AUDIT REPORT
Department of Parks and Recreation
Pahaska Tepee Concessions, LLC
August 2018

Office of the Auditor
Audit Services Division
City and County of Denver

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Denver Auditor
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Audit report year: 2018
AUDITOR'S REPORT

We have completed an audit of the Department of Parks and Recreation’s contract with Pahaska Tepee Concessions, LLC. The objective of the audit was to determine whether Pahaska complies with the terms of its contract regarding accurate reporting of revenue, payments owed to the City, and tax collections.

As described in the attached report, our audit revealed that the concessionaire and the Department of Parks and Recreation need to establish better controls over revenue collection and reporting to ensure that compensation paid to the City complies with the terms of the contract. In addition, the concessionaire and the Department of Parks and Recreation need to define the meaning of gross revenues in the contract. Further, the contract requires that the record keeping system be satisfactory to the City Auditor. Unfortunately, this audit report highlights a record keeping system that is not satisfactory to the City Auditor.

Through stronger controls over revenue collection and reporting, Pahaska and Parks and Recreation will be able to ensure compliance with revenue reporting terms in the contract. Our report lists several related recommendations.

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.

We extend appreciation to personnel at Pahaska and Parks and Recreation who assisted and cooperated with us during the audit.

Denver Auditor’s Office

Timothy M. O’Brien, CPA
Auditor
Objective
This audit examined compliance with key terms of the contract between the City and Pahaska Tepee Concessions, LLC. First, we evaluated the revenue reported by Pahaska to determine whether it was paying the correct percentage to the City under the contract. Next, we examined whether Pahaska was applying the correct sales tax to transactions.

Background
The Department of Parks and Recreation manages the contract between Pahaska and the City. This audit focused on the contract with Pahaska, which operates a gift shop and cafe at the Buffalo Bill Museum and Grave located at Lookout Mountain Park in Golden. At this popular tourist destination, Pahaska offers a variety of items in its gift shop, such as souvenirs, DVDs, and art. Pahaska also sells food and beverages, including buffalo-based dishes, which patrons can enjoy while taking in a scenic view and being immersed in the history and culture of the American West. The City initially awarded Pahaska the contract at the end of 2006.

Highlights
Our audit of the contract between the City and Pahaska Tepee Concessions, LLC, revealed the following deficiencies:

FINDING 1: Pahaska’s Recordkeeping Is Inadequate, and Its Revenue Reporting Does Not Comply with Contract Terms, Making Revenue Unverifiable

- Pahaska's cash registers are low-end, and all the company's sales transactions records are printed on paper rolls from the registers. These records are unreliable, inaccurate, and, in some cases, missing.
- Pahaska deducted discounts in its calculations of gross revenues when contract language and other authoritative governance documents defining gross revenues are unclear on whether this is acceptable.
- The company has a lack of basic controls over cash handling and inventory, with registers left unlocked overnight even though some employees spend the night at the mountaintop facility.
- Pahaska has not complied with terms of the contract requiring payments to increase when it is operating on a month-to-month basis while awaiting contract renewal and has not addressed concerns regarding the schedule of payments to the City.
- The company did not correct similar concerns from a 2007 audit.

FINDING 2: The Department of Parks and Recreation Does Not Provide Adequate Oversight of Pahaska’s Contract

- Parks and Recreation has not reviewed Pahaska's revenue documentation and has not specified what requirements the company's point-of-sale system needs to have in order to properly record transactions.
- Parks and Recreation did not enforce contract requirements governing payments on a month-to-month contract basis, calculation of gross revenues, or the schedule of payments to the City.

We make a variety of recommendations to Pahaska and the Department of Parks and Recreation to correct revenue reporting deficiencies, reconcile past inaccurate payments, and enhance contract oversight.
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BACKGROUND

Pahaska Tepee Concessions, LLC, (Pahaska) operates a gift shop and cafe next door to the Buffalo Bill Museum and Grave, located in Lookout Mountain Park in Golden. Created in 1921, the Buffalo Bill Museum is a popular tourist destination in the Denver metropolitan area that has attracted millions of visitors. The gift shop contains a variety of gifts, books, and unique souvenirs themed around American West art, history, and culture. In the cafe, visitors can take in the scenic views while enjoying food from the grill, homemade fudge, or packaged snacks.

In addition to food, beverage, and merchandise sales, Pahaska is responsible for maintenance of the concession site, utility payments, facility security, reporting revenues on a quarterly basis to the City, making capital improvements with City approval, and hosting an annual Buffalo Bill birthday celebration at no cost to the public.

Pahaska first contracted to operate the gift shop at Buffalo Bill’s Gravesite on January 1, 1988. The contract reviewed during this audit began October 1, 2006, has been extended multiple times since its original 2012 expiration date, and was operating month-to-month at the time this report was issued. Under the contract, Pahaska is required to pay a portion of its revenues through a guaranteed annual minimum payment each year of $50,000. The annual minimum payments are split up into equal amounts of $12,500 each quarter. If the minimum is met for the year, then Pahaska must remit a percentage payment of 8.4 percent of food, beverage, printed materials and other media revenues, and 10.5 percent of other merchandise and vending machine revenues to the City.

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1 At the time of this report, contract negotiations were still ongoing between Pahaska and the Department of Parks and Recreation.
2 The term “printed materials” refers to items such as postcards, books, maps, and any other non digital media. “Other media” refers to items such as movies and music.
OBJECTIVE

This audit examined compliance with key terms of the contract between the City and Pahaska. First, we evaluated the revenues reported by Pahaska to determine whether the concessionaire was paying the correct percentage to the City as required by the contract. Next, we examined whether Pahaska was paying proper sales taxes to applicable municipalities.

SCOPE

The audit team evaluated the accuracy and timeliness of payments Pahaska made to the City during 2016 and 2017.

METHODOLOGY

The audit team used several methodologies to fulfill the audit objectives and analyze Pahaska’s contract to provide concessions at the Buffalo Bill Museum and Grave, including:

- Evaluating Pahaska’s point-of-sale system, including its method of recordkeeping and internal controls surrounding revenue collection;
- Reviewing supporting documentation for daily and monthly revenue reports;
- Recalculating revenues within product categories using daily and monthly register tapes to test whether the percentage payments required by the contract, such as “food/beverage/media and other merchandise,” were accurately reported and paid;
- Identifying revenue deductions and evaluating each cash register’s treatment of unique transactions, such as voids and discounts;
- Exploring potential fraud or theft occurrence at the concessionaire;
- Determining whether late fees were levied, if applicable;
- Reviewing sales tax rates for concession sales items from 2016 through 2017; and
- Reviewing calculations of sales tax due based on the corrected revenue and reviewing tax payments to applicable authorities.
FINDING 1

Pahaska’s Recordkeeping Is Inadequate, and Its Revenue Reporting Does Not Comply with Contract Terms, Making Revenue Unverifiable

In 2016 and 2017, Pahaska Tepee Concessions, LLC, generated more than $2.5 million in revenue. For those two years, this amounted to approximately $253,541 in percentage payments to the City and County of Denver for operating a business at a City-owned facility. The concessionaire earned the most revenue between April and October. It is important to monitor all City contracts, but Pahaska’s location within a Denver Mountain Park facility makes it even more important for the City to enforce compliance to protect the City’s assets. Figure 1 details Pahaska’s quarterly gross revenues for 2016 and 2017.

**FIGURE 1.** Quarterly Gross Revenues Reported by Pahaska

![Graph showing quarterly gross revenues](image)

*Source:* Figure developed from gross revenues data provided by Pahaska. The audit team was unable to independently verify the accuracy of reported gross revenues.

Our assessment found Pahaska’s point-of-sale system and recordkeeping were not adequate to accurately report revenues earned. Second, Pahaska has weak controls over revenue collection. As a result, we were unable to validate gross revenues for 2016 and 2017 and cannot determine whether Pahaska overpaid or underpaid the City. We make recommendations below to address weaknesses in reporting, compliance, and contract monitoring.
The Revenue Reporting Process and Point-of-Sale System Are Inadequate

To meet the objectives of this audit, we attempted to recalculate the revenues earned at Pahaska during 2016 and 2017 and studied the internal controls over revenue collection and revenue reporting. Pahaska currently operates four independent cash registers that are not connected to any retail management software and therefore cannot produce comprehensive revenue reports or reprint lost/damaged receipts. All receipts and reports run from the cash registers and are printed onto common receipt paper rolls, which creates risks when trying to accurately account for earned revenue. Receipts and reports printed on paper rolls are both ineffective and inefficient as the primary system of revenue documentation, when compared to modern cash registers connected to retail management software, since individual transactions cannot be reprinted if there are printing errors, and company-wide revenue reports are not automatically generated.

We had difficulty identifying exact revenue amounts earned at the gift shop for the audit period. Our calculations were based on the definition of gross revenues in the contract, which requires revenues be split into two categories and then paid by different percentages.

The City requires:

- 8.4 percent of food/beverage/media sales; and
- 10.5 percent of other merchandise sales.

The contract’s definition of gross revenues also requires Pahaska to report pre-loss sales prices and does not require gross revenues to include certain deductions, such as sales tax and credit card fees. We could not recalculate Pahaska’s revenue earned nor could we calculate Pahaska’s payments owed to the City without a more robust system to track sales by product category and account for all allowable deductions.

A point-of-sale system is a means to track and record transactions, typically working through cash registers or computerized checkout stations that connect to retail management software. Our team found the following specific shortcomings in Pahaska’s point-of-sale system, which prevented us from accurately recalculating the revenues earned at Pahaska and the amount of those revenues owed to the City.

Register Tapes Are Either Inaccurate or Missing - When attempting to recalculate the revenues earned based on the register tapes at the gift shop, we found that some tapes were not reliable, and some were missing completely. The tapes available were found to be unreliable since errors made throughout the day are not corrected in the registers, printing errors on the tapes occurred frequently, and occasionally sales were recorded without a proper description of the product category.

When we reviewed month-end register tape summaries, we found a few that appeared to show very high amounts, leading us to believe some month-end tapes were actually showing annual sales data. Upon attempting to clarify this difference, Pahaska’s management explained that the cash register tapes given to the auditors were not accurate, although they could not explain why...
monthly tape summaries were not printed consistently. In addition, we found eight out of 96 month-end register tapes were missing. Under Pahaska’s current system, register tapes are the only primary source documentation for revenues earned. If register tape summaries are not accurate, they cannot be used to determine actual revenue by category and percentages owed, by either Pahaska or the City.

**Pahaska Inappropriately Estimates Revenue Percentage Payments** – Due to register tapes not being reliable, Pahaska uses the amounts deposited into its bank account to calculate gross revenues and subsequently uses the same gross revenues amount to calculate the percentage payments owed to the City. Pahaska’s accountant then uses the approximate percentage of sales revenues in each product category, as recorded in the manager’s spreadsheet, to calculate the amounts owed to the City for each product category. This calculation is inappropriate to represent as gross revenues to the City, since it contains post-discounted sales amounts and the percentage of sales revenues in each product category is based on the register tapes, which still include the errors made in the registers throughout the day.3

Since we could not use month-end tapes, we decided to conduct further analysis of the cash and credit card earnings for the months we had already selected to test the daily activity. We compared the “cash” and “charge” amounts reported as earned on the daily register tapes to the amounts recorded by the manager in a tracking spreadsheet. We also compared the amounts deposited at the bank. We found that different amounts were recorded and reported depending on the source. For example, one day’s worth of register tapes we tested showed $7,311 in product sales. However, $7,598 was reported as the “cash” and “charge” totals on daily register summary tapes, and $7,581 was recorded in the manager’s spreadsheet and deposited at the bank. These differences were found in all days tested, which illustrates the difficulty we had reconciling sales to the amounts deposited at the bank.

Further, when calculating the percentage owed to the City, it is allowable by contract to deduct the credit card fees associated with the revenues earned from that month. However, Pahaska’s point-of-sale system has no exact way to split up the credit card fees by product category, meaning its point-of-sale system’s capabilities cannot align its reporting of gross revenues with the definition in the contract with the City. With this limitation, Pahaska could not possibly accurately determine the amount of credit card fees, split by product category, without unrolling all the register tapes or improving on its current system.

**Gross Revenues Are Reported After Discounts but the Contract Is Unclear on Whether This Is Allowed** – The contract requires Pahaska to submit monthly revenue reports to Parks and Recreation with its gross revenues for the previous month. According to the contract, gross revenues is defined as “the aggregate of fees, receipts, sales and income of any kind derived directly or indirectly from the operation of the concession and before deducting any costs, expenses or losses.”

When conducting testing, we found Pahaska offers discounts on purchases to its employees and customers. Over the course of two years, we noted $44,808 worth of discounts offered, averaging $1,867 discounted per month.4 When Pahaska reports gross revenues to the City, it reports only the funds received after the discount has been applied, not the full sales price amount. If the discounts

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3 Pahaska’s accountant does not adjust for discounted sales before reporting gross revenues to the City.
4 The average discount per month was calculated using 88 of the 96 month-end register tapes from the year, which were all that was provided to the audit team for the audit, so the actual number may be higher. Also, register tapes cannot be relied upon, as errors in the registers are not corrected in the registers.
were evenly split between the two product categories, the impact of revenue reported to the City is an approximate average of 9.45 percent, and $4,234 for the two years reviewed.

In meeting with Pahaska and Parks and Recreation personnel at the end of the audit to discuss the report findings, Parks and Recreation informed us that they consulted with the City Attorney’s Office. There they were informed that the Denver Revised Municipal Code (D.R.M.C.), Section 53-24, provides guidance that discounts can be deducted from gross revenues. Upon reviewing this guidance, we found that this section of the D.R.M.C. is referring to sales tax, and that it was not explicitly clear that discounts are an allowable deduction from gross revenues. Since this information was provided so late in our audit process, we were unable to thoroughly clarify this concern with the City Attorney’s Office. Therefore, to ensure the concessionaire and Parks and Recreation are clear on how to address the issue, we recommend an amendment is made to the contract to specifically outline how to treat discounts regarding gross revenues.

We researched other City contracts with concessionaires to determine how gross revenues are defined in situations when discounts are allowed. We found several examples such as a Denver International Airport contract effective in 2013 saying that “a reduction from gross revenues shall be allowed for advertised discounts, discounts approved in writing by the City and discounts given to employees displaying an Airport issued badge.” In addition, we found that Parks and Recreation has worked with another concessionaire to include discounts in the contract for another event. In the case of a music festival to be held in a Denver park in 2018, the concessionaire can issue discounted tickets to neighborhood residents and can provide these tickets up to an amount agreed to by the City. The concessionaire is also required to pay a set fee to the City of $2 per one-day ticket sold and $6 per three-day ticket sold for both full-priced and discounted tickets.

In both the airport and the music festival contracts, the City ensures it receives appropriate compensation, and the concessionaire is still allowed to issue discounts because the contract specifically states these conditions. If Parks and Recreation and Pahaska had the rules for handling discounts specifically laid out in the contract terms, it would clarify how discounted items should be treated when calculating the percentage payments to the City, which are based on Pahaska’s gross revenues.

**RECOMMENDATION 1.1**

Pahaska Tepee Concessions, LLC, should adjust reporting practices to ensure compliance with the revenue reporting terms established in the contract.

**Agency Response: Agree, Implementation Date - 90 days after receipt of signed contract**

**Vending Machine Revenue Records Are Inconsistent and Potentially Incomplete** - Pahaska employees track vending machine revenue on informal paper notes and do not use a form to record revenues. Therefore, it was difficult to determine whether a vending machine had not been emptied of cash during a given month, did not earn any revenues, or whether Pahaska did not report revenues earned. For example, we noticed that Pahaska did not report any revenues from the coin-operated mounted binoculars during February 2017, and it does not appear to be the case that the funds remained in the machines, as extra revenues were not reported in the following month. We also noted that revenue reporting from a novelty fortune-telling machine
was inconsistent, only being reported a few times throughout the two years we reviewed. Without a formal documentation process, it is difficult to verify revenues with consistency and have confidence Pahaska is reporting revenues from all machines. The spreadsheet used by the manager to report vending revenues does not include all machines on site and still includes those no longer on site or working, further causing confusion over vending revenue report completeness. Poor controls over vending revenue collection causes concern that not all revenue is being reported.5

RECOMMENDATION 1.2

Pahaska Tepee Concessions, LLC, should design and implement a form for monthly vending machine revenue reporting, collect all vending revenue monthly, begin to document machines with zero balances during the month, and require a witness signature on all cash counts.

Agency Response: Agree, Implementation Date - October 31, 2018

Pahaska Should Improve Its Weak Internal Controls over Revenue Collection

In addition to the previously mentioned inadequate processes Pahaska uses to report revenues to the City, we were also concerned about controls over collection of revenues. These concerns further solidified our conclusion that we were unable to accurately recalculate revenues earned by Pahaska. Concerns regarding the collection process include, but are not limited to:

Daily Reconciliations by Manager Are Insufficient to Identify and Correct Errors - While the store manager conducts a review of daily transactions to look for any discrepancies on the register tapes at the end of the day, the manager does not attempt to identify and account for all errors in the register. The manager will only attempt to research a difference if the amount is significant, meaning many smaller errors could go unnoticed. Also, Pahaska has no written procedures for handling errors in the cash registers. Without shared procedures for handling errors in a consistent manner, and without a complete reconciliation of errors in the cash registers at the end of the day, Pahaska cannot ensure its revenue collected is accurate on the items sold.

Pahaska Lacks Basic Cash-Handling Controls - At the end of the day, and during the emptying of vending machine monies on a monthly basis, a single staff member counts and records the cash earned. Without added controls, such as having a second staff member witness and document the count, the use of shift-change counts, and midday cash drop boxes, there is the potential that cash may not be appropriately recorded or taken to the bank for deposit. It is not currently the practice of employees at Pahaska to conduct a double-count of funds, whether collecting vending revenue or counting the cash register drawer at the end of the night. Without better cash-handling controls, it is difficult to know whether reported revenues paint an accurate picture of earned revenues at Pahaska.

5 When properly reported and calculated, the City gets 10.5 percent of vending machine revenues, according to the contract.
We were also informed the concessionaire does not require cash registers be locked overnight. Due to the remote location of the gift shop, some employees live on the site and therefore have access to the gift shop’s inventory overnight. Employees are asked to keep a written list of the cost of the items used, which will be taken out of subsequent paychecks. The practice of allowing staff to consume products while in the building overnight, along with not locking up the remaining funds in the cash registers or vending machine funds, creates further concerns the revenues recognized and reported by Pahaska are inaccurate.

**Cash Registers Are Not Programmed or Used Properly** - Since the business uses low-end cash registers without retail management software, there is more room for error. Unlike point-of-sale systems connected to retail management software, which would include controls such as unique barcodes for each item, Pahaska’s registers require staff to manually select the product category and manually type in the price for each sale. Without automation, these manual processes create the potential for errors. Manual programming can be overlooked, which was the case when our team noticed items on receipts marked as “Dept026.” A label such as “Dept026” means neither Pahaska, nor the audit team, can determine whether this item should have been counted as “food/beverage/media” or “other merchandise.” The contract between the City and Pahaska states that the “Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the auditor,” which would include a point-of-sale system that is capable of reporting revenues under the terms of the contract.

**Noncompliance with “Holding Over” Clause** - The contract we audited expired on December 31, 2017, but at the time this report was issued, a new contract had not yet been signed. Pahaska’s contract states that if it expires without a new agreement in place, the current contract changes to operate on a month-to-month basis. The “holding over” clause in the contract dictates that if the contract goes month-to-month, Pahaska would owe twice the amount paid in the final month of 2017, or twice the highest amount of compensation paid for 2017. We found that Pahaska’s payments in 2018 were aligned with the regular compensation terms, as opposed to the terms in this “holding over” clause.

**Pahaska Did Not Implement Recommendations from a 2007 Audit**

The Denver Auditor’s Office conducted an audit of the Buffalo Bill’s Museum and Grave’s gift shop back in 2007 and found issues similar to those we have outlined in this report more than a decade later. The 2007 audit report included recommendations to address their point-of-sale system revenue reporting noncompliance and internal control weaknesses—all issues being addressed in this audit. If Parks and Recreation had done more to mitigate the risks identified in the previous audit, the issues at Pahaska now might have been avoided. Since many of the concerns in this current audit are identical or otherwise closely related to the previous audit’s findings, we will not make recommendations based on the 2007 audit findings, but instead will attempt to correct those concerns through the recommendations made in this report.

**The City May Not Have Received Appropriate Revenue Owed as a Result of Pahaska’s Inadequate Recordkeeping**

Pahaska’s poor recordkeeping system causes several notable effects. The most obvious and potentially risky effect of this finding is that Pahaska’s point-of-sale system does not allow for an

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accurate calculation of gross revenues and percentage payments due to the City. Daily and monthly tapes are not reliable to accurately account for sales in various product categories and calculate percentage payments, as they do not reflect all overrings and other errors made by employees.\(^7\)

Payments during the audit period were going to the Lookout Mountain Development Special Revenue Fund, meaning this fund may have been funded by inappropriate amounts from Pahaska.\(^8\) Not only can the City not determine what payments should have been paid, but the condition of the records makes it impossible to conduct thorough audits of gross revenues.\(^9\) Without more accurate records, it is difficult to know with certainty the net effect on payments to this special revenue fund.

Without a retail management software connected to the point-of-sale system, gross revenue reports cannot be generated, and register tape information is lost forever if the tape is illegible or goes missing. Furthermore, poor internal controls, coupled with an inadequate point-of-sale system, increases the risk of employee theft at Pahaska.

Because we could not calculate the exact amount, it is possible that Pahaska may have been incorrectly reporting revenues to the City for many years. Despite the contract requiring Pahaska to hire a CPA firm to conduct annual audits of gross revenues, the CPA firm also inappropriately used Pahaska’s bank statements and the manager’s spreadsheets to test revenues reported to the City. While the exact effect of inaccurate payments to the City cannot be calculated in dollars, the audit team’s inability to recalculate revenues accurately should motivate both Parks and Recreation and Pahaska to improve their systems to allow for compliance with the contract’s revenue reporting terms.

Therefore, we make the following recommendations to improve payment upon the collection and reporting of revenues, and to conduct a settlement payment that addresses Pahaska’s significantly misrepresented revenues for many years and noncompliance with the “holding over” clause in the contract:

**RECOMMENDATION 1.3**

Pahaska Tepee Concessions, LLC, should ensure managerial corrections of register errors are made through the register and occur at the time of the error, or at least by the end of the business day. Corrections should be well-documented separately from the cash register tapes and be thorough enough to identify all discrepancies.

*Agency Response: Agree, Implementation Date - 90 - 120 days after receipt of signed contract*

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\(^7\) An “overring” occurs when a cashier rings up a price on the cash register higher than the selling price. This typically occurs when a cashier presses a button more than once or presses the wrong button.

\(^8\) The Lookout Mountain Development Special Revenue Fund provided operating and capital improvement funds for the museum. In 2018, the fund was combined with other similar special revenue funds within Denver Mountain Parks.

\(^9\) “Gross revenues” cannot be determined with this contract’s definition of gross revenues. Other definitions of “gross revenue” might be possible to calculate without concerning the various categories of products and without attempting to account for fees from credit card processing.
RECOMMENDATION 1.4

Pahaska Tepee Concessions, LLC, should acquire retail management software to enable entity-wide reporting, to minimize manual data entry of revenue figures, and to provide more accurate information to calculate percentage payments to the City. The system must be able to provide daily, monthly, and annual revenue reports. New system capabilities should completely remove any estimation out of the percentage payment calculation.

Agency Response: Agree, Implementation Date - 90 days after receipt of signed contract

RECOMMENDATION 1.5

Pahaska Tepee Concessions, LLC, should work with the Department of Parks and Recreation’s Director of Finance and Administration to determine whether a settlement payment is necessary to make up for past inaccuracies. If so, both parties must agree on a mutually satisfactory dollar amount to adjust for inexact payments based on misreported gross revenues. The settlement agreement should consider misreported gross revenues and neglecting to pay 2018 payments according to the “holding over” clause in the contract.

Agency Response: Disagree
RECOMMENDATIONS

We make the following recommendations to Pahaska Tepee Concessions, LLC, to improve compliance and recordkeeping for its contract with the City:

1.1 Revenue Reporting - Pahaska Tepee Concessions, LLC, should adjust reporting practices to ensure compliance with the revenue reporting terms established in the contract.

   Agency Response: Agree, Implementation Date - 90 days after receipt of signed contract

   Auditee Narrative: Disagree our systems are inadequate but agree to improvements.

1.2 Improve Vending Revenue Controls - Pahaska Tepee Concessions, LLC, should design and implement a form for monthly vending machine revenue reporting, collect all vending revenue monthly, begin to document machines with zero balances during the month, and require a witness signature on all cash counts.

   Agency Response: Agree, Implementation Date - October 31, 2018

   Auditee Narrative: None

1.3 Correct Errors Through Registers - Pahaska Tepee Concessions, LLC, should ensure managerial corrections of register errors are made through the register and occur at the time of the error, or at least by the end of the business day. Corrections should be well-documented separately from the cash register tapes and be thorough enough to identify all discrepancies.

   Agency Response: Agree, Implementation Date - 90 - 120 days after receipt of signed contract

   Auditee Narrative: None

1.4 Acquire Retail Management Software - Pahaska Tepee Concessions, LLC, should acquire retail management software to enable entity-wide reporting, to minimize manual data entry of revenue figures, and to provide more accurate information to calculate percentage payments to the City. The system must be able to provide daily, monthly, and annual revenue reports. New system capabilities should completely remove any estimation out of the percentage payment calculation.

   Agency Response: Agree, Implementation Date - 90 days after receipt of signed contract

   Auditee Narrative: None

1.5 Settlement Process - Pahaska Tepee Concessions, LLC, should work with the Department of Parks and Recreation’s Director of Finance and Administration to determine whether a settlement payment is necessary to make up for past inaccuracies. If so, both parties must agree on a mutually satisfactory dollar amount to adjust for inexact payments based on misreported gross revenues. The settlement
agreement should consider misreported gross revenues and neglecting to pay 2018 payments according to the “holding over” clause in the contract.

**Auditee Response: Disagree**

Auditee Narrative: All payments were made on accurate gross receipts.
FINDING 2

The Department of Parks and Recreation Does Not Provide Adequate Oversight of Pahaska’s Contract

The contract between the City and Pahaska requires Pahaska to submit quarterly and annual reports of its gross revenues, split out by two different product categories, to allow for the calculation of two different percentage payments. With a contract where payments are based on what revenue is earned, it is important to verify the revenue amount being reported by all concessionaires, including Pahaska. The lack of oversight from the Department of Parks and Recreation noted in this report is despite the audit of Pahaska’s gift shop we conducted in 2007 that explicitly detailed needed improvements to Pahaska’s revenue collection and reporting at that time.

Revenues Reported by the Concessionaire Are Not Properly Verified

We inquired about Parks and Recreation’s oversight regarding revenues paid by concessionaires, and officials explained that revenue is not verified by looking at documentation from the point-of-sale system. During this audit, our team reviewed Pahaska’s income statements, register tapes, sales tax reports, and the revenue reports sent to Parks and Recreation. We found considerable inconsistencies in the revenue reported on all four sources, and we could not find any evidence in the contract administration file of communications questioning Pahaska on varied gross revenues amounts showing in supporting documentation.

If Parks and Recreation had reviewed the support for the amounts reported to the agency, it would have recognized that Pahaska’s accountant was reporting by estimating the revenue based off bank deposits, as opposed to reporting exact cash register collections.

Point-of-Sale System Requirements Are Not Specified

For the City to be confident that a point-of-sale system meets the requirements of the contract, it is important the City first specify the requirements for the system. By signing the contract with the City, the concessionaire agreed to develop and maintain a system of bookkeeping satisfactory to the Auditor, as noted in Section 4-2 of the contract.

We found another government entity that developed requirements for the use of point-of-sale systems by businesses that collect sales tax. The state of New York requires each transaction on the point-of-sale system to detail the individual item(s) sold, the selling price, the tax due, the invoice number, the date of sale, the method of payment, and terminal number/transaction number. Further, the requirements state that a point-of-sale system must maintain auditable internal controls, and that records must have the capability to trace any transaction back to the original source, or forward to a final total. Finally, the requirements state that documentation describing the automated data processing of the system must be made available upon request. Requirements such as these, and those that Parks and Recreation determines to be a necessity, would provide Parks and Recreation with the tools to evaluate and ensure the concessionaire is using a point-of-sale system that can accurately report revenue on a regular and consistent basis.

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RECOMMENDATION 2.1

The Department of Parks and Recreation’s Director of Finance and Administration should obtain an understanding of the Pahaska Tepee Concessions, LLC, point-of-sale system’s functionality so Parks and Recreation can properly monitor compliance of gross revenues reported.

Agency Response: Agree, Implementation Date - December 31, 2018

RECOMMENDATION 2.2

The Department of Parks and Recreation’s Director of Finance and Administration should discuss detailed requirements of the Pahaska Teepee Concessions, LLC, point-of-sale system to ensure accurate reporting of gross revenues.

Agency Response: Agree, Implementation Date - December 31, 2018

Parks and Recreation Has Not Finalized the New Contract or Enforced Compliance with the Payment Schedule

The Parks and Recreation Administration division is responsible for overseeing the terms of the contract, including an assigned contract administrator specifically for each contract. The contract administrator works with concessionaires to ensure all contract terms are being complied with. Parks and Recreation also has a financial team for reviewing revenues and accounting for payments. Despite the contract administrator sending reminders when reports, payments, or other documents are due, and the financial team performing high-level analysis as to whether revenues reported are reasonable compared to previous years, Parks and Recreation and Pahaska appear to be out of compliance with two specific contract terms: the “holding over” clause and the payment schedule. In addition, guidance on reporting gross revenues as it relates to discounts remains unclear.

Parks and Recreation Did Not Enforce “Holding Over” Clause – As mentioned in Finding 1, the contract we audited expired as of December 31, 2017, and a new contract has not been finalized. The contract includes a “holding over” clause specifying that if the contract goes month-to-month, Pahaska owes twice the amount paid in the final month of 2017, or twice the highest amount of compensation paid for 2017. We found that Pahaska’s payments in 2018 were aligned with the regular compensation terms and not with the “holding over” clause.

Parks and Recreation Did Not Correct Inaccurate Payment Schedule – Pahaska’s contract requires two different types of payments to the City: guaranteed annual minimum payments of $50,000, and percentage payments ranging from 8.4 percent to 10.5 percent, depending on the item. The contract’s first amendment (in 2007) added: “No Percentage Payment need be paid until the total amount of Percentage Payment [...] exceeds the guaranteed annual minimum payment for that year.” However, we found that Pahaska made a percentage payment in the first quarter of both years tested, despite it not exceeding the guaranteed minimum payment. The contract
allows the guaranteed minimum payment to be paid in four quarterly installments of $12,500, and this appears to have added to the confusion at Pahaska.

**Discounts Not Specifically Mentioned in the Contract** - As previously mentioned, when conducting testing of Pahaska’s revenue, we found that discounts were deducted from gross revenues. Parks and Recreation contract management personnel were not aware Pahaska was using discounts in its calculation of gross revenues and had not discussed these practices with the concessionaire. The contract definition of gross revenues does not specifically mention these as allowable deductions. Therefore, an amendment to the contract is necessary to resolve this issue.

Parks and Recreation is responsible for ensuring the concessionaire is both aware of the proper payment schedule and adhering to due dates as well as understanding what deductions from gross revenues are allowable. Without proactive communications, the concessionaire may continue to make payments to the City that are noncompliant with the contract terms.

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**RECOMMENDATION 2.3**

The Department of Parks and Recreation’s Director of Finance and Administration should communicate the proper payment schedule to the accountant for Pahaska Tepee Concessions, LLC, and offer an opportunity to discuss the appropriate payment schedule.

*Agency Response: Agree, Implementation Date – December 31, 2018*

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**RECOMMENDATION 2.4**

The Department of Parks and Recreation’s Director of Finance and Administration should amend the definition of gross revenues in the Pahaska Tepee Concessions, LLC, contract to address how discount items should be reported.

*Agency Response: Disagree*

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**RECOMMENDATION 2.5**

The Department of Parks and Recreation’s Director of Finance and Administration should work with Pahaska Tepee Concessions, LLC, to determine whether a settlement payment is necessary to make up for past inaccuracies. If so, both parties must agree to a mutually satisfactory dollar amount to adjust for inexact payments based on misreported gross revenues. The settlement agreement should consider misreported gross revenues and neglecting to pay 2018 payments according to the “holding over” clause in the contract.

*Agency Response: Disagree*
Parks and Recreation’s Lack of Contract Oversight Has Resulted in Noncompliance

One of the most serious effects of Pahaska’s process not providing accurate payments to the City is that the City may not have been receiving the correct percentage payments, which it is owed by contract. Not only is Pahaska partially at fault, but so is Parks and Recreation.

Without a clearer definition of what types of discounts are allowed by contract, it creates room for interpretation, which can be a point of disagreement between the City and the concessionaire. By clarifying the definition of gross revenues to include a clearer depiction of allowable discounts, the City can avoid this problem.

Since Parks and Recreation does not review the point-of-sale systems or the internal controls of concessionaires, the agency does not have a clear understanding of concessionaires’ reporting capabilities. Without understanding a concessionaire’s reporting capabilities, there is a potential to enter into a contract that requires the concessionaire to report revenues in ways its system cannot perform. The Pahaska contract required it pay two different percentages for different product categories, despite its point-of-sale system and internal controls not being sufficient to present that information accurately, which sets both the City and Pahaska up for noncompliance with the contract.

Lastly, Parks and Recreation’s lack of oversight of Pahaska’s contract terms may have resulted in Parks and Recreation not pursuing resolutions to discrepancies, such as payments not complying with the “holding over” clause, or the concessionaire failing to make payments according to the schedule listed in the contract. Parks and Recreation’s uncertainty that Pahaska’s revenue reporting is accurate, along with its inability to verify discrepancies, could result in a loss of revenue paid to the City from this contract.
RECOMMENDATIONS

We make the following recommendations to the Department of Parks and Recreation to improve oversight of the City’s contract with Pahaska Tepee Concessions, LLC:

2.1 **Point-of-Sale System’s Functionality** - The Department of Parks and Recreation’s Director of Finance and Administration should obtain an understanding of the Pahaska Tepee Concessions, LLC, point-of-sale system’s functionality so Parks and Recreation can properly monitor compliance of gross revenues reported.

*Auditee Response: Agree, Implementation Date - December 31, 2018*  
*Auditee Narrative:* The Department agrees with this recommendation. Appropriate department staff will review the system’s functionality with the Concessionaire.

2.2 **Point-of-Sale System’s Requirements** - The Department of Parks and Recreation’s Director of Finance and Administration should discuss detailed requirements of the Pahaska Tepee Concessions, LLC, point-of-sale system to ensure accurate reporting of gross revenues.

*Auditee Response: Agree, Implementation Date - December 31, 2018*  
*Auditee Narrative:* The Department agrees with this recommendation. Appropriate department staff will evaluate the system’s capabilities and provide requirements to the Concessionaire related to the tracking and reporting of all transactions. If the current POS system cannot meet the requirements, the Concessionaire will be required to replace it with a system that complies with the requirements.

2.3 **Communicate Payment Schedule** - The Department of Parks and Recreation’s Director of Finance and Administration should communicate the proper payment schedule to the accountant for Pahaska Tepee Concessions, LLC, and offer an opportunity to discuss the appropriate payment schedule.

*Auditee Response: Agree, Implementation Date - December 31, 2018*  
*Auditee Narrative:* The Department agrees with this recommendation. While the nature of the Concessionaire’s non-compliance with the terms of the agreement is that they pay in advance, the Department agrees that it causes difficulty in reconciling and tracking payments. As a result, notice will require the Concessionaire to adhere to the payment schedule contained in the Concession License Agreement.

2.4 **Amend the Current Contract Definition of Gross Revenues** - The Department of Parks and Recreation’s Director of Finance and Administration should amend the definition of gross revenues in the Pahaska Tepee Concessions, LLC, contract to address how discount items should be reported.

*Auditee Response: Disagree*  
*Auditee Narrative:* The Department disagrees with this recommendation. This Concession License, and all other Parks and Recreation revenue agreements, comply with the definition of Gross Sales as set forth in D.R.M.C Sections 53-23 (14) and 53-23.
Both the City Treasurer and the City Attorneys who deal with tax, accounting and treasury issues agree that this definition is clear. As a result, our practice is consistent with how the City defines Gross Revenues. In addition, the City Attorney's Office reviewed the definition of Gross Revenues in the Concession License and determined that the current language in the agreement is sufficient to reflect the City's current accounting and calculation practices, including the contractual requirement for the Concessionaire to adhere to all applicable law including the Denver Revised Municipal Code. As a result, the Department believes it is unnecessary to amend these agreements to reiterate the definition provided in D.R.M.C.

**Auditor's Addendum:** Although the Department of Parks and Recreation indicates that their concession revenue agreements follow the definition of Gross Sales in the Denver Revised Municipal Code (D.R.M.C.), the Sections mentioned specifically relate to gross sales for sales tax purposes and not gross revenues for revenue contracts. In our follow-up with the City Treasurer for clarification, he indicated that the definition of Gross Sales provided in Chapter 53 in the D.R.M.C. is clear and is consistent with how most jurisdictions define Gross Sales for taxation purposes. However, his opinion had not been offered regarding treatment of discounts in relation to gross revenues, and he had not reviewed the language in the contracts. Therefore, we maintain our original stance that the definition of gross revenues as it relates to discounts is not defined in the contract, nor is it defined in other authoritative City governance documents. It therefore requires clarification.

### 2.5 Settlement Process

The Department of Parks and Recreation’s Director of Finance and Administration should work with Pahaska Tepee Concessions, LLC, to determine whether a settlement payment is necessary to make up for past inaccuracies. If so, both parties must agree to a mutually satisfactory dollar amount to adjust for inexact payments based on misreported gross revenues. The settlement agreement should consider misreported gross revenues and neglecting to pay 2018 payments according to the “holding over” clause in the contract.

**Auditee Response: Disagree**

Auditee Narrative: The Department disagrees with this recommendation. The Department does not have adequate resources to perform revenue audits. The Department relies on the Concessionaire’s contractual obligation in each Concession License Agreement to annually submit a report of Gross Revenues prepared and certified by an independent certified public accountant to provide assurances that reporting and payments to the City is accurate and complete. Upon receipt of the annual audit, Department staff analyze the information contained in the audit compared to the periodic reports and payments submitted to the City by the Concessionaire. Adjustments to monies owed are made either by invoicing the Concessionaire, issuing a refund to the Concessionaire, or issuing a credit to the Concessionaire’s account. In addition, provisions are in each agreement that enables the Auditor’s Office to audit concessionaire records. The Department will, however, take two actions to address these audit findings. First, the Department will begin requiring the Concessionaire to provide POS reports and verify that percentage payments are based upon the Gross Sales amounts
indicated on these reports. Second, the Department will require the Concessionaire to engage a new CPA to perform the annual audits.

Regarding the "holding over" clause, DPR was advised by the City Attorney's Office that the Holding Over clause should be utilized as a legal remedy in the case of dispute. In this case, this concessionaire was selected again through a competitive process to operate the lodge for the new contract, and we agreed that they should remain on the premises until the new contract was executed. Unfortunately, DPR incurred some delays in timely completing the contract and we did not find it fair to require additional payments under the Holding Over provisions where we agreed that this concessionaire would remain at Pahaska.
AGENCY RESPONSE

8-5-2018

Dear Mr. O'Brien,

Re: Audit findings

Our responses as follows.

1.1
Disagree our systems are inadequate but agree to improvements.
Target date to implement: 90 days after receipt of signed contract.
Bill Carle 303-881-6052

1.2
Agree
Target date to implement: 10/31/2018
Bill Carle 303-881-6052

1.3
Agree
Target date to implement: 90 -120 days after receipt of signed contract Bill Carle 303-881-6052

1.4
Agree
Target date to implement: 90 days after receipt of signed contract

1.5
Disagree. All payments were made on accurate gross receipts.
Target date to implement: in our opinion moot.
Bill Carle 303-881-6052

Please contact Bill Carle at 303-881-6052 with questions.

Yours Truly,

Bill Carle
H.W. Stewart Inc.
Secretary/ Treasurer
Dear Mr. O'Brien,

The Office of the Auditor has conducted a performance audit of Department of Parks and Recreation – Pahaska Tepee Concessions, LLC.

This memorandum provides a written response for each reportable condition noted in the Auditor's Report final draft that was sent to us on July 17, 2018. This response complies with Section 20-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING 2
The Department of Parks and Recreation Does Not Provide Adequate Oversight of Pahaska’s Contract

RECOMMENDATION 2.1
The Department of Parks and Recreation’s Director of Finance and Administration should obtain an understanding of the Pahaska Tepee Concessions, LLC point-of-sale system’s functionality so Parks and Recreation can properly monitor compliance of gross revenues reported.

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<th>Agree or Disagree with Recommendation</th>
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<th>Name and phone number of specific point of contact for implementation</th>
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<tr>
<td>Agree</td>
<td>December 31, 2018</td>
<td>Fred Weiss 720-913-0735</td>
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Narrative for Recommendation 2.1
The Department agrees with this recommendation. Appropriate department staff will review the system’s functionality with the Concessionaire.

RECOMMENDATION 2.2
The Department of Parks and Recreation’s Director of Finance should discuss detailed requirements of Pahaska’s point-of-sale system to ensure accurate reporting of gross revenues.

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The Department agrees with this recommendation. Appropriate department staff will evaluate the system’s capabilities and provide requirements to the Concessionaire related to the tracking and reporting of all transactions. If the current POS system cannot meet the requirements, the Concessionaire will be required to replace it with a system that complies with the requirements.

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**Narrative for Recommendation 2.3**
The Department agrees with this recommendation. While the nature of the Concessionaire’s non-compliance with the terms of the agreement is that they pay in advance, the Department agrees that it causes difficulty in reconciling and tracking payments. As a result, notice will require the Concessionaire to adhere to the payment schedule contained in the Concession License Agreement.

**RECOMMENDATION 2.4**
The Department of Parks and Recreation’s Director of Finance and Administration should amend the definition of gross revenues in the Pahaska Tepee Concessions, LLC contract to address how discount items should be reported.

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**Narrative for Recommendation 2.4**
The Department disagrees with this recommendation. This Concession License, and all other Parks and Recreation revenue agreements, comply with the definition of Gross Sales as set forth in D.R.M.C Sections 53-23 (14) and 53-23 (21). Both the City Treasurer and the City Attorneys who deal with tax, accounting and treasury issues agree that this definition is clear. As a result, our practice is consistent with how the City defines Gross Revenues. In addition, the City Attorney’s Office reviewed the definition of Gross Revenues in the Concession License and determined that the current language in the
agreement is sufficient to reflect the City’s current accounting and calculation practices, including the contractual requirement for the Concessionaire to adhere to all applicable law including the Denver Revised Municipal Code. As a result, the Department believes it is unnecessary to amend these agreements to reiterate the definition provided in D.R.M.C.

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Please contact Fred Weiss at 720-913-0735 with any questions.
Sincerely,

[Signature]

Executive Director
Parks and Recreation

cc: Valerie Walling, Deputy Auditor, CPA, CMC
    Sonia Montano, Audit Supervisor