

**Performance Audit:
Management of Live Nation
Lease Agreements**

August 2020

**City Auditor's Office
City of Atlanta**

File #19.06



CITY OF ATLANTA

City Auditor's Office
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Performance Audit:

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What We Found

The city received \$4.2 million in revenue from Live Nation under the lease agreements for Lakewood and Chastain Park Amphitheaters from calendar years 2016 through 2018. Although the company provided revenue summaries each year, Live Nation declined to provide detailed documentation to the city to support revenue for the period for either venue. The city's contract for Lakewood does not require the information to be provided, but the Chastain contract requires Live Nation to provide specific documents to support ticket revenue, name-in-title sponsorship agreements, and parking fees. Live Nation only provided contractually required documentation for the 2018 concert season at Chastain.

City departments with oversight authority over the contracts—Enterprise Assets Management and Parks— have not validated that revenue amounts at the venues were correct and have not consistently monitored compliance with other contract requirements. Although Live Nation took credits for performing maintenance at the Lakewood facility, Enterprise Assets Management has not visited the park to ensure that the maintenance has been performed. While both the Lakewood and Chastain contracts require sound levels to be monitored, the Lakewood venue has no sound monitoring equipment installed and the contract is unclear about who is responsible for installing the equipment or for monitoring sound levels. Monitoring equipment is in place at the Chastain venue, but Live Nation and its equipment vendor agree that the system is old and unreliable, resulting in malfunctions and inaccurate readings.

Why We Did This Audit

We undertook this audit due to community concerns about Live Nation's compliance with lease agreement terms at the Lakewood Amphitheater. Live Nation also holds the lease for the Chastain Park Amphitheater.

What We Recommended

The city should strengthen lease agreements to:

- ensure unrestricted access to audit all documentation associated with the contract terms including box office statements, ticket manifests, and reports
- provide penalties for late payments
- provide for electronic payments
- require installation of sound monitoring equipment at Lakewood
- clarify name-in-title documentation and approval requirements

The city should strengthen oversight by:

- reviewing supporting documents to verify rental payment accuracy
- providing mandated revenue reports to the City Council
- conducting routine inspections of the Lakewood facility to confirm whether Live Nation is performing maintenance as required
- working with Live Nation to evaluate the sound monitoring system for repair and/or replacement at the Chastain Park Amphitheater.
- requesting that Live Nation provide records of replacements, repairs, and calibrations of the sound monitoring system at the Chastain Park Amphitheater.

For more information regarding this report, please use the "contact" link on our website at www.atlaudit.org

Management Responses to Audit Recommendations

Summary of Management Responses

Recommendation #1: We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add specific language to require Live Nation to provide box office statements, ticket manifests, and reports so that revenue can be independently verified by the city.

Response & Proposed Action: While I defer to Law regarding the need to amend the contract with Live Nation with respect to our rights to audit, the language of Article 12 in the Summary of Terms that supplements the Amphitheatre Agreement appears to me to be all encompassing and unequivocal: "The City shall have the right to audit all documents used by Live Nation to determine the percentage rents...." The language was developed by the Law Department at the time that the City took over management of Lakewood from Filmworks, USA, Inc. Of course, any amendment of the business terms would have to be negotiated with Live Nation prior to passage of any ordinance in order to be effective.

Timeframe: Not provided

Partially Agree

Recommendation #2: We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add specific language to the audit clause in the Lakewood contract to ensure that the city has unrestricted access to audit all documentation associated with the contract terms.

Response & Proposed Action: While I defer to Law regarding the need to amend the contract with Live Nation with respect to our rights to audit, the language of Article 12 in the Summary of Terms that supplements the Amphitheatre Agreement appears to me to be all encompassing and unequivocal: "The City shall have the right to audit all documents used by Live Nation to determine the percentage rents...." The language was developed by the Law Department at the time that the City took over management of Lakewood from Filmworks, USA, Inc. Of course, any amendment of the business terms would have to be negotiated with Live Nation prior to passage of any ordinance in order to be effective.

Timeframe: Not provided

Partially Agree

Recommendation #3:	We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add a provision requiring penalties for late payments.	Agree
Response & Proposed Action:	I agree with the recommendation to add a provision requiring penalties for late payments. Again, I think any such provision would require an agreement with Live Nation as to the terms. I am quite willing to initiate that conversation, but I'm not optimistic regarding their willingness to do so in this economic climate. Live Nation has reportedly canceled all concerts for the season in most or all locations for the remainder of the year due to the coronavirus pandemic.	Agree
Timeframe:	Not provided	
Recommendation #4:	We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add language to ensure the installation of the sound monitoring equipment and to outline responsibilities associated with monitoring roles and compliance.	
Response & Proposed Action:	I don't disagree with the desire to install sound monitoring equipment, but LN will not agree to pay for it. I have had one complaint in the 10 years that we have been managing Lakewood, and that came from our other tenant, EUS/Screen Gems. The incident occurred during a sound check and our two tenants subsequently worked things out. As I understand it, the threshold sound level is 65 dBA over a 30 minute period, (which is apparently highly unlikely) measured at the residential property lines. The sound from the amphitheatre primarily flows uphill to where EUE/Screen Gems has its improvements, with the residential neighborhood in that direction a significant distance away. If sound becomes an issue at Lakewood, I would recommend that the city invest in the equipment and the personnel necessary to monitor it as needed. Again, I defer to Law, but I think that all the city can do is to hold LN to the terms of the city's sound ordinance.	Partially Agree
Timeframe:	Not provided	

Recommendation #5:	We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to amend the name-in-title sponsorship clause to ensure that name-in-title revenue payments are set and specify documentation that should be included with the payment for the city's verification.	Agree
Response & Proposed Action:	I am not sure what is meant by ensuring "that name-in-title payments are set" with respect to naming rights at Lakewood. Article 13 in the referenced Summary of Terms speaks to Naming Rights. The terms and form were negotiated with Law's assistance and specify that the city will receive 10% of the Net Proceeds, as defined. I agree that we should require a breakdown each year of those "costs required by Name and Title Contract to be paid by Live Nation to fulfill its obligations thereunder", as stipulated in Article 13. I will discuss with Law within the week how to ensure our audit rights to any Name and Title Contract can be enforced.	
Timeframe:	Not provided	
Recommendation #6:	We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to require Live Nation to pay rents electronically to expedite the payment process and increase transparency.	Agree
Response & Proposed Action:	I agree that we should have LN make their contract payments electronically, and I think that LN will agree. I will broach with LN within the week whether they are willing to amend the business terms to require electronic payments. As stated previously, changes to the contract terms requires agreement between the parties.	
Timeframe:	Not provided	
Recommendation #7:	We recommend the Department of Parks and Recreation commissioner work with the city attorney to develop a contract amendment for City Council consideration add specific language to the audit clause to ensure that the city has unrestricted access to audit all documentation associated with the contract terms.	Agree
Response & Proposed Action:	Work with City Attorney to amend contract for City Council consideration adding specific language to the audit clause to ensure that the City has unrestricted access to audit all documentation associated with the contract terms to include but not limited to parking sales, ticket sales and name-in-title sponsorship payments.	
Timeframe:	June 2020	

Recommendation #8:	We recommend the Department of Parks and Recreation commissioner should work with the city attorney to develop a contract amendment for City Council consideration to amend the name-in-title sponsorship clause to ensure the city's review of the contract prior to execution and receipt of the final contract are mandated and documented.	
Response & Proposed Action:	Work with City Attorney to amend the name-in-title sponsorship clause to ensure the city's review of the contract prior to execution and receipt of the final contract are mandated and documented.	Agree
Timeframe:	June 2020	
Recommendation #9:	We recommend the Department of Parks and Recreation commissioner require staff to request and review supporting documents along with the annual summaries to verify that rental payments to the city are correct.	
Response & Proposed Action:	Along with annual summaries from Live Nation, staff will request and review supporting documents to verify rental payments to the City are correct to include parking sales, ticket sales and name-in-title sponsorship payments.	Agree
Timeframe:	June 2020	
Recommendation #10:	We recommend the Department of Parks and Recreation commissioner provide mandated revenue reports to the City Council's Community Development Human Services Committee to ensure that revenue at the Chastain Amphitheaters is monitored.	
Response & Proposed Action:	Provide revenue reports to the City Council's Community Development Human Services Committee in coordination with the Department of Finance.	Agree
Timeframe:	July 2020	
Recommendation #11:	We recommend the Department of Parks and Recreation commissioner work with the chief financial officer to ensure that \$24,944 is moved to the Chastain Trust Fund from the Centers of Hope Fund.	
Response & Proposed Action:	Completed.	Agree
Timeframe:	April 2020	

Recommendation #12:	We recommend the Department of Enterprise Assets Management commissioner require staff to request and review supporting documents along with the annual summaries to verify that rental payments to the city are correct.	Agree
Response & Proposed Action:	I agree that DEAM staff should review supporting documents along with the annual summaries provided by LN to ensure that all payments are correct. To the extent provided by law, I agree that DEAM should request those supporting documents. I understand that we have the right to audit, but I defer to Law regarding what copies of documents LN is required to give us rather than allow us to inspect/audit.	
Timeframe:	Not provided	
Recommendation #13:	We recommend the Department of Enterprise Assets Management commissioner conduct routine inspections of the Lakewood facility to confirm whether Live Nation is performing maintenance as required.	Agree
Response & Proposed Action:	I agree that DEAM should conduct periodic inspections of the site to ensure LN is performing its maintenance obligations under Article 6 of the Summary of Terms. Our Operations staff originally opined that the annual allowance of \$48,000 would cost the city much more than that if we had to be responsible for the items in Article 6. It is in LN's best interest to maintain the grounds for its patrons (likewise the buildings, but it owns those improvements). While we do make periodic inspections of the 80 or so acres that make up the area leased by LN, I will have staff drive through and inspect on a monthly basis off season and bi-weekly from April through October.	
Timeframe:	Not provided	
Recommendation #14:	We recommend the Department of Parks and Recreation commissioner work with Live Nation to evaluate the sound monitoring system for replacement and/or repair prior to the 2020 concert season at Chastain Park Amphitheater.	Agree
Response & Proposed Action:	Work with Live Nation to test a replacement sound monitoring system alongside the current sound monitoring system at Chastain during 2020 concert season. The two systems will work simultaneously during the 2020 season. Recommend amending / revising contract provision that would provide the ability to purchase like or similar sound monitoring system if replacement is required.	
Timeframe:	July 2020	

Recommendation #15:	We recommend the Department of Parks and Recreation commissioner request that Live Nation provide records of replacements, repairs, and calibrations of the sound monitoring system at the Chastain venue.
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Response & Proposed Action:	Work with Live Nation to obtain written reports regarding the maintenance, repair, and calibrations of the sound monitoring system at Chastain venue as needed.
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Agree

Timeframe:	July 2020
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CITY OF ATLANTA

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August 21, 2020

Honorable Mayor and Members of the City Council:

We conducted this audit due to community concerns about Live Nation's compliance with lease agreement terms at the Lakewood Amphitheater. Live Nation also holds the lease for the Chastain Park Amphitheater. We included both agreements in the scope. We started the project in late 2018. Completion of fieldwork was delayed as we sought access to records, which Live Nation ultimately declined to provide.

Our recommendations focus on strengthening contract terms to better protect the city's interests and on strengthening oversight of the contracts. We recognize that the current economic environment with the cancellation of the 2020 concert season in response to the COVID-19 emergency could affect contract negotiations.

The Audit Committee has reviewed this report and is releasing it in accordance with Article 2, Chapter 6 of the City Charter. Public release was delayed by Executive Order 2020-27, which postponed meetings of city boards while city facilities are closed during the pandemic response. We sent the draft report to management February 24, 2020, and received final responses from the Department of Parks and Recreation April 10, 2020, and from the Department of Enterprise Asset Management May 5, 2020. Their responses are appended. We appreciate the courtesy and cooperation of city staff throughout the audit. The team for this project was Micheal Jones and Diana Lynn.

Amanda Noble
City Auditor

Marion Cameron
Chair, Audit Committee

Management of Live Nation Lease Agreements

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Introduction

We undertook this audit because community stakeholders expressed concern to the Audit Committee about Live Nation’s compliance with lease agreement terms for the Lakewood Amphitheater, which include base and percentage rents, maintenance obligations, and capital improvements. The City Council authorized a direct lease agreement between the city and Live Nation Worldwide, Inc., for use of the Lakewood Amphitheater through 2034. Prior to the 2009 agreement, Live Nation held a sublease to the property.

Background

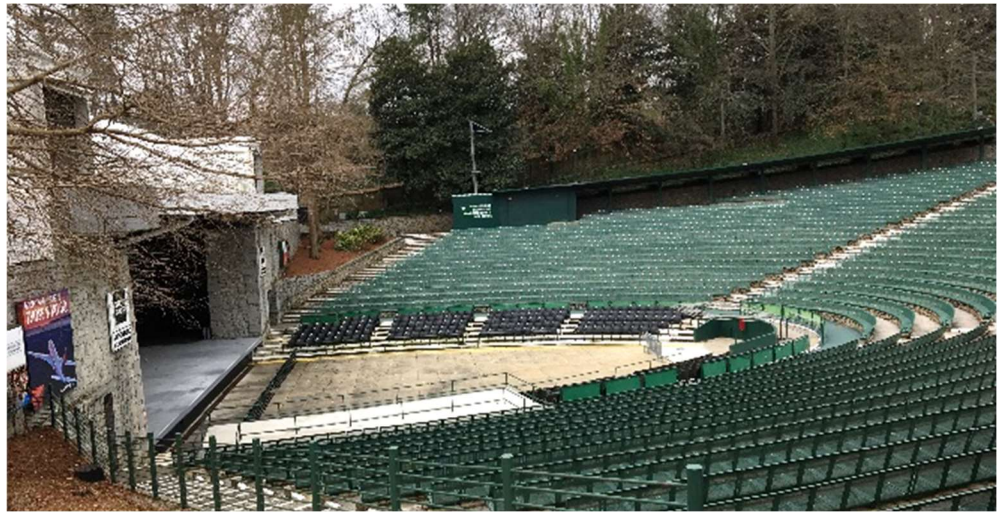
The city owns the Chastain Park Amphitheater (Cadence Bank Amphitheatre at Chastain) and the Lakewood Fairgrounds where the Lakewood Amphitheater (Cellairis Amphitheatre at Lakewood) stands. Live Nation owns the Lakewood facility throughout the lease agreement, with ownership reverting to the city at the end of the lease. Lakewood Amphitheater, shown below, is located on Lakewood Avenue in the southern part of the city. The amphitheater has a total seating capacity of 19,000, including 7,000 reserved seats and 12,000 seats on the theater’s lawn. It sits on 75 acres and has approximately 6,000 parking spaces available. The venue’s event season typically runs from May through October.



Cellairis Amphitheatre at Lakewood, Pryor Road box office, taken by auditors in January 2019

Chastain Park Amphitheater is located in Chastain Park on Stella Drive in the northwestern part of the city. The theater has a seating capacity of

6,900 mostly uncovered seats, shown on the following page. Events are held at the venue from April through October.



Cadence Bank Amphitheatre at Chastain stage, taken by auditors in January 2019

Atlanta Contracts with Live Nation to Promote Concerts and Maintain Facilities

The city contracts with Live Nation to organize and promote concerts at both Lakewood and Chastain Amphitheaters. Live Nation works with artists to book performances, promotes the shows, and negotiates ticket prices with the artists. The company generates revenue from ticket sales, sponsorships, naming rights, and parking, as well as food, beverage, and merchandise concessions. The city leases the venues to Live Nation, and in return, Live Nation pays the city—depending on the contract— a base rent amount plus a percentage of its gross revenue, including naming rights and a seat surcharge. Seat surcharges are calculated by multiplying the number of seats sold by a flat dollar amount. Naming rights are a form of advertising—companies can negotiate with Live Nation to purchase the right to name the facility for a period of time. Currently, Cellairis, a cell phone repair and accessory company, has naming rights to the Lakewood venue and Cadence Bank has naming rights to the Chastain venue.

As part of the lease agreements, Live Nation is responsible for performing repairs and structural and grounds maintenance and completing capital improvements at both amphitheaters. The city is responsible for repair and maintenance of the underground water and sewer infrastructure. Atlanta does not receive any revenue from sponsorship agreements that Live Nation has with other companies. The sponsorships allow businesses to sponsor shows or sell products at the

venues and pay Live Nation a fee for the advertisement. Contracts for each amphitheater are structured differently, as shown in Exhibit 1.

The revenue terms for Chastain Park Amphitheater are different from the terms of the Lakewood Amphitheater agreement. The city earns revenue at Lakewood for rent, ticket sales, and other revenues, as well as naming rights and parking. Chastain revenue is generated from base rent, seat surcharges on tickets sold, naming rights, and parking fees (See Exhibit 1). Most revenue generated from both the lease agreements is deposited into the city's general fund.

Exhibit 1: Live Nation Revenue Terms Vary between Lakewood and Chastain Park

Type of Revenue Due	Lakewood Amphitheater	Chastain Park Amphitheater
Base Rent	\$11,000 monthly (\$15,000 - \$4,000 for maintenance credit)	\$300,000 annually 2016 - 2020
Percentage Rent: Tickets	3% of gross ticket sales	N/A
Percentage Rent: Other Revenues (parking, food, beverage and merchandise sales; third-party rental fees)	4% of gross receipts	N/A
Seat Surcharges	N/A	\$8 per sold tickets
Naming Rights	10% of net proceeds	50% of net proceeds
Parking Fees	See Percentage Rent: Other Revenue	33.33% of gross receipts (net of applicable sales, use or similar taxes)

Source: Summary of revenue according to contracts and associated authorizing legislation for the Lakewood and Chastain Park Amphitheaters.

Although the contract lists base rent and percentage rents as separate provisions, the Lakewood contract permits Live Nation to deduct each monthly base rent payment from all revenue earned during the calendar year. The city also deducts up to \$48,000 annually from the base rent at the Lakewood venue if Live Nation performs its maintenance obligations, as provided in a 2009 amendment of the contract. Under the contract terms, the monthly base rent is \$15,000 (\$180,000 annually). If Live Nation performs the maintenance specified in the contract, the city will reduce the monthly lease payment by \$4,000 to \$11,000 per month. Over a 12-month period, the total reduction is \$48,000. The annual maintenance credit for any year must be taken within the calendar year.

The maintenance includes:

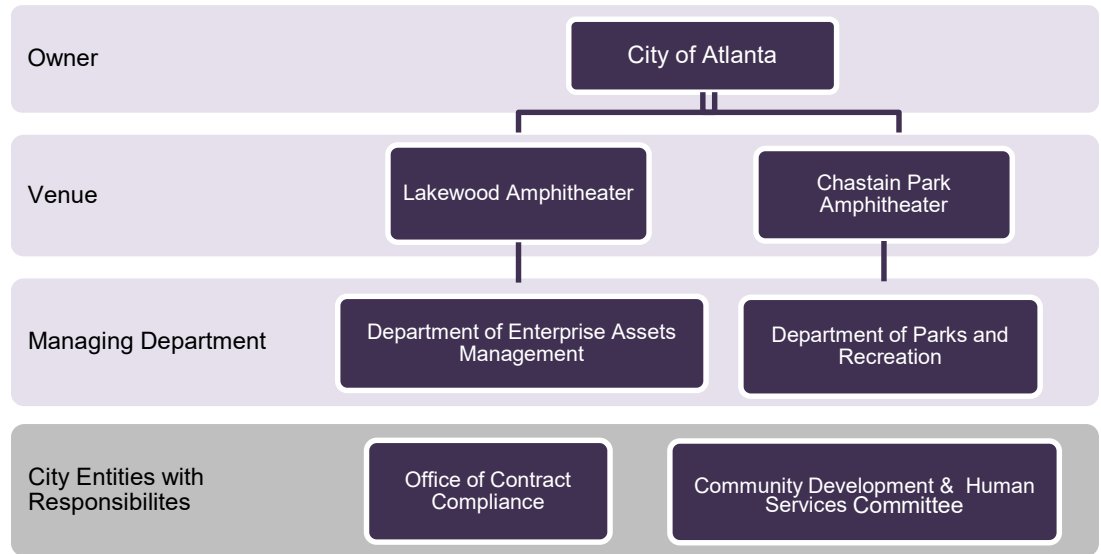
- kudzu/weed control and trash cleanup on the Pryor Road and Lakewood Avenue frontages
- maintaining the front paved parking lot on Pryor Street by repairing potholes and significant cracks and removing trash and debris
- repairing and maintaining all existing light fixtures on all leased property and parking areas subject to any existing easement in favor of Live Nation
- maintaining reasonable coverage of the gravel in the rear parking areas in a manner suitable for Live Nation's use
- maintaining the fence, which is to be constructed on the Pryor Road and Lakewood Avenue frontages to the customary and usual level of commercial maintenance standards

The current venue user agreement between the city and Live Nation for the Lakewood Amphitheater, was last amended in 2009 by Ordinance No. 09-O-0559. The contract terminates the relationship between the city and Filmworks, making Live Nation the successor to all rights and responsibilities under the master lease from 1984, and the sublease and amphitheater agreement from 1988. The venue user agreement in place for Chastain, last amended in 2017 in Ordinance No. 17-O-1019, is between the city and Chastain Ventures, a joint venture consisting of the Atlanta Symphony Orchestra and Live Nation Worldwide, Inc. As of February 2016, Live Nation became the sole promoter at Chastain Park Amphitheater.

Multiple City Departments Are Responsible for Managing Facility Contracts

The city's Department of Enterprise Assets Management is responsible for managing the Lakewood Amphitheater contract, and the Department of Parks and Recreation is responsible for managing the Chastain contract, amendments, and authorizing legislation (see Exhibit 2). The Parks department is required to prepare quarterly revenue reports for the Chastain venue and provide those reports to City Council's Community Development Human Services Committee. The Office of Contract Compliance is responsible for ensuring that the contracts are compliant with the city's minority subcontractor program.

Exhibit 2: Various Departments Play a Role in Contract Management



Source: Auditor's Summary based on interviews and contractual agreements for Lakewood and Chastain Park Amphitheaters.

Audit Objectives

This report addresses the following objectives:

- Is the city managing contracts to ensure that Live Nation is paying all base and percentage rents due according to the terms outlined in the contracts?
- Is the city managing contracts to ensure that Live Nation is complying with all provisions of the contracts as required?

Scope and Methodology

We conducted this audit in accordance with generally accepted government auditing standards. We reviewed documentation associated with the management and revenue generation of Lakewood and Chastain Park Amphitheaters for concert seasons 2016, 2017, and 2018.

Our audit methods included:

- reviewing city code, state law, and federal regulations related to venue management
- reviewing all contracts, amendments, authorizing legislation, and supplemental documents related to the management of the amphitheaters

- interviewing staff from the Departments of Finance, Parks and Recreation, and the Office of Contract Compliance, as well as subject matter experts from Live Nation
- reviewing Live Nation's annual summary reports sent to the city regarding revenue payments
- conducting a review of all sound reading reports from Chastain Park Amphitheater events from concert seasons 2016-2019 to confirm whether fines were issued
- analyzing financial reports from Oracle and supporting documentation reflecting revenue deposits and fund allocation
- consulting with the Department of Law to confirm our understanding of contract provisions and to assist with documentation requests
- reviewing all name-in-title agreements and payments to ensure compliance with the associated contract clauses

Generally accepted government auditing 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.

Government auditing standards also require that we report any scope limitations that affect our ability to perform any audit procedures and describe the effect that the limitation has on our ability to provide assurance in those areas. Because Live Nation declined to provide supporting documents related to the reported revenue generated during the 2016-2018 concert seasons at Lakewood and Chastain Park Amphitheaters, we were unable to confirm whether the percentage rents and revenue were calculated accurately according to the agreements.

We were also unable to assess whether Live Nation's merger with Ticketmaster had any impact on revenue due to the city. Live Nation merged with Ticketmaster in January 2010. Terms of the agreement to obtain clearance from the Department of Justice to protect competitive conditions in ticketing and promotions required Live Nation to divest the ticketing subsidiary, Paciolan, and license Ticketmaster's ticketing system to AEG for a period up to five years. This merger included Front Line's artist management and services.

Findings and Analysis

Lakewood and Chastain Contracts Do Little to Protect the City's Interests

The city received \$4.2 million in revenue from Live Nation under the lease agreements for Lakewood and Chastain Park Amphitheaters for calendar years 2016 through 2018. Although the company provided the city brief revenue summaries each year, we were unable to confirm whether the city received the revenue owed according to the contract terms. The Lakewood and Chastain contracts do not include provisions to facilitate an audit of the revenue and Live Nation executives declined to provide information we requested to verify whether revenue provided to the city was calculated correctly.

Stronger contract terms would better protect the city's interests. We recommend the city amend the Lakewood contract to add specific language that requires Live Nation to provide box office statements, ticket manifests, and reports so that revenue can be independently verified. We also recommend that audit clauses for both contracts be rewritten and clarified to ensure the city has unrestricted access to all documentation associated with the contract terms. We also recommend that the city require Live Nation to make rental payments electronically to expedite the payment process and add a provision to the Lakewood contract to allow the city to charge fees for late payments.

Both Venue Contracts Need Strengthening to Facilitate Revenue Verification

The city received over \$4 million in revenue from Live Nation under the lease agreements for Lakewood and Chastain Park Amphitheaters from calendar years 2016 through 2018. Although the company provided revenue summaries each year, Live Nation declined to provide detailed documentation to the city to support revenue for the period for either venue. The city's contract for Lakewood does not require the information to be provided, but the Chastain contract requires Live Nation to provide specific documents to support ticket revenue, name-in-title sponsorship agreements, and parking fees. Live Nation only provided contractually required documentation for the 2018 concert season at Chastain. The Lakewood and Chastain contracts do not include provisions that would facilitate an audit of the revenue, and Live Nation executives declined to provide information we requested;

therefore, we were unable to confirm whether the city received the revenue owed according to the contract terms.

Live Nation provided detailed revenue support to the city for only the Chastain 2018 concert season. Although the city received \$4.2 million in revenue from concerts held at Lakewood and Chastain Amphitheaters over the three-year period (see Exhibit 3), city staff did not receive detailed information each year that would allow confirmation that the revenue was calculated according to contract terms. The city's Department of Enterprise Assets Management is responsible for managing the Lakewood Amphitheater contract, and the Department of Parks and Recreation is responsible for managing the Chastain agreement.

Exhibit 3: Live Nation Paid the City \$4.2 Million in Revenue from 2016-2018

Venue	Revenue Paid to City			
	FY2016	FY2017	FY2018	Total
Lakewood Amphitheater	\$628,943	\$526,828	\$647,284	\$1,803,055
Chastain Park Amphitheater	\$705,064	\$831,593	\$896,518	\$2,433,175
Total	\$1,334,007	\$1,358,421	\$1,543,802	\$4,236,230

Source: Oracle records provided by Department of Finance for Lakewood and Chastain Amphitheaters.

The Department of Enterprise Assets Management received a two-page summary from Live Nation each year regarding the revenue earned during each concert season for Lakewood. The annual summary consisted of a general summary of the rent payment and a one-page summary of each concert and the associated revenue earned by ticket, parking, and miscellaneous revenue, as shown for the Lakewood venue in Exhibit 4.

Exhibit 4: Lakewood Rent Summary Report Lists Events and Revenue, But No Supporting Details

Cellairis Amphitheatre at Lakewood Calendar 2018 Rent Expense							
Artist	Date	Number of Shows	2018 Season Paid Attendance	Ticket Revenue	Other Revenue	Special Events Revenue	Total
Kendrick Lamar	5/25/2018	1	14,754				
Dave Matthews Band	5/26/2018	1	16,621				
Dead & Co	6/8/2018	1	15,491				
Post Malone	6/10/2018	1	18,527				
Birthday Bash	6/16/2018	1	16,620				
Logic	6/23/2018	1	9,408				
Chris Brown	7/3/2018	1	17,944				
Weezer	7/27/2018	1	13,338				
Warped Tour	7/31/2018	1	11,510				

Source: Lakewood Amphitheater annual summarization provided to the Department of Enterprise Assets Management by Live Nation for the 2018 event season.
Note: Potentially proprietary information is redacted.

Although the summary shows the concerts held and revenue received, Live Nation declined to provide information that would have allowed the city to verify revenue totals for the seasons, such as box office statements, ticket manifests, or parking reports.

The city also receives a one-page summary for the Chastain venue for each season (see example from 2017 in Exhibit 5). For the 2018 season Live Nation submitted not only the annual summary, but also box office statements, parking reports for each concert, and an invoice for repairs made in which Live Nation applied for reimbursement.

Exhibit 5: Chastain Revenue Summary Lacked Detail

Rent		\$300,000.00
Parking		\$106,693.33
Ticket Surcharges		\$424,900.00
Improvement Surcharge (\$1 per ticket)	\$121,400.00	
City's Center of Hope Fund (\$.50 per ticket)	\$60,700.00	
Mayor's Youth Scholarship Fund (\$2 per ticket)	\$242,800.00	
Total Base Surcharges & Parking		\$531,593.33
Additional ancillary to meet performance threshold		
Total Ancillary		\$531,593.33
Total Paid to the City		\$831,593.33

Source: Chastain Park Amphitheater annual summary provided by Department of Parks and Recreation by Live Nation for the 2017 event season.

Contract provisions for the Lakewood venue do not facilitate revenue verification. The current agreement for the Lakewood venue does not

require Live Nation to provide any specific documentation to the city to allow staff to confirm that all revenue owed is paid. Also, although the Chastain contract contains provisions that require Live Nation to maintain support for revenue, the company has not consistently provided the information to the Department of Parks and Recreation.

The contract for Chastain requires that Live Nation provide the following to the city:

- ticket revenue - a certified statement reflecting the number of tickets sold and Live Nation shall maintain a certified box office statement and ticket manifest for each performance for audit by the city for three years
- name-in-title sponsorship agreements - documentation of the costs deducted from the gross proceeds
- parking fees - pay the city 33.33% of the gross receipts (net of any applicable sales, use or similar taxes), documented in writing and certified

Live Nation provided contractually required documentation for the 2018 concert season at Chastain. Only the summary-level information was provided for the 2016 and 2017 seasons.

We were unable to verify whether the revenue Live Nation provided to the city was accurate. The Lakewood and Chastain contracts do not include provisions that would facilitate an audit of the revenue, and Live Nation executives declined to provide information we requested.

A 2009 amendment to the Lakewood contract states that “the City shall have the right to audit all documents used by Live Nation to determine the percentage rents but the City’s right to audit shall in no case be less than any right to audit which existed under the Sublease.” According to the sublease, the city “shall have the right, on no more than two occasions in any one year period, to inspect and audit, at its own expense, (Live Nation’s) books and records upon 30 days’ notice... at a location designated by (Live Nation) in the greater Atlanta area.” The contract does not mention audit access to documents associated with other revenue owed.

The Chastain contract audit clause restricts the city’s access to independently audit the documentation associated with the revenue generated by the venue. The contract states the “City, at no expense to Live Nation, shall have the right to inspect and audit at any time during business hours, upon reasonable advance notice and for the applicable retention period required by governmental authorities (including the requirements of the Internal Revenue Service) having

jurisdiction over the Venture or City, all of Venture's income, costs, expenses, correspondence and records as well as vouchers, and books of account insofar as they pertain to the performance of Venture's services under this Renewal Agreement." The city's Law Department concurred with Live Nation's interpretation that we could only view documents at its office and could not keep copies for analysis or audit documentation. The company stated that we would only be permitted to view the documentation and that corporate policy prohibited copies of the requested documents being given to the city. We would not be allowed to photocopy or take pictures of any of the documents.

We requested the following information from Live Nation representatives for both venues: box office statements; ticket manifests; name-in-title agreements; miscellaneous revenue reports for food, beverage, merchandise; ATM usage, parking revenue reports (for Lakewood), and repair and improvement approvals and invoices. Live Nation initially responded by requesting us to sign a confidentiality agreement to limit the information that could be disclosed in our audit report. Live Nation never responded to the Law Department's proposed revisions to the confidentiality agreement. Because we were unable to obtain copies of the documentation, we were unable to conduct our analysis.

We recommend the city amend the Lakewood Amphitheater contract to specifically add language that requires Live Nation to provide box office statements, ticket manifests, and reports so that revenue can be verified by the city. We also recommend that audit clauses for both contracts be rewritten and clarified to ensure the city has unrestricted access to audit all documentation associated with the contract terms.

Lakewood Contract Incentives Were Ineffective

The Lakewood contract allows Live Nation to pay percentage rents at higher rates in lieu of making \$3 million in capital investments in Lakewood Amphitheater. The city put incentives into the ordinance that would lower the percentage rents to be paid as long as Live Nation met its capital improvement obligations, but Live Nation opted instead to pay the higher percentage fees in the contract, resulting in a reduction in or a delay in improvements.

Live Nation did not make all payments timely for the Lakewood venue. We found instances where the monthly and annual payments were not made according to the due date in the contract; however, the Lakewood contract contains no provisions for late fees.

The Lakewood contract makes capital investments optional.

According to the contract, Live Nation is required to pay the city a percentage of ticket sales and a percentage of gross receipts. If the company did not complete certain levels of capital improvements within a certain period of time, a higher percentage rate would apply (see Exhibit 6). Live Nation has been paying percentage rents at the highest rates in lieu of making capital investments at the Lakewood venue, resulting in capital improvements either not being made or fewer or delayed improvements.

Exhibit 6: Lakewood Contract Increase Live Nation Rent if Capital Improvements Are Not Made

Period	Capital Improvements					
	>= \$4M		>= \$3M < \$4M		< \$3M	
	% Gross Ticket Sales	% Other Revenue	% Ticket Sales	% Other Revenue	% Ticket Sales	% Other Revenue
Years 1-3	2.25%	3.25%	Contract allowed three years to meet capital investment.			
Years 4-6	2.5%	3.5%	2.75%	3.75%	3%	4%
Years 7-9	2.75%	3.75%	3%	4%		
Year 10 Forward	3%	4%				

Source: Lakewood Amphitheater contract (Ordinance No. 09-O-0559)

The rent percentage schedule assumed a \$4 million capital investment in the first three years after the contract amendment was approved in 2009. If Live Nation did not make at least \$3 million in improvements within that period, the revenue percentages would increase to three percent of ticket revenue and four percent of “other revenue.” According to Department of Enterprise Assets Management staff, the city put incentives into the ordinance that would lower the percentage rents in exchange for capital improvements, but Live Nation opted to instead pay the higher percentage fees in the contract. The company has been paying the top percentages on ticket sales (3%) and “other” revenue (4%) since 2013, which was considered year four after the effective date of the 2009 contract amendment (see Exhibit 7).

Exhibit 7: Live Nation Opted to Pay Higher Rent Rather Than Make Capital Investments to Lakewood Amphitheater

Cellairis Amphitheatre at Lakewood Calendar 2018 Rent Expense							
Artist	Date	Number of Shows	2018 Season Paid Attendance	Ticket Revenue	Other Revenue	Special Events Revenue	Total
Kendrick Lamar	5/25/2018	1	14,754				
Dave Matthews Band	5/26/2018	1	16,621				
Dead & Co	6/8/2018	1	15,491				
Post Malone	6/10/2018	1	18,527				
Birthday Bash	6/16/2018	1	16,620				
Logic	6/23/2018	1	9,408				
Chris Brown	7/3/2018	1	17,944				
Weezer	7/27/2018	1	13,338				
Warped Tour	7/31/2018	1	11,510				
Kesha	8/2/2018	1	8,184				
Slayer	8/10/2018	1	8,648				
Flashback Festival	8/11/2018	1	5,098				
Rob Zombie	8/14/2018	1	10,807				
Godsmack	8/16/2018	1	8,760				
Streetfest	8/18/2018	1	4,380				
Wiz Khalifa	8/21/2018	1	10,512				
Lynyrd Skynyrd	9/1/2018	1	18,370				
G-Eazy	9/5/2018	1	6,047				
Paul Simon	9/12/2018	1	7,453				
Praise In The Park	10/6/2018	1	8,221				
Chris Stapleton	10/20/2018	1	18,540				
Sunshine Parking Lot Rental	Various	Multiple	-				
Bridelake Productions Parkin	Various	Multiple	-				
PGA Tour Championship Pari	Various	Multiple	-				
Raising Deon Parking Lot Re	Various	Multiple	-				
Cobra Kia Parking Lot Rental	Various	Multiple	-				
Erickson Parking Lot Rental	Various	Multiple	-				
By Show		21	249,233				
NIT Sponsorship							
Non-show related operational revenue							
Total			249,233				
% Due to City				3.00%	4.00%	4.00%	
2018 Total Rent Due to City				355,068	275,295	2,383	632,745

Source: Lakewood Amphitheater annual summary provided to the Department of Enterprise Assets Management by Live Nation for the 2018 event season.
Note: Potentially proprietary information is redacted.

Live Nation's payments for the Lakewood venue were not always made timely, but the contract makes no sanctions for late payments. Live Nation's annual payment for the 2018 concert season was made twelve days after the deadline of February 1, 2019. According to the contract, all percentage rents for a calendar year shall be determined and paid not later than February 1st of the following calendar year.

We also found that the monthly rent payment of \$11,000 for August 2019 was made in late September 2019 after Enterprise Assets Management identified the missing payment and contacted Live Nation for resolution. The contract requires that all base rent payments to be paid on the first day of every month. According to financial

documentation, Live Nation sent one payment of \$22,000 that covered August 2019 and October 2019 base rent invoices. While two delayed payments do not indicate a trend of non-compliance with payment terms, the city currently has no legal recourse in cases where payments are missed or late according to contract terms. Delayed and missing payments could negatively impact the city's financial position.

We recommend that the city require Live Nation to pay rents electronically in order to expedite the payment process and increase transparency. We also recommend that the city add a provision to the Lakewood contract requiring a sanction for late payments.

Oversight Over Lakewood and Chastain Contracts Should Be Improved

City departments with oversight authority over the contracts—Enterprise Assets Management and Parks— have not validated that revenue amounts at the venues were correct and have not consistently monitored compliance with other contract requirements. Although Live Nation took credits for performing maintenance at the Lakewood facility, Enterprise Assets Management has not visited the park to ensure that the maintenance has been performed. While both the Lakewood and Chastain contracts require sound levels to be monitored, the Lakewood venue has no sound monitoring equipment installed and the contract is unclear about who is responsible for installing the equipment or for monitoring sound levels. Monitoring equipment is in place at the Chastain venue, but Live Nation and its equipment vendor agree that the system is old and unreliable, resulting in malfunctions and inaccurate readings. We identified three concerts at Chastain during the 2016 through 2019 seasons with readings that exceeded the sound limits specified in the contract. The city issued fines to Live Nation for only one of those three concerts.

Live Nation has not submitted minority participation reports for the Lakewood or Chastain concert venues. Office of Contract Compliance staff found that the company has not met the minority participation requirement for its Chastain subcontractors.

Enterprise Assets Management Has Not Inspected Maintenance at Lakewood to Confirm Whether Live Nation Earned Credits

Although Live Nation takes a \$48,000 annual maintenance credit for performing maintenance at the Lakewood Amphitheatre, the city has not ensured that the maintenance is actually being performed. The Lakewood contract provides that the maintenance is subject to inspection by the [Department] of Enterprise Assets Management;

however, staff told us the department uses an honor system regarding the maintenance requirements and has not conducted inspections to ensure Live Nation completed the maintenance as required by the contract. Live Nation has returned between \$10 and \$2,500 of unused maintenance credit during the 2016 to 2018 concert seasons but provided no documentation to verify the cost of the maintenance.

We conducted a site visit to the venue and found that Lakewood Amphitheater had kudzu overgrowth January 14, 2019 (see Exhibit 8). Department of Enterprise Assets Management staff should conduct routine inspections of the Lakewood facility to ensure that Live Nation is performing maintenance as required.

Exhibit 8: City Does Not Inspect Lakewood Maintenance



Source: Photos taken by auditors at Lakewood Amphitheater on January 14, 2019.

The contract also provides that if Live Nation does not comply with the maintenance obligations within 30 days after written notice, the city may reduce the credit or bill Live Nation for the actual cost incurred by

city staff to perform the work. We recommend that the city evaluate whether outsourcing the maintenance is more cost-effective or eliminate the \$48,000 annual maintenance credit

Reliable Sound Monitoring Equipment Would Better Enforce Noise Ordinance

Both the Lakewood and Chastain contracts require sound levels to be monitored; however, the Lakewood venue has no sound monitoring equipment installed and the contract for that venue is unclear about who is responsible for installing the monitoring equipment or monitoring sound levels. Monitoring equipment is in place at the Chastain venue. Sound readings were available for 67% of the events held at Chastain Park Amphitheater from 2016 through 2019. According to Department of Parks and Recreation, no sound readings were available for any event held during 2017 and a number of events from 2016 and 2018 due to the cyberattack. Live Nation and its equipment vendor both agree that the system is old and unreliable, resulting in inaccurate readings. We identified three concerts at Chastain during the 2018-2019 seasons with readings that exceeded the sound limits specified in the contract. The city issued fines to Live Nation for only one of those three concerts.

Lakewood Amphitheater is not monitored for sound violations as required by the contract. Neither the city nor Live Nation is monitoring the sound at Lakewood as required by the contract; although the contract requires monitoring it does not specify the party responsible for monitoring sound levels or who would install the monitoring equipment. No sound monitoring equipment was ever installed at the Lakewood venue. Between 2016 and 2018, 27 noise complaints were filed about the areas surrounding Lakewood Amphitheater.

Law department staff agreed that the contract is unclear who is responsible for monitoring sound violations. The Atlanta Police Department generally has the responsibility for investigating sound complaints in the city and may be responsible for investigating potential sound violations at Lakewood Amphitheater. The law department also opined that the Department of Enterprise Assets Management should issue the fines.

We recommend the city rewrite the contract language to ensure the installation of the sound monitoring equipment and to outline responsibilities associated with monitoring roles and compliance.

Sound monitoring equipment is in place at Chastain Amphitheater, but the city is not consistently applying fines for violations due to the permissive language in the contract. We reviewed available sound readings for events held at Chastain Park Amphitheater during the 2016 through 2019 concert seasons (see Exhibit 9). According to Department of Parks and Recreation, no sound readings were available for events held during 2017 and the following events: Rock Chastain in 2016 and 2018, Kenny Rogers, Goo Goo Dolls / Collective Soul, Cheap Trick, Joan Jett & Heart, and Ben Rector due to the cyberattack. Attempts to recover the missing sound readings were unsuccessful.

Exhibit 9: Chastain Amphitheater Events with Sound Readings

Concert Season	Number of Events	Events with sound readings	Events without sound readings	Sound violations
2016	36	31	5	0
2017	36	0	36	0
2018	32	31	1	1
2019	27	26	1	2
Total	131	88	43	3

Source: Sound readings provided by Department of Parks and Recreation

From the 131 events with sound readings, we identified three concerts with a reading that exceeded the sound limits set by the contract. The Department of Parks and Recreation stated that no fine was issued for two events due to technical difficulties with the sound monitoring equipment. According to the sound monitor and the sound reading files, the system was restarted two or more times during the three concerts in which violations occurred. Parks issued one fine of \$5,000 to Live Nation in June 2019, for the Billie Eilish concert because a one-minute reading exceeded 95 dB (see Exhibit 10), which allows for an automatic fine.

The contract language permits the city to issue fines but does not require it. According to the contract, fines may be imposed in cases in which Live Nation has an artist with more than ten one-minute readings that exceed 90 dB or a single 1-minute reading that exceeds 95 dBa.

Exhibit 10: City Issued Fines for Sound Violations at the Billie Eilish Concert

Red Flags 06-23-2019

(Press F5 to Refresh)

Time	Booth SPL	dB Over Red Limit	Cumulative Red Flags
22:18:00	94	4 dB	9
22:17:00	95	5 dB	8
22:16:00	96	6 dB	7
22:15:00	93	3 dB	6
21:51:00	90	0 dB	5
21:30:00	90	0 dB	4
21:16:00	91	1 dB	3
19:46:00	90	0 dB	2
16:44:00	90	0 dB	1

Source: Red Flag Report provided by the Department of Parks and Recreation for sound violations from the Billie Eilish concert held at Chastain Park Amphitheater on June 23, 2019.

Sound readings at Chastain Park Amphitheater may not be accurate because monitoring equipment is considered "old and unreliable". This may contribute to the city's reluctance to assess fines for sound violations. The city, Live Nation and the third-party sound monitoring company agree that the system should be replaced, but do not agree on who is responsible for maintenance. While Live Nation paid the fine issued from the Billie Eilish concert, the company president included a statement that said, "While we are choosing to honor the fine, at this time I would like to state for the record that our confidence in the Grozier system is very low. The system has not been effectively calibrated or maintained for many years, due to the insolvency of the Grozier company and often behaves strangely, freezing when being turned on (with an immediate dB spike even though no sound is being produced in the PA or coming from the stage.) A sound monitoring system like this, without the ability to create confidence in its data, doesn't serve any of its intended purposes, most importantly allowing the venue and artists to monitor and adjust sound levels to balance the needs of the concert audience and the neighborhood. I request that the system receive a professional, third party review and calibration as soon as possible and that we agree to revisit replacing or removing this system before the 2020 concert season."

The sound monitoring company had a similar opinion to Live Nation regarding the equipment. According to the technician, “The computer that is being used to run Grozier is extremely old and so is cabling that is ran to the microphones. I believe that RBRM’s sound crew is at fault for the situation that happened on May 17th, but an update of the system would stop any sort of blame being placed on the system for being “old and unreliable.”

The Department of Parks and Recreation also agrees that the sound system needs replacement. The department planned to discuss the system replacement with Live Nation after the 2019 concert season. According to the department, Live Nation is responsible for updating and/or repairing the system due to the 2017 ordinance that stated “The city will be responsible for the repair and maintenance costs of the underground water and sewer infrastructure. All other repair and maintenance costs will be paid by the Venture.” But a Live Nation representative stated the city is responsible for equipment maintenance and upgrades to the system. The contract amendment (17-O-1019) also provides that Live Nation receive a \$4.50 of each \$8.00 per-seat surcharge, to be used in part to pay for “all amphitheater sound-control expenses.” The law department appears to agree with Parks’ opinion, stating that Live Nation must pay all sound-related expense according to the contract amendments in that ordinance.

We recommend the city work with Live Nation to evaluate the sound monitoring system for replacement and/or repair prior to the 2020 concert season at Chastain Park Amphitheater. The city should also request and maintain records of replacements, repairs, and calibrations of the sound monitoring system.

City May Be Owed Additional Revenue for the Lakewood Sponsorship

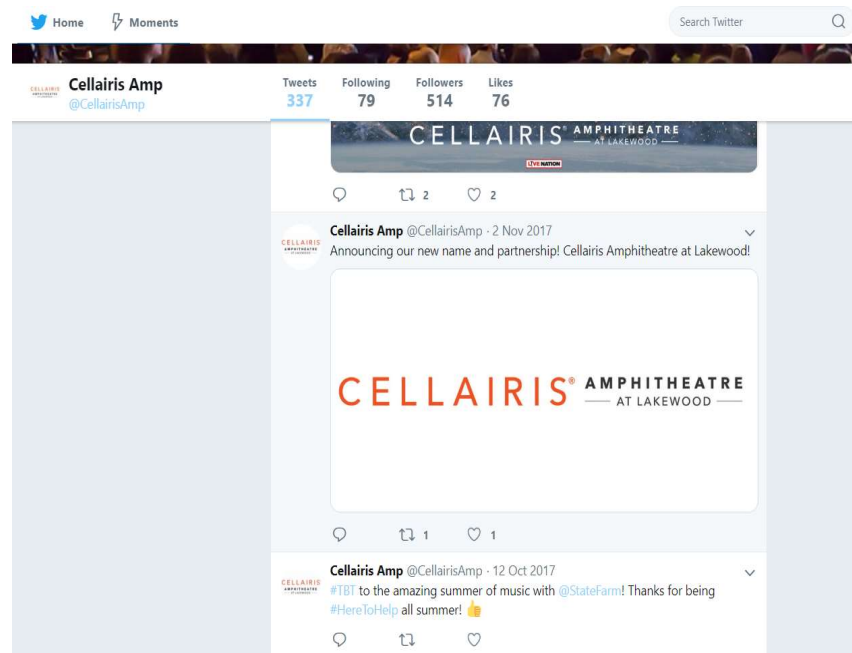
The Department of Enterprise Assets Management did not collect sponsorship payments related to Live Nation’s sponsorship agreement at the Lakewood Amphitheater for 2017 and did not verify the payment for the 2018 event season. Live Nation provided two separate sponsorship agreements that provided conflicting revenue amounts due to the city, but city staff did not resolve the discrepancies with Live Nation staff. Also, the Lakewood contract is unclear as to the specific percentage of name-in-title sponsorship revenue that Live Nation should pay the city.

The city may not have received name-in-title sponsorship revenue at Lakewood for 2017 and cannot confirm whether the 2018 payment was accurate. While the city did not collect payment for the name-in-title sponsorship in 2017, Live Nation included a name-in-title sponsorship payment of \$14,529.00 associated with Cellairis during the

2018 event season. The two-page breakdown of the 2018 rent payment from Live Nation does not detail what was deducted from the name-in-title payment, nor does it include supporting documentation for the deductions. We found no evidence that Enterprise Assets Management staff attempted to collect sponsorship payments and documentation for 2017 or requested documentation to verify the 2018 payment.

The city received two copies of a sponsorship agreement from Live Nation, one in February 2018 and the other in May 2018. The first agreement requires that Live Nation receive a payment of \$235,000 for 2017 within ten days from the execution date of July 10, 2017, and a second payment of \$460,000 due December 31, 2017, for the 2018 season. The execution of a second version of the same agreement on May 23, 2018, requires only two \$100,000 payments within 10- and 60-days for 2018 rights only. We found that the sponsorship had been officially announced through Lakewood Amphitheater's Twitter page and an AJC article on November 2, 2017 (see Exhibit 11).

Exhibit 11: Lakewood Partnership Announced Early November 2017



Source: Lakewood Amphitheater Twitter page operated by Live Nation announcing partnership between Lakewood Amphitheater and Cellairis on November 2, 2017.

Although Cellairis announced its sponsorship agreement in 2017, the city's Department of Enterprise Assets Management was not provided a copy of this agreement until February of 2018. Because the city received a copy of the sponsorship agreement six months after it was executed, the city would have been unaware of any sponsorship revenue

due by the end of 2017. The initial agreement dates contradict Live Nation's argument regarding no sponsorship since the agreement provided in February 2018 went into effect March 14, 2017, and was executed July 10, 2017.

The Lakewood contract does not clearly state the percentage of name-in-title sponsorship revenue that should be paid to the city by Live Nation. Specifically, the contract does not mandate that a certain percentage of net proceeds be paid to the city for all agreements, but states that 10% of net proceeds are paid to the city in association with the 2009 sponsorship agreement between Lakewood Amphitheatre and Aarons, Inc.

According to the law department, the city could argue that it should have received 10% of the payments made under the contract since the initial version was executed and in effect in 2017 and the 2018 sponsorship payment remitted to the city appears to be the 10% of net proceeds from the second agreement of \$200,000. The contract is also unclear regarding how the city's approval of the agreement would be documented (if in writing) or require that the city receive a copy of the finalized name-in-title agreement.

We recommend that the city amend the name-in-title sponsorship clause in the Lakewood contract to ensure that name-in-title revenue payments are set and specify documentation that should be included with the payment for the city's verification.

The city did not appear to provide compliance oversight for the name-in-title agreement revenue at Chastain Amphitheater. The Department of Parks and Recreation received a copy of the name-in-title agreement with State Bank (Cadence Bank), on October 28, 2019. According to the documentation between Parks leadership and the president of Live Nation, Live Nation stated that the sponsorship agreement had been previously vetted by the law department prior to execution. Live Nation provided no documents to confirm the review by the city and the Department of Parks and Recreation never requested documentation to verify that the sponsorship revenue check was accurate according to the contract.

The Chastain contract states that Live Nation is required to provide the city with documentation of the costs deducted from the gross proceeds from the name-in-title contract. It also states that the city shall have the right to examine any documents to be executed by the Live Nation in connection with the naming transaction as part of the approval process. The contract does not address how the examination will be

documented (if in writing) or ensure that the city will receive a copy of the finalized name-in-title agreement from Live Nation.

We recommend that the city rewrite the name-in-title sponsorship clause in the Chastain contract to ensure the city's review of the contract prior to execution and receipt of the final contract are mandated and documented.

Oversight Is Needed to Ensure Live Nation Complies with Contract Requirements

Live Nation has not submitted minority participation reports for the Lakewood or Chastain concert venues. Contract compliance staff found that the company has not met the minority participation requirement for its Chastain subcontractors. Also, the Department of Parks and Recreation has not submitted mandated reports to the City Council committee with oversight authority of the parks.

City departments did not consistently ensure that Chastain contract compliance requirements were met; minority participation reports have not been submitted by Live Nation for either concert venues. Office of Contract Compliance staff notified Live Nation during a meeting that the company was not currently meeting the minority subcontracting requirements associated with the management of Chastain Park Amphitheater. Contract compliance staff found that two of the three minority subcontractors used by Live Nation were either in the process of being certified or not certified by the city, and therefore had not met minority business enterprise participation requirements. Live Nation agreed to work with the city to meet the requirements, including replacing the subcontractor that was not certified or pursuing certification with the city's minority participation program.

Also, Live Nation representatives said that they have never provided minority participation reports for their subcontractors to the city for Lakewood Amphitheater since it took over the management responsibilities from Filmworks in 2009. Contract Compliance staff requested that Live Nation prepare an aggregated report for the missing years through 2019 and begin to submit the required annual report beginning in 2020.

Council Committee has not received mandated revenue reports for Chastain Amphitheater. The Department of Parks and Recreation is responsible for managing the Chastain contract. Beginning in 2017, Parks is required to prepare quarterly revenue reports for the Chastain venue and provide those reports to City Council's Community Development Human Services Committee. Neither the council

committee nor Parks staff could verify that the report had ever been generated.

We recommend that the Department of Parks and Recreation provide the required revenue reports to the City Council’s Community Development Human Services Committee.

City departments responsible should exercise greater oversight of the contracts in order to ensure the city receives all revenue owed.

We were unable to determine whether the city has been paid as required by the venue contracts because Live Nation executives declined to provide the supporting documents we requested and neither of the contracts contained strong audit clauses. Also, the city departments with oversight authority of the contracts—Enterprise Assets Management and Parks—did not request any additional information to confirm the annual summaries that Live Nation provided for the 2016-2018 concert seasons. Staff with both departments confirmed that they have not validated that revenue amounts at the venues were correct.

The Parks department did follow up on concerns raised by City Council members regarding deductions from the 2018 concert season at Chastain. Live Nation submitted invoices to the city in Chastain’s 2018 annual summary for \$99,000 (see Exhibit 12). Live Nation deducted this amount from revenue due to the city; however, the Chastain contract requires Live Nation to pay for repairs not associated with underground water and sewer. The city required Live Nation to pay the amount to the city, which the company did in January 2019.

Exhibit 12: Structural Repairs Were Not Allowable Deductions from Revenue

CHASTAIN VENTURES DEDUCTIONS FOR THE 2018 SEASON	
Vendor: Reeves & Young	
Structural Repairs - Engineered Wall Supports	\$ 54,000.00
Structural Repairs - Repair CMU Wall	\$ 45,000.00
Total Deduction	\$ 99,000.00

Source: Chastain Park Amphitheater annual summary deduction provided to the Department of Parks and Recreation by Live Nation for the 2018 event season.

We recommend the Departments of Parks and Enterprise Assets Management validate the reported revenue against the required documentation to ensure Live Nation complies with the terms of both venue contracts.

Chastain Revenue Applied Incorrectly

The city has not accurately allocated revenue to the funds as required by the Chastain contract. We found the Department of Parks and Recreation incorrectly applied \$24,944 of 2016 ancillary income to the Centers of Hope account instead of the Chastain Trust. According to the Department of Law, the ancillary income of \$24,944 should have been applied to the Chastain Trust. We did not identify an adjustment to correct the 2016 transaction.

The department also incorrectly applied \$30,350 and \$30,859 from the 2017 and 2018 concert seasons to the Mayor's Youth Scholarship Fund when the money should have been applied to the Chastain Trust. City Council expressed concerns about the miscalculation to Parks staff in January 2019. The city corrected the revenue for 2017 and 2018 and placed the funds into the appropriate accounts on January 31, 2019. The cause of the misapplication of the 2017 and 2018 funds was associated with a discrepancy between the fourth contract amendment and the authorizing legislation (17-O-1019). The Department of Law has opined that the fourth amendment legislation is the authorizing document, but the Parks employee responsible for managing the revenue deposits told us that Parks was not aware of the opinion from Law and therefore applied the revenue according to the 2017 contract amendment.

We recommend the Department of Parks and Recreation return the \$24,944 to the Chastain Trust Fund from the Centers of Hope Fund.

Recommendations

To clarify requirements and ensure compliance with the Lakewood lease agreement, the Department of Enterprise Assets Management commissioner should work with the city attorney to develop the following contract amendments for City Council consideration:

1. Add specific language to require Live Nation to provide box office statements, ticket manifests, and reports so that revenue can be independently verified by the city.
2. Add specific language to the audit clause in the Lakewood contract to ensure that the city has unrestricted access to audit all documentation associated with the contract terms.
3. Add a provision requiring penalties for late payments.
4. Add language to ensure the installation of the sound monitoring equipment and to outline responsibilities associated with monitoring roles and compliance.
5. Amend the name-in-title sponsorship clause to ensure that name-in-title revenue payments are set and specify documentation that should be included with the payment for the city's verification.
6. Require Live Nation to pay rents electronically to expedite the payment process and increase transparency.

To clarify requirements and ensure compliance with the Chastain lease agreement, the Department of Parks and Recreation commissioner should work with the city attorney to develop the following contract amendments for City Council consideration:

7. Add specific language to the audit clause to ensure that the city has unrestricted access to audit all documentation associated with the contract terms.
8. Amend the name-in-title sponsorship clause to ensure the city's review of the contract prior to execution and receipt of the final contract are mandated and documented.

To ensure adequate oversight of the Chastain venue contract and ensure that the city is receiving revenue owed from Live Nation, the commissioner of the Department of Parks and Recreation should:

9. Require staff to request and review supporting documents along with the annual summaries to verify that rental payments to the city are correct.
10. Provide mandated revenue reports to the City Council's Community Development Human Services Committee to ensure that revenue at the Chastain Amphitheaters is monitored.
11. Work with the chief financial officer to ensure that \$24,944 is moved to the Chastain Trust Fund from the Centers of Hope Fund.

To ensure adequate oversight of the Lakewood venue contract and ensure that the city is receiving revenue owed from Live Nation, the commissioner of the Department of Enterprise Assets Management should:

12. Require staff to request and review supporting documents along with the annual summaries to verify that rental payments to the city are correct.

To ensure compliance with the maintenance terms in the Lakewood lease agreement, the Department of Enterprise Assets Management commissioner should:

13. Conduct routine inspections of the Lakewood facility to confirm whether Live Nation is performing maintenance as required.

To ensure compliance with the sound violation provisions in the Chastain lease agreement, the Department of Parks and Recreation commissioner should:

14. Work with Live Nation to evaluate the sound monitoring system for replacement and/or repair prior to the 2020 concert season at Chastain Park Amphitheater.
15. Request that Live Nation provide records of replacements, repairs, and calibrations of the sound monitoring system at the Chastain venue.

Appendices

Appendix A: Management Review and Response to Audit Recommendations

Report # 19.06	Report Title: Management of Live Nation Lease Agreements	Date: May 2020
Recommendation 1: We recommend Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add specific language to require Live Nation to provide box office statements, ticket manifests, and reports so that revenue can be independently verified by the city.		
Proposed Action: While I defer to Law regarding the need to amend the contract with Live Nation with respect to our rights to audit, the language of Article 12 in the Summary of Terms that supplements the Amphitheatre Agreement appears to me to be all encompassing and unequivocal: "The City shall have the right to audit all documents used by Live Nation to determine the percentage rents...." The language was developed by the Law Department at the time that the City took over management of Lakewood from Filmworks, USA, Inc. Of course, any amendment of the business terms would have to be negotiated with Live Nation prior to passage of any ordinance in order to be effective.		Response: Partially Agree
Person Responsible: John Lavelle, Director of Real Estate		Implementation Date: Not provided
Recommendation 2: We recommend Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add specific language to the audit clause in the Lakewood contract to ensure that the city has unrestricted access to audit all documentation associated with the contract terms.		
Proposed Action: While I defer to Law regarding the need to amend the contract with Live Nation with respect to our rights to audit, the language of Article 12 in the Summary of Terms that supplements the Amphitheatre Agreement appears to me to be all encompassing and unequivocal: "The City shall have the right to audit all documents used by Live Nation to determine the percentage rents...." The language was developed by the Law Department at the time that the City took over management of Lakewood from Filmworks, USA, Inc. Of course, any amendment of the business terms would have to be negotiated with Live Nation prior to passage of any ordinance in order to be effective.		Response: Partially Agree
Person Responsible: John Lavelle, Director of Real Estate		Implementation Date: Not provided

Recommendation 3:

We recommend Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add a provision requiring penalties for late payments.

Proposed Action: I agree with the recommendation to add a provision requiring penalties for late payments. Again, I think any such provision would require an agreement with Live Nation as to the terms. I am quite willing to initiate that conversation, but I'm not optimistic regarding their willingness to do so in this economic climate. Live Nation has reportedly canceled all concerts for the season in most or all locations for the remainder of the year due to the coronavirus pandemic.

Response:

Agree

Person Responsible: John Lavelle, Director of Real Estate

Implementation Date:

Not provided

Recommendation 4:

We recommend Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to add language to ensure the installation of the sound monitoring equipment and to outline responsibilities associated with monitoring roles and compliance.

Proposed Action: I don't disagree with the desire to install sound monitoring equipment, but LN will not agree to pay for it. I have had one complaint in the 10 years that we have been managing Lakewood, and that came from our other tenant, EUS/Screen Gems. The incident occurred during a sound check and our two tenants subsequently worked things out. As I understand it, the threshold sound level is 65 dBA over a 30 minute period, (which is apparently highly unlikely) measured at the residential property lines. The sound from the amphitheater primarily flows uphill to where EUE/Screen Gems has its improvements, with the residential neighborhood in that direction a significant distance away. If sound becomes an issue at Lakewood, I would recommend that the city invest in the equipment and the personnel necessary to monitor it as needed. Again, I defer to Law, but I think that all the city can do is to hold LN to the terms of the city's sound ordinance.

Response:

Partially Agree

Person Responsible: John Lavelle, Director of Real Estate

Implementation Date:

Not provided

Recommendation 5:

We recommend Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to amend the name-in-title sponsorship clause to ensure that name-in-title revenue payments are set and specify documentation that should be included with the payment for the city's verification.

Proposed Action: I am not sure what is meant by ensuring "that name-in-title payments are set" with respect to naming rights at Lakewood. Article 13 in the referenced Summary of Terms speaks to Naming Rights. The terms and form were negotiated with Law's assistance and specify that the city will receive 10% of the Net Proceeds, as defined. I agree that we should require a breakdown each year of those "costs required by Name and Title Contract to be paid by Live Nation to fulfill its obligations thereunder", as stipulated in Article 13. I will discuss with Law within the week how to ensure our audit rights to any Name and Title Contract can be enforced.

Response:

Agree

Person Responsible: John Lavelle, Director of Real Estate

Implementation Date:

May 2020

Recommendation 6:

We recommend the Department of Enterprise Assets Management commissioner work with the city attorney to develop a contract amendment for City Council consideration to require Live Nation to pay rents electronically to expedite the payment process and increase transparency.

Proposed Action: I agree that we should have LN make their contract payments electronically, and I think that LN will agree. I will broach with LN within the week whether they are willing to amend the business terms to require electronic payments. As stated previously, changes to the contract terms requires agreement between the parties.

Response:

Agree

Person Responsible: John Lavelle, Director of Real Estate

Implementation Date:

Not provided

Recommendation 7:

We recommend the Department of Parks and Recreation commissioner work with the city attorney to develop a contract amendment for City Council consideration to add specific language to the audit clause to ensure that the city has unrestricted access to audit all documentation associated with the contract terms.

Proposed Action: Work with City Attorney to amend contract for City Council consideration adding specific language to the audit clause to ensure that the City has unrestricted access to audit all documentation associated with the contract terms to include but not limited to parking sales, ticket sales and name-in-title sponsorship payments.

Response:

Agree

Person Responsible: Henry Thompson, Business Manager and/or Contracts Manger

Implementation Date:

June 2020

Recommendation 8:

We recommend the Department of Parks and Recreation commissioner work with the city attorney to develop a contract amendment for City Council consideration to amend the name-in-title sponsorship clause to ensure the city's review of the contract prior to execution and receipt of the final contract are mandated and documented.

Proposed Action: Work with City Attorney to amend the name-in-title sponsorship clause to ensure the city's review of the contract prior to execution and receipt of the final contract are mandated and documented.

Response:

Agree

Person Responsible: Henry Thompson, Business Manager and/or Contracts Manager

Implementation Date:

June 2020

Recommendation 9:

We recommend the Department of Parks and Recreation commissioner require staff to request and review supporting documents along with the annual summaries to verify that rental payments to the city are correct.

Proposed Action: Along with annual summaries from Live Nation, staff will request and review supporting documents to verify rental payments to the City are correct to include parking sales, ticket sales and name-in-title sponsorship payments.

Response:

Agree

Person Responsible: Henry Thompson, Business Manager and/or Contracts Manager

Implementation Date:

June 2020

Recommendation 10:

We recommend the Department of Parks and Recreation commissioner provide mandated revenue reports to the City Council's Community Development Human Services Committee to ensure that revenue at the Chastain Amphitheaters is monitored.

Proposed Action: Provide revenue reports to the City Council's Community Development Human Services Committee in coordination with the Department of Finance.

Response:

Agree

Person Responsible: John Dargle, Jr., Commissioner

Implementation Date:

July 2020

Recommendation 11:

We recommend the Department of Parks and Recreation commissioner work with the chief financial officer to ensure that \$24,944 is moved to the Chastain Trust Fund from the Centers of Hope Fund.

Proposed Action: The Department of Finance completed the transaction at DPR's request.

Response:

Agree

Person Responsible:

Implementation Date:

Complete

Recommendation 12:

We recommend the Department of Enterprise Assets Management commissioner require staff to request and review supporting documents along with the annual summaries to verify that rental payments to the city are correct.

Proposed Action: I agree that DEAM staff should review supporting documents along with the annual summaries provided by LN to ensure that all payments are correct. To the extent provided by law, I agree that DEAM should request those supporting documents. I understand that we have the right to audit, but I defer to Law regarding what copies of documents LN is required to give us rather than allow us to inspect/audit.

Response:

Agree

Person Responsible: John Lavelle, Director of Real Estate

Implementation Date:

Not provided

Recommendation 13:

We recommend the Department of Enterprise Assets Management commissioner conduct routine inspections of the Lakewood facility to confirm whether Live Nation is performing maintenance as required.

Proposed Action: I agree that DEAM should conduct periodic inspections of the site to ensure LN is performing its maintenance obligations under Article 6 of the Summary of Terms. Our Operations staff originally opined that the annual allowance of \$48,000 would cost the city much more than that if we had to be responsible for the items in Article 6. It is in LN's best interest to maintain the grounds for its patrons (likewise the buildings, but it owns those improvements). While we do make periodic inspections of the 80 or so acres that make up the area leased by LN, I will have staff drive through and inspect on a monthly basis off season and bi-weekly from April through October.

Response:

Agree

Person Responsible: John Lavelle, Director of Real Estate

Implementation Date:

Not provided

Recommendation 14:

We recommend the Department of Parks and Recreation commissioner work with Live Nation to evaluate the sound monitoring system for replacement and/or repair prior to the 2020 concert season at Chastain Park Amphitheater.

Proposed Action: Work with Live Nation to test a replacement sound monitoring system alongside the current sound monitoring system at Chastain during 2020 concert season. The two systems will work simultaneously during the 2020 season. Recommend amending / revising contract provision that would provide the ability to purchase like or similar sound monitoring system if replacement is required.

Response:

Agree

Person Responsible: Adrienne Wright, Special Events Manager and /or Contracts Manager

Implementation Date:

July 2020

Recommendation 15:

We recommend the Department of Parks and Recreation commissioner request that Live Nation provide records of replacements, repairs, and calibrations of the sound monitoring system at the Chastain venue.

Proposed Action: Work with Live Nation to obtain written reports regarding the maintenance, repair, and calibrations of the sound monitoring system at Chastain venue as needed.

Response:

Agree

Person Responsible: Adrienne Wright, Special Events Manager and /or Contracts Manager

Implementation Date:

July 2020