FOF management agreement, the City also entered into a separate contract with FOF for the sole purpose of producing the Riverbend Festival. The Riverbend Festival is a weeklong music festival that requires the use of the City's waterfront. FOF produces the entire event utilizing several City resources. The contract waives rental fees for this event but requires other payment conditions of FOF.

**STATEMENT OF OBJECTIVES**

This audit was conducted in accordance with the Internal Audit Division's 2011 Audit Agenda. The objectives of this audit were to determine if:

1. The Friends of the Festival contract was executed properly.
2. The revenue from FOF events are accounted for properly.

3. Parks and Recreation management is monitoring the FOF management contract.
4. Parks and Recreation management is overseeing the FOF license agreement (Riverbend Festival) properly.

### **STATEMENT OF SCOPE**

Based on the work performed during the preliminary survey and the assessment of risk, the audit will cover events managed by Friends of the Festival as required by their management contract from January 1 to December 31, 2011. Additionally, the Riverbend license agreement terms were reviewed. Source documentation was obtained from Parks and Recreation department and FOF staff. Original records as well as copies were used as evidence and verified through physical examination.

### **STATEMENT OF METHODOLOGY**

In order to meet the objectives of the audit, extensive interviews were conducted with the staff of Parks and Recreation Department and FOF. Inquires were made of the Purchasing and Finance Directors, and the offices of the Mayor and City Attorney on issues regarding the FOF management contract and Riverbend license agreement.

A complete review of all events managed by FOF during 2011 was conducted to determine if the rental amount paid was correct, the event was properly categorized, had a license agreement and certificate of insurance, was approved by the Waterfront Steering Committee, and the proper collection procedures were followed.

A review of both the management contract and the Riverbend Festival license agreement was made to determine if the terms were being followed and if the contracts were being managed properly by the Parks and Recreation department.

Applicable State laws, City Code and internal policies were reviewed during the audit to determine if they were followed properly.

### **STATEMENT OF AUDITING STANDARDS**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **AUDIT CONCLUSIONS**

Based upon the test work performed and the audit findings noted below, we conclude that:

1. The FOF management contract was not executed properly.
2. Some of the event's revenues were not accurately collected.
3. In some instances, Parks and Recreation management is not monitoring the FOF management contract carefully.
4. Parks and Recreation management is not properly overseeing FOF's Riverbend agreement.

While the findings discussed below may not, individually or in the aggregate, significantly impair the operations of the Parks and Recreation Department, they do present risks that can be more effectively controlled.

## **FINDINGS AND RECOMMENDATIONS**

### **The FOF management contract was not competitively bid.**

City Code Section 2-552 requires any contract exceeding \$10,000 shall be publicly advertised for competitive bids. This process was not followed for the FOF management agreement. T.C.A. 12-4-106 states contracts for legal services, fiscal agent, financial advisor, educational consultant and similar services by professional groups or persons of high ethical standards shall not be competitively bid. A management service would not be considered a professional service. Further, a management agreement does not fall under any other category of exceptions to bidding and advertising requirements listed in T.C.A 6-56-304.

We made inquiry of the Mayor's office, the Purchasing and Finance Directors, Parks and Recreation Department, and FOF to verify if the management agreement for the City's waterfront was advertised for bid. None of those contacted had any knowledge of the agreement being bid. After reviewing files and documentation related to the agreement, no evidence could be located to indicate it was advertised for bid.

The agreement was presented to Council and approved as required for purchases over \$10,000 by City Code 2-551. Both the Parks and Recreation Administrator and the Chattanooga Downtown Redevelopment Corporation (CDRC) President signed the contract.

### **Recommendation 1**

We recommend Parks and Recreation management ensure all applicable laws and proper procedures are followed prior to executing any contract.

### ***Auditee Response***

*As indicated by City Council of Chattanooga, Tennessee, Resolution No. 25503, which authorizes the subject contract for management of the 21st Century Waterfront, the Parks and Recreation Department did not serve a primary role in the formulation of resulting contract. Neither was a primary role served in the formulation of the contract resulting from and authorized by Resolution No. 25504, despite the allocation of the Resolution to our Department.*

*As previously conveyed, this Department was charged with the responsibility of signature by the City Administration, after the natural time during which the bid processes would have assumedly occurred.*

*As such, at the time of contract formulation and execution, the duty of review and application of all applicable laws and proper procedures extended to all participating City Departments, beyond the Parks and Recreation Department.*

*Upon notification of this deficiency, this Department immediately arranged for a public bid process, to result in new contracts (for the subject matter previously codified in City Council Resolutions No. 25503 and 25504), which is pending at this time.*

### **City events are not handled properly.**

The City sponsors several large events that are held on the waterfront. FOF helps with the logistics of these events as required of their management contract. During 2011, the City partnered with several organizations to provide free community-based events. Typically, these organizations provide equipment, marketing, personnel and sponsorships in exchange for exclusive use of City property.

- 1. City-sanctioned events lack contracts:*** Parks and Recreation management did not have written contracts for the Head of the Hooch or Head Race events for 2011. The City has partnered with the Atlanta Rowing Company and Lookout Rowing Company for many years to produce the two events on the City's waterfront. The Administrator allows these organizations to use the waterfront areas without paying any rental fees. These events are free to the public to view and bring in thousands of spectators. However, the rowing companies are allowed to charge and collect registration and vendor fees for these events. The City does not receive any proceeds from these fees. For the 2011 events, there was not a signed contract with either organization for the terms of the events, cost sharing, collection of fees, etc. These events were not presented to Council.
- 2. Events not approved by Council and rental fees waived:*** The City partnered with organizations such as First Things First, Allied Arts and the Atlanta Rowing Company to host six events in 2011. None of the six events were charged rental fees for the use of City property and none of the events were approved by Council.

In 2008, the Administrator of Parks and Recreation provided a letter to FOF in an attempt to clarify these City-sanctioned events. The letter stated City-sanctioned events are events requiring approval from Council. By issuing this letter, it would seem Parks and Recreation management is aware of the need to acquire approval from Council before conducting these events with outside partners.

To support these City-sanctioned events, Parks and Recreation management developed letters of agreement with Allied Arts and First Things First. These letters were signed by both parties. The letters simply stated that, due to the co-sponsorship by the organization for the event, the rental fees are not applicable; however, specific insurance coverage is required. The Administrator obtained approval from the Mayor before going forward with these events and waiving their fees.

According to the City Attorney, the Parks and Recreation Administrator does not have the authority to waive rental fees for these events. The Administrator must follow City Code Section 2-756, which requires officials to have a written contract that is approved by Council before authorizing the use of municipal facilities by outside organizations or individuals. The City Attorney indicated he would assist Parks and Recreation management to draft criteria for exempting organizations from rental fees for City-sanctioned events. Management would then not have to go before Council to seek approval for each special event in the future.

## **Recommendation 2**

We recommend Parks and Recreation management confer with the City Attorney to establish a process that would allow Parks and Recreation management to work with organizations in promoting events that would benefit the community and allow use of City property for free while following all applicable laws.

One approach could be to setup criteria that the organizations must meet such as type of organization (nonprofit), documented benefit to the community (free admission), cost sharing advantages, etc. Then, include these criteria in the Parks and Recreation fee structure which is approved by Council. This process would alleviate the need to obtain approval for each event.

We further recommend Parks and Recreation management obtain a written agreement with any organization they will be partnering with for these City-sanctioned events to document the details of the arrangement before any obligation or use is made of City assets.

## ***Auditee Response***

*The subject events of concern, above, are those which are indeed events conducted by City of Chattanooga, or 'City Events'. As such, the respective fees for usage, codified in the City Code of Chattanooga, as those which are charged to third parties, by the City itself, are inapplicable.*

*Prior to the commencement of this Audit, our Department was actively seeking guidance and assistance from the City Legal Department to clarify the ambiguous terms which have been used in reference to the above activity (i.e. sponsorship, partnership, sanctioned and co-sponsored terminology), and our Department's respective duties. We will continue to consult all City Departmental authority, in an effort to clarify what remains to be an ambiguous concept, with the goal of establishing an efficient and productive documentation process.*

*All past event programming provided to Friends of the Festival, by our Department, for management, were determined to be functions of the City of Chattanooga, and therefore not subject to outside party user fees. As the City does not maintain a typical special events programming unit responsible for conducting all aspects of said special events, the assistance of other organizations in the production of these city events is reasonably required.*

*As such, it would be advisable to more completely examine the issue of event operation, from the entire City perspective, beyond the limited scope of the Parks and Recreation Department.*

*The above-described events and the relationships with the correlative organizations were codified in License Agreements, executed at the time of performance, facilitated by Friends of the Festival.*

*Our Department presented the City Events for the upcoming season to the City Council of Chattanooga on May 29, 2012, which is reflected in the correlating minutes.*

### **Auditor Comment**

Contrary to the above statements by the auditee and as stated in our finding, Parks and Recreation Administration did not have written contracts with all of the organizations that used the City's property for free. Further, these organizations were allowed to collect registration and vendor fees during the events.

A purely City event is developed, produced and staffed by City employees entirely. Partnering with outside organizations and allowing them the use of City property requires compliance with city Code Section 2-756. Further, the *Internal Control and Compliance Manual for Tennessee Municipalities* requires written agreements to be executed and provided to City Council when such "partnerships" are entered into.

### **Better review of licenses agreements is needed.**

All events should have a signed license agreement in place before the event occurs. The license agreement contains the applicable rental fees, terms, insurance requirements and other details required of the licensee. The license agreement is signed by the Parks and Recreation Administrator along with the event representative. We found two of the 21 events did not have a license agreement on file. These two events are some of the longest running

events on the waterfront: the Movies in the Park and Grateful Gobbler Walk. We also noted other issues where better review is needed:

1. ***Improper rate structure applied:*** The fee structures for the waterfront property are approved by Council upon recommendation of the Parks and Recreation Department and FOF. The fee structures are broken down by category depending upon the type of event. Classification of the events into the proper category sets the rental fee due. A few of the events were not placed into the proper category based upon the details of their events. The Who Fest Folk Art Festival, the Ragnar Relay and the Grateful Gobbler events were all placed into the wrong category when their license agreements were executed.
2. ***Payment terms not accurate:*** We noted two events where the rental payment terms of the license agreement were not accurate. The license agreement for the Chattanooga Track Half Marathon did not require any rental fees. However, this event did not qualify as a City-sanctioned event. The Pops in the Park license agreement required a rental fee, but the fee was waived.
3. ***Potentially Unnecessary Agreements:*** While reviewing the agreements, we discovered some were executed within the Parks and Recreation Department. These events were hosted by Outdoor Chattanooga (a division of Parks and Recreation) and include Outdoor Chattanooga Expo and Gear Swap, and Waterfront Triathlon. Since these are City events, rental fees were not applied. The process of developing, signing and executing a license agreement with divisions within the Parks and Recreation Department (or other city Departments) seems inefficient and may need to be reconsidered.

### **Recommendation 3**

We recommend Parks and Recreation management carefully review all license agreement terms to verify accuracy before executing the contract. We further recommend the process of executing contracts be reviewed, enhanced and documented.

### **Recommendation 4**

We recommend Parks and Recreation management ensures each event is charged the correct rental amount. We further recommend Parks and Recreation management work with FOF to update the fee schedule for events.

### ***Auditee Response***

*Our Department concurs with the above recommendations, and will implement improvement mechanisms, where possible, as well as enforce the duty of the management provider to refine the licensing criteria, to the extent we are legally authorized.*

*As provided, our Department currently maintains a 'Contract Procurement and Monitoring Procedure', established November, 2011, which addresses certain pertinent aspects of the above findings, and will be revised to address all reasonably foreseeable identified scenarios.*

## **Riverbend Festival contract terms were not being enforced.**

The City, CDRC and River City entered into a license agreement with Friends of the Festival for the sole purpose of producing the Riverbend Festival. The contract term started on June 1, 2008 and expires June 30, 2012. Resolution #25504 authorized the Parks and Recreation Administrator to enter into this agreement. The contract waives the rental fees for this event but requires other financial obligations of FOF.

After reviewing the contract and interviewing Parks and Recreation management, the CDRC President, and FOF staff, it seems some of the conditions of the contract have not been enforced or monitored by the City. The conditions are listed below:

1. FOF shall pay a refundable damage deposit of \$25,000 to the City on or before June 1 of each year.
2. FOF shall be responsible for reimbursing the City for the cost of trash and recyclable material pick-up and disposal from the site within 30 days of having being billed for same.

FOF has not paid the annual refundable damage deposit of \$25,000. However, FOF does pay for damages as they occur each year. In addition, Parks and Recreation management has never billed FOF for trash pickup and disposal.

### **Recommendation 5**

We recommend Parks and Recreation management develop a process to ensure the terms of the Riverbend contract are adhered to. We also recommend future contracts include language regarding penalties for nonpayment and late payments as applicable.

When developing the new contract terms, Parks and Recreation should consider the City's ability to properly monitor and collect the negotiated fees. Alternatively, the contract could include a set fee for the use of City property based upon estimated expenses incurred by the City for the event.

### ***Auditee Response***

*At the time of the referenced festival management contract execution, Friends of the Festival contributed approximately \$100,000.00 toward the capital development of the waterfront and the expenses of providing the improvements that support the festival, which contributed to the consideration given for the contract.*

*The referenced damage deposit of \$25,000.00 has been made by Friends of the Festival, for the 2012 contract period, and will be enforced per the new pending contractual arrangement, with the appropriate resulting contract party.*

*Our Department concurs with the following recommendations to implement the following mechanisms into the pending public bid contracts, referenced in Auditee Response (1):*

- 1. Addition of penalties for nonpayment; and*
- 2. Determined appropriate allocation of cost reimbursement.*

### **Event payments were not processed properly.**

When reviewing the event files and City receipt book, it was noted that two payments were returned after receiving them in the Parks and Recreation office. The payments were returned by staff based upon a procedure of not accepting partial payments for reservations.

However, in accordance with T.C.A 6-56-111, the *City's Finance Collection Policy* states all funds collected by a municipal official are to be submitted to the Treasurer's office within 3 days of receipt. Once funds are received they must stay intake and be deposited daily.

*The Parks and Recreation Cash Collection and Control Manual Policy 6.8* states, "Funds received for future events or programs must be deposited and if necessary a refund check should be requested." Policy 6.10 states, "Funds received to be reconciled to receipts/customer payment documentation at the end of each business day. The funds must be deposited directly to the SunTrust Bank or the Treasurer's office." Policy 6.7 states, "Payment in full is required. Partial payments are not allowed."

We noted this policy provides no instruction about how to handle partial payments. This has caused confusion about returning the payments. When returning the payments, the staff is violating State laws, as well as City and internal policies.

### **Recommendation 6**

We recommend Parks and Recreation receipt and collect all rental payments as received, either partial or in full. They should revise their policies to include steps on how to address partial payment collections and how to account for the balances due.

### ***Auditee Response***

*Our Department concurs with the technical accurateness of the above recommendations, and will revise our policies to clarify the payment processing procedure, which will result in increased processing costs, (in order to repetitively notify applicants of insufficient and ineffective reservation statuses), additional employee time spent monitoring the status of the pending reservation statuses, and applicant incurrence of lengthy refund periods, all of which will also be experienced the City Finance Department.*

## **Auditor Comment**

All organizations experience inefficiencies created by legal requirements (public and private). Further, it is the Parks and Recreation Department's own policy that (properly) states all checks received must be deposited.

Administration has a responsibility to implement policies and systems to ensure the most efficient and effective operations possible within the constraints of the law. With regard to this particular issue, adherence to the law should not result in any "increased processing costs" as compared to the practice that is currently in place. Instead of mailing a check back to the citizen, administrative support staff could simply mail a standard form letter advising the citizen of their failure to pay in full (as is clearly required in the application) and informing them of the process to obtain a refund or pay the remaining balance. This process would not require monitoring by City staff, assuming the standard form letter is properly designed.