PORTLAND CENTER FOR THE PERFORMING ARTS:

Outsourced management good for the City, but agreements and oversight need improvement

June 2011

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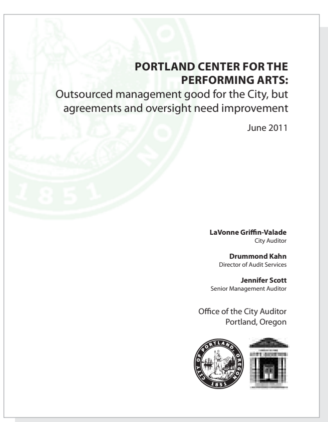
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CITY OF PORTLAND

OFFICE OF THE CITY AUDITOR
ENSURING OPEN AND ACCOUNTABLE GOVERNMENT

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CITY OF PORTLAND, OREGON 1851

June 30, 2011

TO: Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman
Ken Rust, Director, Office of Management and Finance

SUBJECT: Audit Report – Portland Center for the Performing Arts: Outsourced management good for the City, but agreements and oversight need improvement (Report #393)

The attached report contains the results of our audit of City-owned performing arts facilities. In 1989, the City transferred management of the buildings that make up the Portland Center for the Performing Arts (PCPA) to the Metropolitan Exposition and Recreation Commission (MERC), a subsidiary of Metro. We assessed risks and benefits to the City from the outsourced management arrangement, as well as the City's involvement with PCPA.

We found that the arrangement is good for the City because the buildings are well managed, and the City has transferred significant financial responsibility and risk. We also found that the agreements governing the outsourced management arrangement are outdated and some aspects are not followed. In addition, although the City is working to increase oversight of PCPA, there is confusion as to whom PCPA and MERC staff should contact with City related operational and policy questions. We make a number of recommendations to City Council members and the Office of Management and Finance to address these issues.

We ask the lead City Council member on arts and culture, the City Council member responsible for coordinating with MERC/Metro, and the Office of Management and Finance to provide us with a status report in one year detailing steps taken to address the recommendations in this report.

We appreciate the cooperation and assistance we received from the Mayor's Office, the Office of Management and Finance, PCPA, MERC, and Metro management and staff as we conducted this audit.

L. Griffin-Valade

LaVonne Griffin-Valade
City Auditor

Audit Team: Drummond Kahn
Jennifer Scott

Attachment

CC: Suzanne Flynn, Metro Auditor
Dan Cooper, Acting Chief Operating Officer, Metro
Teri Dresler, General Manager, Metro Visitor Venues
Robyn Williams, Director, PCPA

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Summary

The City of Portland has been involved in the arts for decades. The City financially supports arts projects, initiatives designed to sustain arts funding, and the Portland Center for the Performing Arts (PCPA), whose three performing arts buildings containing five theatre spaces are owned by the City. Although City support for some arts projects is widely publicized, the City's financial support of PCPA and City ownership of the buildings may be less well-known, even to those who attend PCPA performances. The City owns the buildings, but the management of PCPA was outsourced to the Metropolitan Exposition and Recreation Commission (MERC), part of the Metro regional government, in the early 1990s. There are three intergovernmental agreements that govern the management transfer and the City's financial support of PCPA.

In order to assess risks and benefits to the City from the outsourced management arrangement, and to provide information on the City's involvement with PCPA, we audited the agreements regarding management and ownership of the facilities, the City's financial involvement with PCPA, and the benefits to the City from the arrangement.

We found that the arrangement is good for the City because the buildings are well managed and the City has transferred significant financial responsibility and risk. Moreover, because PCPA reports to MERC, an independent commission that specializes in managing visitor venues like theatres for the performing arts, PCPA enjoys efficiencies through shared costs and expertise. In addition to these benefits, we found that the agreements governing the outsourced management arrangement are outdated, and some aspects are not followed. We also found that although the City is working to increase

oversight of PCPA, there is confusion among some PCPA and MERC staff as to whom they should contact in the City with operational and policy questions. We provide background information on PCPA to clarify the City's involvement and the outsourced management arrangement. We also make a number of recommendations designed to update the agreements and to ensure that the City's involvement in PCPA is clear and consistent.

Chapter 1 **Background**

The City has long supported arts and culture in Portland

Over the past 40 years, the City has financed literary, performing, and visual arts, some through City managed programs and some through support of outside nonprofit organizations and other local government bodies. In 1973, the City co-founded the organization now known as the Regional Arts and Culture Commission (RACC), which was a City bureau until 1995, when it was restructured into a non-profit organization. In 1980, the City adopted the Percent for Art program, through which a percentage of improvement project costs are allocated to public art. In 1981, the Portland Center for the Performing Arts was created. In 1992, the City adopted the Arts Plan 2000+ in cooperation with Metro, demonstrating the City's long-term commitment to providing and increasing arts funding.

The City continues to be heavily involved in the arts. In 2009, the City, Metro, and Washington County released the Creative Action Plan for the Portland Metropolitan Region. According to the Mayor's Arts and Culture Director, the Action Plan is the City's strategic plan for the arts. The plan contains three goals: strengthen cultural infrastructure; improve access to the arts and arts education; and invest in creative talent. Additionally, the plan states that the region needs to secure $15-$20 million in public funding annually for the arts. There is no City bureau that oversees the City's arts initiatives, but since 2009, the Mayor has served as the lead Council member on arts and culture; the Mayor's office has one full-time Arts and Culture Director on staff and recently hired an arts-focused Policy Coordinator.

The City is working to achieve the goals of the Creative Action Plan in part by supporting non-profit organizations, including RACC and the Creative Advocacy Network (CAN). RACC encourages arts and culture in the region and receives public finding from local, regional, state and federal governments. According to RACC's annual report, they received nearly $5 million from the City in FY 2009-10, which was 73 percent of their total revenue. RACC provides service in five areas: advocacy, public art, community service, arts education, and grants. RACC awards grants to artists and operating support to arts organizations including all of PCPA's resident companies, though RACC provides no support to PCPA itself. RACC also passed through some of the City's FY 2009-10 funding to CAN, a nonprofit group working to mobilize support for the creation of a public fund for the arts and arts education. In addition to receiving funds from the City, CAN lists City staff as volunteers and a City bureau director as a Board member.

City outsourced management of PCPA

Although the City owns the three PCPA buildings, the City is no longer responsible for the management of PCPA. The City transferred management responsibility of PCPA to MERC in 1990; three intergovernmental agreements govern the transfer of management, and the City's financial involvement with PCPA:

1. *Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Services District*
2. *Visitor Facilities Intergovernmental Agreement*
3. *Visitor Development Fund Services Agreement*

Details and compliance with City and PCPA related aspects of the agreements are discussed in Chapter 2 of this report.

Portland Center for the Performing Arts (PCPA), a premier arts and entertainment venue

The Portland Center for the Performing Arts (PCPA) was created in 1981, when voters approved a ballot measure allowing the City to use $19 million in general obligation bonds to renovate an existing City-owned building, to acquire and renovate another building, and to construct a new building. The City predicted that PCPA would generate $40 million in direct annual economic benefit to the City and "enhance the City's livability and reputation as a cosmopolitan city."

PCPA refers to a group of performing arts buildings, as well as the organization responsible for their management and operations. The PCPA has a total of five performing arts venues housed in three downtown buildings - the Keller Auditorium, Arlene Schnitzer Concert Hall, and Antoinette Hatfield Hall, which holds the Brunish Hall, Dolores Winningstad Theatre and Newmark Theatre (See Figure 1). PCPA is responsible for all aspects of event management including booking performances, selling tickets, staffing back stage and front of house operations, and maintaining the buildings. In FY 2009-10, PCPA's budget included 46 full time positions, and in 2009, they hosted over 800 events that drew approximately 1 million attendees.

Figure 1 PCPA performing arts venues

Building/ venue name	Year constructed, last major renovation (if applicable)	Size/capacity
Keller Auditorium	1917, 1968	Seating - 2,992
Arlene Schnitzer Concert Hall	1928, 1984	Seating - 2,776
Antoinette Hatfield Hall *(contains the following)*	1987	127,000 sq. foot complex, 3 venues:
Newmark Theatre	1987	Seating - 880
Winningstad Theatre	1987	Seating - 304
Brunish Hall	1987	Seating - varies, up to 200

Source: PCPA

Figure 2 Arlene Schnitzer Concert Hall

Source: PCPA

Current management and oversight of PCPA

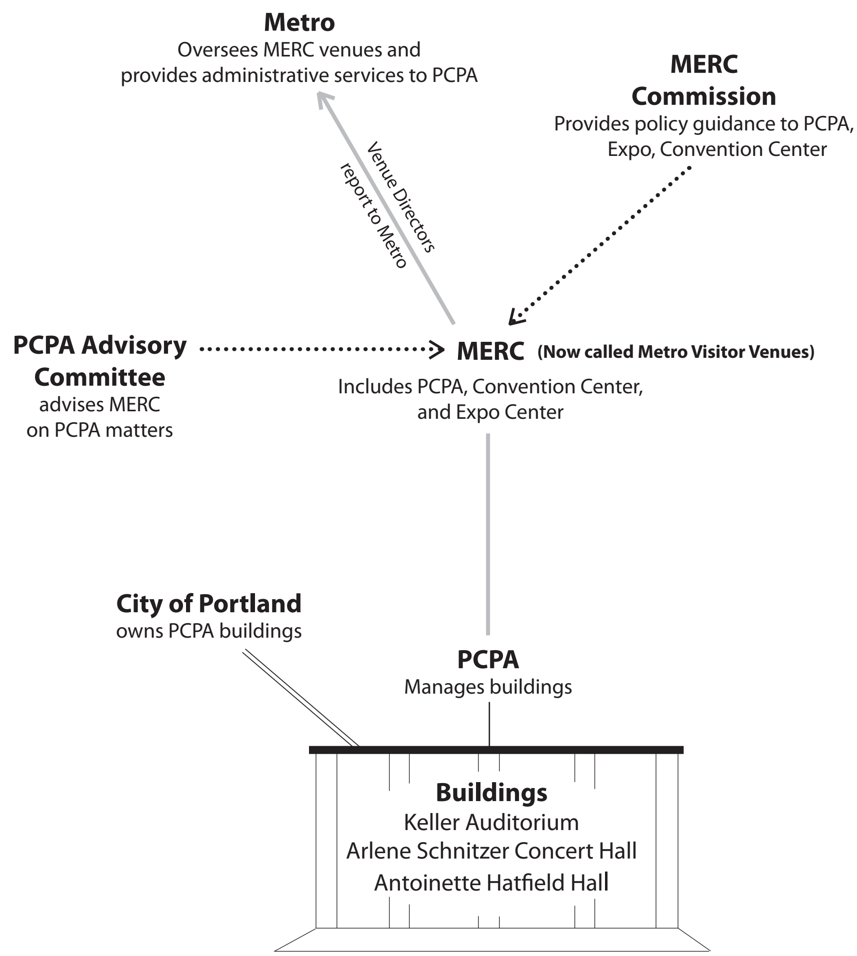
PCPA operates under the guidance of the MERC Commission, which also oversees the Oregon Convention Center, and the Portland Expo Center. MERC is a part of Metro, an elected regional government responsible for urban growth boundary management, transportation planning, waste disposal planning and management, zoo operations, solid waste management and recycling, preservation of natural areas, long-range planning, habitat restoration, and venues for concerts, exhibits, and performing arts for the 25 cities and three counties that it represents.

In July 2010, Metro initiated a process to change the reporting relationship between MERC and Metro to give Metro more oversight, and during our audit, MERC was in a process of transition. In the past, MERC was a stand-alone entity with staff who provided administrative services to the venues, and the MERC General Manager reported directly to the MERC Commission, a group of seven individuals recommended by the jurisdictions they represent (Metro, City of Portland, and the counties of Washington, Clackamas, and Multnomah), and appointed by the Metro Council. With the recent change, the MERC General Manager now reports directly to the Metro Chief Operating Officer instead of the MERC Commission, and the position is now known as the General Manager of Metro Visitor Venues. The Chief Operating Officer told us that Metro altered the reporting relationship to allow Metro more oversight of the venues for which they are ultimately responsible.

The General Manager told us that MERC as a stand-alone business entity no longer exists. MERC business office staff are now Metro employees, while MERC venue operations and management staff are still considered MERC employees. During our fieldwork, many business office staff we spoke with had not yet transitioned to Metro. As such, in this report we refer to MERC staff and their duties. Metro is absorbing the administrative services that MERC once provided. Metro now provides an umbrella of services including marketing, human resources, capital project management, and accounting to Metro offices as well as the MERC venues. The MERC Commission continues to serve as the policy making body over PCPA, the Convention Center, and Expo, and assists in rate setting, contracting, and budget planning.

The PCPA Advisory Board, a committee with members appointed by the City of Portland, provides advocacy and counsel on PCPA issues. There are currently two MERC Commissioners on the Board who are appointed by the MERC Chair.

Figure 3 PCPA ownership, oversight, advisory, and management relationship



Source: Audit Services Division

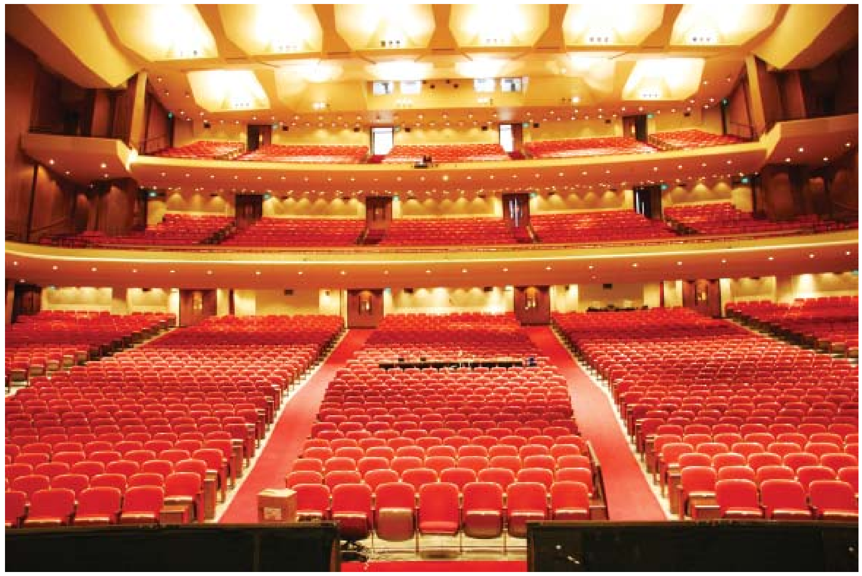
PCPA finances

Though PCPA operates under the guidance of the MERC Commission, a part of Metro, PCPA receives no operational support from Metro. Most of PCPA's FY 2009-10 revenue was from charges for services including theatre rentals, admission fees, ticket commissions, food and beverage service, as well as income from the Transient Lodging Tax, and contributions from the City of Portland. More than half of PCPA's operating expenses were dedicated to personal services like employee wages and benefits. PCPA has budget contingency and ending reserve balances that grew at a steady rate from 2002-2009, but in 2010, the amount was anticipated to drop to 2008 levels. MERC's current policy requires venues to hold a minimum of 4 percent of their total budget as contingency, but there is a proposal to increase the minimum. The proposed policy recommends that PCPA reserves go into a restricted fund for an employee pension program, an accumulation fund for capital maintenance and improvement, and a contingency fund to help ensure that PCPA has sufficient resources to remain operational if they experience a significant loss of revenue or increase in costs. When we discussed a draft of this report with the General Manager of Visitor Venues, she told us that the shift in administrative functions from MERC to Metro will reduce overhead costs for PCPA since the costs will be shared with more entities. She also told us that the MERC Commission will institute new financial policies for PCPA and the other venues in FY 2011-12.

PCPA works to support resident companies and charges venue renters different rates

The mission of the PCPA is to "provide superior, responsibly managed performance spaces that foster an environment in which diverse performing arts, events and audiences may flourish." PCPA's Director told us they do this by giving booking priority and subsidized rental rates to the six primary performing arts groups (tier-4 resident companies) that use the facilities: Oregon Ballet Theatre; Portland Opera; Oregon Symphony; Oregon Children's Theatre; Tears of Joy Theatre; and Portland Youth Philharmonic. Performing arts groups must meet a set of criteria in order to be tier-4 resident companies, including that they must be a non-profit company based in Clackamas, Multnomah, Washington, or Clark County. However, the PCPA Director told us that some of the criteria, like that which requires companies to fill 60% of a venue's seats, are outdated and no longer enforced.

Figure 4 Interior of Keller Auditorium



Source: PCPA

PCPA charges venue renters a range of rental rates. As noted above, tier-4 resident companies are charged the lowest rental rate. PCPA charges a higher rate to "discounted non-profit" organizations, and an even higher rate to other non-profits and "Broadway Across America" seasons. The highest rent is charged to for-profit commercial touring shows and concerts. In addition to rental rates, PCPA charges venue renters "user fees," a portion of the cost of show tickets. According to the PCPA Director, revenue earned on rent and user fees from Broadway seasons and other commercial shows help to offset the subsidized rates offered to tier-4 resident companies, which are the lowest in the country for venues the caliber of PCPA's. In 2009, in an effort to help tier 4-resident companies during the economic downturn, PCPA drew upon reserves and reduced tier-4 user fees for four years.

We spoke with representatives of the Portland Opera, Oregon Symphony, Oregon Children's Theatre, and Oregon Ballet Theatre about their experiences as some of PCPA's tier-4 resident companies. We also spoke with RACC, since they work closely with all of PCPA's tier-4 resident companies. Overall, representatives of the companies characterized their experience with PCPA as positive; some reported they benefit from PCPA's flexibility with time in the theatres, that the reduction in user fees helped them financially, and that the buildings are generally in good condition. RACC staff told us that some resident companies believe the fees charged by PCPA are too high, and one resident company told us they think they pay for more than they get from PCPA.

Potential rate increase for performing arts companies

A Transient Lodging Tax of 12.5 percent is charged on hotel and motel room rentals in Multnomah County, three percent of which is pooled into the Excise Tax Fund to be distributed to PCPA, RACC, and Metro. When we reviewed the results of this audit with the PCPA Director, she explained that the annual revenue from the Excise Tax Fund has been significantly reduced and will likely impact the rates PCPA charges to resident companies. The PCPA Director explained that during the last few years, the Excise Tax Fund has shrunk because there have been fewer overnight visitors and hotels have reduced lodging rates. She explained that though Transient Lodging Tax revenue is rebounding due to an uptick in tourism, the Excise Tax Fund allocation structure stipulates that PCPA's share can only increase annually by the Consumer Price Index rate, which was almost zero in 2009. The Visitor Venues General Manager estimated that this reduction represents a $350,000 annual loss of revenue for PCPA and that it will take 13 years for PCPA's Excise Tax Fund allocation to return to pre-recession levels.

The PCPA Director said that without an increase in annual support or a change in the allocation guidelines, PCPA will have to increase the user fees and rental rates charged to tier-4 resident companies. When we asked about using budget reserves to cover the cost of reducing fees for performing arts companies, the Director explained that there are MERC policies that require venues to have minimum levels of reserves, which are needed to cover the cost of deferred building maintenance. Although the Excise Tax Fund and the agreements that govern its distribution were not reviewed as part of this audit, we included this information because revenue from the Fund may impact rates charged to tier-4 resident companies.

Limited performance space for many other performing arts companies

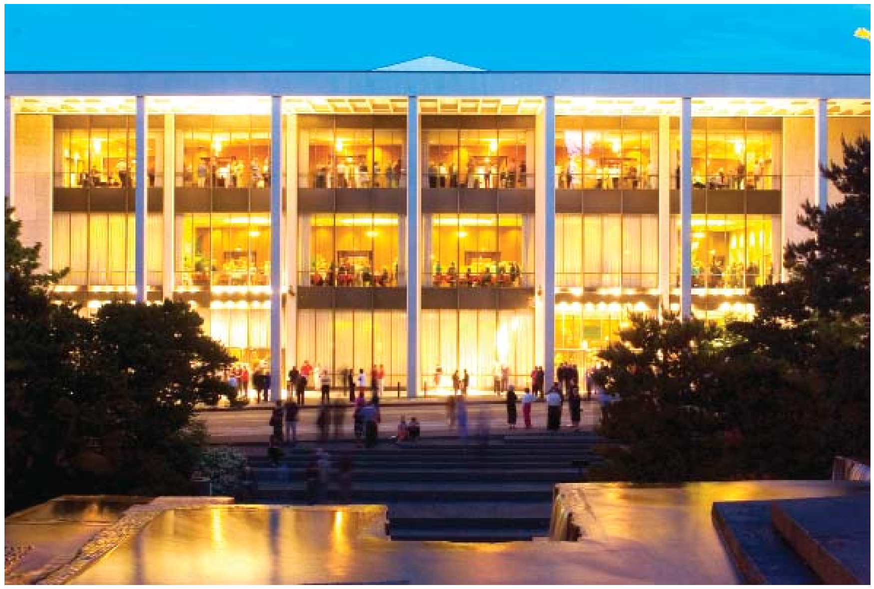
The Portland area is home to many artists and performing arts organizations. Some of the biggest performing arts companies are PCPA's tier-4 resident companies. However, throughout this audit, we heard concerns about lack of affordable theatre space for small performing arts companies. RACC staff told us that many companies in Portland are unable to use PCPA facilities because of limited availability, and because the rental rates and user fees are too high. Multiple newspaper articles echoed that there is limited theater space in the Portland area, and that as a result, many small companies are turning to nontraditional spaces, such as bars and churches, to hold performances.

We discussed concerns about limited performance space with the PCPA Director, who agreed that most PCPA venues are too large and rates too high for many local companies. The PCPA Director and MERC interim General Manager told us that rates cannot be eliminated since they cover many fixed costs like electricity and labor. In light of budget constraints, PCPA management and staff told us that they have made an effort to address the needs of small companies with limited resources. PCPA retrofitted Brunish Hall, one of the small theatres in the Antoinette Hatfield Hall as a small "black box" space where the stage and seating can be arranged in various ways. Non-profit users of Brunish Hall are not charged rent, but must have insurance and pay a user fee on tickets sold. Companies must also hire a house manager, and a stagehand on their first and last show dates, but they can use their own labor for other jobs that typically require paid PCPA staff. RACC staff told us that few companies use the hall because it is not an exciting space since there are many other similar venues in town.

Figure 5 Brunish Hall arranged two different ways

Source: PCPA

Figure 6 Keller Auditorium



Source: PCPA

Chapter 2 **Audit Results**

Transfer of management of PCPA to Metro and MERC is a good deal for the City

The City has no direct management involvement with PCPA, and when we started this audit, City policy makers told us they were not sure whether the City was getting a good deal from the outsourced management agreement. We found that the transfer of PCPA management is a good deal for the City in a number of ways. Not only has the City transferred liability and primary financial responsibility for building upkeep, but PCPA operates efficiently due in part to its relationship with Metro and MERC. If the City were to take on management of PCPA, they would have to acquire venue and events management staff and tools, or outsource PCPA management to another venue and events manager.

City buildings improved with little City funding

Since the transfer of PCPA management, the City has helped finance some renovations to PCPA buildings; however, the majority of recent improvements made to the buildings have been done without City funding. PCPA funds maintenance projects using PCPA budget reserves. In addition, the non-profit Portland Center for the Performing Arts Foundation fundraises on behalf of PCPA and has financed many capital improvements. According to PCPA and MERC managers, the Foundation provided over $300,000 for capital improvements from 2007 through 2009, including a new roof, generator, chairs, rigging components, sound system replacement, new drapes, and an orchestra shell. Though the Foundation has funded many improvement projects to date, there is no guarantee that this source of funding is sustainable. The PCPA Director said that she is concerned about the Foundation's fundraising during times of economic recession and global humanitarian crises that compete for donor funds.

City buildings maintained by PCPA and MERC

The PCPA buildings are well maintained and PCPA and MERC place an emphasis on safety. We found that PCPA buildings are inspected by PCPA and MERC maintenance and inspection staff and outside entities regularly. We toured the PCPA buildings, reviewed inspection reports, and spoke with managers and users about the buildings, and concluded that they are in good condition and maintained appropriately. Many PCPA building upgrades are scheduled and some will be completed as financing is available. PCPA managers and building renters told us that although the buildings are well-maintained, they will benefit from renovations and completion of deferred maintenance.

Insurance liability covered by Metro

In addition to diverting significant financial responsibility for the PCPA buildings, the City has also diverted primary liability through the current management arrangement. Metro insures the PCPA buildings as part of a blanket policy that covers all Metro buildings. In addition to paying for the insurance coverage, Metro told us that they would pay the deductible if there was damage to the PCPA buildings or if someone was injured in the buildings.

Metro's earthquake insurance coverage limit is $100 million, and the value of all Metro's buildings exceeds that amount. The Metro Risk Manager told us that in the case of a major earthquake that caused damage to multiple area buildings, the replacement costs for all Metro buildings would not be covered by the policy and Metro would want to repair buildings they own before those owned by the City. We discussed the situation with the City's Risk Manager, who told us that it is typical for governments to have holdings valued in excess of their insurance coverage limit. In addition, she told us that if there were a major earthquake that damaged many buildings, the Federal Emergency Management Agency (FEMA) would likely give the City aid to help rebuild. The City's Risk Manager told us that overall, the outsourced management arrangement seems like a good deal for the City.

Performing arts in Portland enhanced through PCPA and MERC

The provision of performance art in Portland is enhanced through PCPA's association with MERC, an organization that specializes in venue management. Before the change in MERC and Metro's reporting relationship described in Chapter 1, MERC provided an umbrella of administrative services to its venues. These services are now provided by Metro, and the cost is shared by Metro offices and the MERC venues. As a result, PCPA experiences economies of scale that translate into cost savings. In addition, PCPA is able to tap into expertise of staff at other visitor venues like the Convention Center and Expo, and with the change in reporting relationship, the PCPA Director told us she will be able to tap into a larger pool of talent for help with marketing, human resources, web design, information technology, capital project and accounting issues. If the City were to assume responsibility for PCPA management or outsource it to another entity, these economies of scale and event management expertise would be lost.

PCPA operates under the guidance of the MERC Commission, which is good for the provision of arts. Although the MERC Commission is part of the elected Metro government, the Commission has representatives from five jurisdictions, and they are involved with PCPA management and policy setting. The PCPA Director told us that the independent nature of the Commission helps PCPA select resident companies, set fees and performance schedules using professional judgment.

Figure 7 Antoinette Hatfield Hall

Source: PCPA

Note: Contains Newmark Theatre, Dolores Winningstad Theatre, Brunish Hall, and PCPA administrative offices

City dedicates funds to PCPA and has varied oversight involvement

City financially involved with PCPA

Over the last five years, between $800,000 and $1 million of City funds have been dedicated to PCPA each year (See Figure 8). In addition to the annual contribution the City is contractually obligated to give Metro on behalf of PCPA, the City has given PCPA grants for capital improvements and to back-fill for lost revenue when PCPA's allocation from the Visitor Fund Trust Account was reduced. The City also gave Portland General Electric (PGE) a credit for the last 24 years to cover the cost of debt service on funds used to help construct and renovate PCPA buildings.

In the mid 1980's, when the PCPA buildings were renovated and constructed, the Portland hydroelectric project was completed $7.5 million under budget. The hydroelectric project was funded through tax-exempt bonds, for which PGE paid debt service since they were the primary customer of power generated by the project. The City wanted to use the hydroelectric project budget surplus to fund the completion of PCPA construction and renovation. The full $7.5 million could not be used for non-hydroelectric purposes, or the bonds would become taxable; however, about $2 million of the bonds could be used. PGE did not want to cover the expense of debt service on money going to fund PCPA construction, so in 1984, the City and PGE agreed that the City's hydroelectric fund would give PGE an annual credit on their power bill to cover the debt service. The "performing arts center credit" has been approximately $200,000 a year since FY 1986-87, and FY 2010-11 is the last year of the credit. Over 24 years, the City has credited PGE about $5 million that would have otherwise gone into the City's general fund.

We reviewed publicly available resources, and found that the annual payments for a typical 25-year loan at a 7-8 percent interest rate were consistent with the annual dollar amount that the City forgave PGE.

Figure 8 **City of Portland funds associated with Portland Center for the Performing Arts**

	FY 06	FY 07	FY 08	FY 09	FY 10
Annual contractual contribution to PCPA	667,181	689,082	711,375	734,709	766,100
Additional contribution to PCPA	250,000	0	0	225,000	0
Performing Arts Center Credit to PGE	194,563	194,563	194,563	194,563	194,563
TOTAL	**$1,111,744**	**$ 883,645**	**$ 905,938**	**$1,154,938**	**$ 960,663**

Source: Audit Services Division

Many City entities involved with PCPA, which causes some confusion

The City outsourced management responsibility of PCPA through an intergovernmental agreement. However, various City offices and bureaus are involved with PCPA. The Mayor's Arts and Culture Director serves on the PCPA Advisory Committee, and told us she regularly communicates with the PCPA Director. The City's Office of Management and Finance (OMF) is responsible for making the annual payment to Metro for PCPA. PCPA and MERC staff coordinate with other City bureaus on a variety of issues. For example, MERC worked with the Water Bureau to try to address an issue with a water main under one of the PCPA buildings. PCPA staff regularly work with the Fire Bureau on fire code building inspections and drills. PCPA also works with the Bureau of Development Services on building permits, and the Bureau of Transportation when they need parking meters hooded outside theatres.

When we started this audit, City OMF staff told us they were beginning oversight of PCPA and requested $22,000 in their FY 2010-11 budget to fund the effort. The OMF staff told us their oversight effort was designed to help ensure that obligations of the agreement are met and to provide Council with assurance that the assets are well maintained. The budget request was rejected by Council, but OMF management and staff told us they will fund the effort out of existing resources. The PCPA Director told us that she was not aware of the City effort to increase oversight.

MERC and PCPA staff told us that coordinating with multiple contacts in the City is a challenge, and that having one contact may help improve their coordination of City related issues. An example of this challenge involves planned renovations to PCPA buildings. A MERC manager responsible for construction and capital improvement projects told us she is unsure whether the renovations should be carried out in accordance with the City's green building policy, and does not know where to seek clarification. City staff told us the answer is likely in the Consolidation Agreement. However, the Consolidation Agreement is silent on the issue of green building and major PCPA building renovations. As a result, the Agreement does not clarify which policy should be followed when major renovations to the City-owned PCPA buildings are carried out.

Agreements regarding PCPA management and City involvement outdated and not followed

As noted in the background section, three agreements govern the transfer of PCPA management from the City to MERC, and the City's continued financial involvement with PCPA:

1. *Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Services District*
2. *Visitor Facilities Intergovernmental Agreement*
3. *Visitor Development Fund Services Agreement*

Through the Consolidation Agreement, City maintains title and outsources management

When PCPA began operating, it was managed by the Exposition and Recreation Commission, a part of the City of Portland. In 1989, the City, Exposition and Recreation Commission, and Metro entered into the *Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Services District* (Consolidation Agreement). This intergovernmental agreement dissolved the

City's Exposition and Recreation Commission and created the Metro Exposition and Recreation Commission (MERC), a part of Metro. The agreement also transferred management of public convention, trade show, and spectator facilities (including PCPA), from the City to Metro via MERC. The Consolidation Agreement has been amended three times since 1989 to reflect changes to the ownership of the coliseum and stadium. Although a few requirements related to PCPA and the City changed in the amendments, the arrangement for management of PCPA has not been modified since 1989. The City has maintained title and ownership of the PCPA buildings, but Metro and the MERC Commission are responsible for operations, building maintenance and management. The Consolidation Agreement contains seven City-related requirements, but only two requirements have been fully implemented – the establishment of an Advisory Board, and the City's paying off of debt related to PCPA bonds and loans.

Visitor Facilities Agreement details City's financial involvement

In 2001, the City, Multnomah County, and Metro entered into the *Visitor Facilities Intergovernmental Agreement* (Visitor Facilities Agreement), which established funding to promote the visitor industry, economic development, and visitor and arts facilities. Through the Visitor Facilities Agreement, Multnomah County agreed to increase the Transient Lodging Tax and the Motor Vehicle Rental Tax both by 2.5 percent. The revenues from these new tax surcharges are pooled into the Visitor Facilities Trust Account (VFTA), the distribution of which is outlined in the agreement. The agreement also contains important details about the City's financial involvement with the PCPA. The Visitor Facilities Agreement contains three City-related requirements, only the requirement that the City issue PCPA bonds has been fully implemented.

Each agreement contains obligations related to jurisdictions other than the City and two contain obligations related to venues other than PCPA. In our review, we focused on requirements related to the City and PCPA and found that many aspects are not being followed. We summarize the results of our review in Figure 9.

Figure 9 Compliance with City and PCPA related aspects of Consolidation Agreement and Visitor Facilities Agreement

Consolidation Agreement		
Requirement	**Implementation status**	**Additional Information**
City Commissioner in Charge of MERC will appoint a PCPA Advisory Board to serve as the official advisory committee to Metro for all PCPA matters.	Implemented	As noted in Chapter 1, City established an Advisory Board and appoints its members.
City will pay debt service on $30.1 million Performing Arts and Civic Stadium General Obligation Bond issued in 1986. City will discount Portland General Electric's (PGE) annual bill to cover debt service PGE paid on funds used for PCPA construction.	Implemented	The City paid off the bond in 2001. As discussed earlier in this chapter, the "performing arts center credit" given to PGE has been approximately $200,000 a year since 1987.
Metro will provide the City an annual report on PCPA, in a format determined by the Commissioner in Charge.	Partially implemented	Metro financially reports to the City annually. MERC prepared annual economic and fiscal impact analysis report for last three years. PCPA and MERC prepared annual report about four times during the last ten years. The format of these reports was not determined by the City.
Metro will provide the City with monthly financial report showing the status of revenues and expenditures for each MERC facility for the current fiscal year.	Partially implemented	City staff provided with a link to electronic reports. Only some reports contain revenues and expenditures for PCPA.
City will give Metro $600,000 a year adjusted for inflation for PCPA. The Agreement details which inflation factor to use in the calculation.	Partially implemented	City gives Metro $600,000 a year, adjusted for inflation, as discussed earlier in this chapter. We found that the City was using the wrong inflation rate in their calculation. For the four years we examined, an error resulted in an overpayment of $31,000. OMF has since corrected their calculation.

Figure 9 *(continued)*

Compliance with City and PCPA related aspects of Consolidation Agreement and Visitor Facilities Agreement

Consolidation Agreement (continued)		
Requirement	**Implementation status**	**Additional Information**
City's annual contribution will be used half for PCPA operations and half for PCPA capital improvements.	Not implemented	PCPA uses all of City contribution for operations. (see page 24 for more information)
All capitalized personal property acquired using City facility-related funds will become property of the City. To track this information, Metro will maintain records of all capitalized personal property indentifying the facility where it is used and the source of funding.	Not implemented	Funding source information not maintained and the City is not requesting it.

Visitor Facilities Agreement		
Requirement	**Implementation status**	**Additional Information**
The City will issue limited tax revenue bonds for PCPA capital improvements. Cost of debt service will be paid by the Visitor Facilities Trust Account (VFTA).	Implemented	City issued bonds for PCPA capital improvements in the amount of $2.1 million in 2001. Debt service has been covered by VFTA each year.
As does the Consolidation Agreement, this agreement requires that City will give Metro $600,000 a year adjusted for inflation for PCPA. The Agreement includes instructions on how inflation should be calculated and which inflation factor to use in the calculation.	Partially implemented	As noted on the previous page, the City submits an annual payment for PCPA. City was using wrong inflation rate but corrected it after we brought the mistake to their attention.
As does the Consolidation Agreement, this agreement requires that City's annual contribution be used half for PCPA operations and half for PCPA capital improvements.	Not implemented	As noted above, PCPA uses all of City contribution for operations.

PCPA continues to use City's annual contribution in violation of agreements and relies on informal agreement for permission

The Consolidation Agreement and the Visitor Facilities Agreement detail how the City's $600,000 annual contribution to Metro for PCPA should be used -- half for PCPA operations and half for PCPA capital improvements. The PCPA Director told us that PCPA uses the entire City contribution for operations and that the OMF Director agreed to this use of funds in 2006. We discussed this with the OMF Director who told us that he was not intending to give blanket approval; however, OMF staff said that they do not hold PCPA to the 50/50 split requirement. OMF staff told us they believe PCPA receives capital funds in excess of the City's contractual obligation through fundraising done by the Portland Center for the Performing Arts Foundation.

The informal agreement on PCPA's use of the City's annual contribution was discussed in a 2006 audit by the Metro Auditor. The Metro Auditor highlighted the risk of having an informal agreement and recommended that the parties open the agreement to formalize the use of the City's annual contribution. This issue has yet to be resolved and continues to pose risks to the parties. For example, the City could hold PCPA to the use detailed in the agreements, which may require PCPA to find additional funds to meet their operational expenses.

Both agreements explicitly state that they cannot be modified except by written amendment, dated, approved, and signed by all parties of the agreement, which in the case of the Visitor Facilities Agreement, includes Multnomah County. City and MERC staff told us that opening the agreements in order to make changes would be politically challenging.

City no longer party to the Visitor Development Fund Services Agreement

A third agreement, the *Visitor Development Fund Services Agreement*, was also signed in 2001. This agreement is between the Visitor Development Fund Inc., Metro, Multnomah County, and the City. The agreement is mandated by the Visitor Facilities Agreement discussed above and establishes the Visitor Development Fund (VDF) Board, which is responsible for overseeing the allocation of the VFTA funds. Currently, there are two City Commissioners on the VDF Board.

We found that the City has not reauthorized its participation in the *Visitor Development Fund Services Agreement* after the required ten years. The lack of reauthorization seems to be an oversight; City and MERC representatives were not aware of it until we shared results of this audit. According to the Office of the City Attorney, the City is no longer party to the agreement and has lost rights granted by the agreement, including having the ability to confirm or remove members on the VDF Board. The City Attorney advised OMF to reauthorize their participation in the agreement.

Chapter 3 **Audit Recommendations**

To address issues with the agreements regarding the management of PCPA, and to ensure that the City's involvement with PCPA is clear and cohesive, we make the following four recommendations:

Lead City Council member on arts and culture, City Council member responsible for coordinating with MERC/Metro, and OMF:

1. Arrange regular meetings between Commissioner's staff working with PCPA, Commissioner's staff working with Metro, and OMF staff working with Metro, MERC, and PCPA to discuss oversight efforts. Determine appropriate City contact for Metro, MERC, and PCPA operational and policy questions. Communicate contact to Metro, MERC, and PCPA.

Lead City Council member on arts and culture and City Council member responsible for coordinating with MERC/Metro:

2. Work with representatives of all parties to the Consolidation Agreement, and all parties to the Visitor Facilities Agreement to coordinate meetings to discuss agreements and current practices. Based on discussions, make necessary amendments to the agreements to match current practice or vice versa. Any amendments proposed by the City should be informed by the meetings recommended above.

OMF:

3. Continue to calculate annual contribution to PCPA using method outlined in the Consolidation Agreement and the Visitor Facilities Agreement. Document the procedure in bureau policy to ensure that future calculations are performed correctly.

City Council member responsible for coordinating with MERC/Metro:

4. Renew participation in the *Visitor Development Fund Services Agreement*.

Chapter 4 **Objective, scope, and methodology**

The objective of this audit was to perform a broad review of the agreements regarding the management and ownership of the PCPA facilities, the City's financial involvement, and the benefit to the City from the current management arrangement. This audit was on our annual schedule and was requested by the Mayor's Office

To achieve our audit objective, we examined City and PCPA related aspects of the *Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Services District*; the *Visitor Facilities Intergovernmental Agreement*; and the *Visitor Development Fund Services Agreement*. We also reviewed documents provided to the City per the agreements. In order to assess the City's financial involvement with PCPA, we reviewed City, MERC, and Metro budget documents. We interview managers and staff of PCPA, Metro, and MERC, as well as City staff and managers involved with PCPA. To learn about the experiences of PCPA resident companies, we interviewed representatives of the Regional Arts and Culture Council (RACC), Portland Opera, Oregon Ballet Theatre, Oregon Children's Theatre, and Oregon Symphony. In order to assess how the buildings are maintained and their general condition, we did a walk-through of PCPA buildings and reviewed inspection reports of the buildings performed by MERC.

PCPA reports to the MERC Commission, a part of Metro, and falls under the Metro Auditor's authority. This audit, conducted by the City Auditor's Audit Services Division, focused on the City's involvement with PCPA, since these questions fall under the authority of the City

Auditor. We did not assess the management of PCPA or management decisions of PCPA, MERC or Metro since these issues fell outside the authority of the City Auditor. We reviewed audits of MERC and PCPA performed by the Metro Auditor and looked into the status of recommendations related to this audit objective. We passed along issues that came to our attention that were outside the scope of this audit to the Metro Acting Chief Operating Officer, Metro Auditor, the General Manager of Metro Visitor Venues, and the PCPA Director.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. These 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 reasonable basis for our findings and conclusions based on our audit objectives.

RESPONSES TO THE AUDIT

OFFICE OF MAYOR SAM ADAMS
CITY OF PORTLAND

June 23, 2011

LaVonne Griffin-Valade
City Auditor
1221 SW 4th Avenue, Room 140
Portland, Oregon 97204

Dear Auditor Griffin-Valade,

Thank you for performing this analysis of the Portland Center for the Performing Arts (PCPA) and its structural relationship with the City of Portland. PCPA is a vital resource for Portlanders that contributes significantly to the quality of life, culture and the economy of our region.

I appreciate your analysis and its conclusion that the outsourcing of management of this City-owned property to Metro and the Metro Exposition and Recreation Commission (MERC) is a good arrangement for the City. I am particularly pleased by your finding that the buildings are well managed and benefit from efficiencies in this arrangement, while the City's financial responsibility and risk is minimized.

I support your recommendations in this audit to work closely with the Office of Management and Finance (OMF) to ensure even more effective coordination with Metro and PCPA. As you suggested, I have moved forward with OMF in designating the City's Facilities Manager as the point of contact for operational and policy questions and will communicate that designation to relevant parties. Additionally, I will work with my colleagues on City Council and in OMF to reauthorize the City's participation in the Visitor Development Fund Services Agreement. I will also consider how best to align practices and agreements regarding PCPA, informed by your analysis.

Once again, thank you for your hard work and dedication to public service in the City of Portland.

Sam Adams
Mayor
City of Portland

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CITY OF PORTLAND
OFFICE OF MANAGEMENT AND FINANCE

DATE: June 23, 2011

TO: LaVonne Griffin-Valade, City Auditor

FROM: Kenneth L. Rust, Chief Administrative Officer KLR

SUBJECT: Response to Portland Center for Performing Arts: Outsourced management good for the City, but agreements and oversight need improvement (Report #393)

Thank you for the opportunity to comment on your audit of the Portland Center for Performing Arts, Report #393. We found the Report helpful to better understand the complexities surrounding the City's involvement in contributing funding towards maintaining these assets and clarifying OMF's role.

OMF supports the Report's recommendations to work closely with the lead City Council member responsible for coordinating with Metro on these efforts and will work with the City Council to reauthorize the City's participation in the Visitor Development Fund Services Agreement. OMF has assigned the City's Facilities Manager as the point of contact for operational and policy questions and will communicate this to the affected parties. We further agree to continue calculating the annual contribution to PCPA according to the method outlined in the Consolidated Agreement and the Visitor Facilities Agreement.

OMF is prepared to work with Metro, MERC and PCPA to further discuss oversight efforts and clarify roles regarding the management of PCPA.

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Portland Center for the Performing Arts: Outsourced management good for the City, but agreements and oversight need improvement

Report #393, June 2011

Audit Team: Jennifer Scott

LaVonne Griffin-Valade, City Auditor
Drummond Kahn, Director of Audit Services

Other recent audit reports:

Fire and Police Disability and Retirement: Improvements resulted from 2006 Charter reforms, but significant fiscal challenges remain (#408, June 2011)

Police Property Evidence Division: Internal controls and physical security strong; tracking system needs improvement (#403, April 2011)

Spending Utility Ratepayer Money: Not always linked to services, decision process inconsistent (#398, March 2011)

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