

**Audit of Agreement CA-0316 with
P3 Lake Louisa LLC at Lake Louisa State Park**

Division of Recreation and Parks

Report: A-1920DEP-020

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

July 31, 2020

3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3000
<https://floridadep.gov/>





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The Office of Inspector General (OIG) conducted an audit of Agreement CA-0316 (Agreement) between the Department of Environmental Protection (Department) Division of Recreation and Parks (Division) and P3 Lake Louisa LLC (Concessionaire) at Lake Louisa State Park (Park). This audit was initiated as part of the Fiscal Year (FY) 2019-2020 Annual Audit Plan.

Scope and Objectives

The scope of this audit included a review of Agreement activities and financial records for the period beginning January 1, 2018. The objectives were to:

- determine the accuracy of reported gross sales
- determine the Concessionaire's compliance with the Agreement
- evaluate management oversight of Concession activities and performance under the Agreement

Methodology

This audit was conducted under the authority of Section 20.055, Florida Statutes (F.S.), and in conformance with the current *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. Our procedures included a site visit, interviews with the Concessionaire, Park, and Division staff, as well as a review of Concessionaire and Park records.

Background

Located in Clermont, Florida, there are three major lakes at the Park which are Lake Louisa, Lake Hammond, and Lake Dixie. The Park offers visitors opportunities for camping, water sports, and trails. The Division executed the Agreement on June 29, 2016, for a term of 15 years with the Concessionaire to provide services at the Park. Required services include food and

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beverage, retail merchandise sales, recreational equipment rental, event management, guided tours, trail rides, and visitor Wi-Fi services. Additional services authorized but not required include excursion camping, equestrian livery, and vending. The Agreement was amended October 18, 2019, to revise requirements related to utilities, compensation, public records, capital improvements, minimum accounting requirements, and clarification of other Agreement terms.

From July 2016 through September 2019, the Concessionaire was required to remit a monthly commission payment of five percent of total monthly gross sales, but not less than \$10,000 annually. The Agreement amendment reduced the Concessionaire's required commission rate to three percent beginning October 2019. In addition, the Concessionaire was required to remit monthly direct payments of \$726.06 beginning December 2019. According to Monthly Reports of Concessionaire's Total Gross Sales, the Concessionaire reported gross sales and remitted commission payments for calendar years 2018 and 2019 as follows.

Year	Reported Gross Sales	Commission Payments
2018	\$170,285.09	\$8,514.26
2019	\$200,416.38	\$8,994.41

Results

Accuracy of Reported Gross Sales

To determine the accuracy of reported amounts, we compared gross sales as reported in the Monthly Report of Concessionaire's Total Gross Sales to the Concessionaire's general ledger and amounts reported to the Department of Revenue for calendar year 2019.

2019 Reported Gross Sales Comparison		
Monthly Report of Concessionaire's Total Gross Sales	Income Statement (from the General Ledger)	Department of Revenue (DR-15) Reports
\$200,416.38	\$200,180.00	\$183,847.06

Reported gross sales were generally consistent with the Concessionaire's general ledger. According to the Concessionaire, differences between reported gross sales and sales reported to the Department of Revenue were due to the sales tax reporting structure through the use of third-party booking vendors. We further compared reported gross sales to the Concessionaire's bank deposits as follows:

2019 Reported Gross Sales Comparison with Bank Deposits	
Monthly Report of Concessionaire's Total Gross Sales	Bank Deposits (As adjusted for Tax Collections per Monthly Department of Revenue Reports)
\$200,416.38	\$212,220.26

Deposits were generally consistent with reported gross sales. Overall differences were attributed to added deposits during months when the Concessionaire was expanding service offerings. We further compared Monthly Reports of Concessionaire's Total Gross Sales and general ledger entries to gross sales per the Concessionaire's Point of Sale (POS) documentation for the sampled months of January and March 2019 as follows:

Gross Sales for Sampled Months of January and March 2019			
Month/Year	Monthly Report of Concessionaire's Total Gross Sales	General Ledger	POS Documentation ¹
January 2019	\$14,975.60	\$14,975.60	\$14,249.09
March 2019	\$23,914.16	\$23,914.16	\$23,111.39
Total	\$38,889.76	\$38,889.76	\$37,360.48

¹ POS documents reviewed included transaction summaries from the Concessionaire's mobile POS system, as well as third-party booking vendors.

Reported gross sales were supported by general ledger entries. However, POS documents did not support all reported sales. Based on discussions with the Concessionaire and review of the general ledger and bank statements, this was due in part to deferred revenue adjustments. Reported sales were greater than supported amounts for the sampled months, and differences were not considered significant.

Minimum Accounting Requirements

Based on our site visit and discussions with the Concessionaire, the Concessionaire uses third party reservation vendors as well as a mobile POS system equipped with a customer facing visual display to record daily transactions. Transactions are recorded sequentially, with date, time, and cashier identification. Signs are posted at the POS reminding customers to ask for a receipt. Registers produce customer copies of sales receipts that include recorded tax amounts and are closed out daily. Duties associated with recording and reconciling daily receipts are generally assigned to different employees. The Concessionaire provides consistent supervision over employees. Prior to deposit, cash receipts are stored in a secured location.

According to the Minimum Accounting Requirements, *customer refunds shall be supported by customer signed documents*. All transactions were maintained electronically in the Concessionaire's POS system and were reflected on the ledger. During the sampled months of January and March 2019, we reviewed refund documentation for 17 transactions. Of the 17, three refunds with customer signed receipts were retained by the Concessionaire.

Agreement Compliance and Management Oversight

Under the Agreement, the Concessionaire is required to meet financial, service, and reporting obligations. We reviewed Division oversight and the Concessionaire's compliance of these requirements.

Use of Facilities, Space, and Equipment

Under Special Conditions Paragraph B of the Agreement, the Department shall provide the Concessionaire the following facilities, space, and equipment for use during the term of the Agreement.

1. *Space near each lake entrance for Concession and storage*
2. *Space at the main beach for Concession and storage*
3. *Space at the equine trail head for temporary/permanent structure to be used as an office and horse stalls*
4. *Space near the equine trail head to be used as pasture land*
5. *Space in the campground for Concession and storage*
6. *Space throughout the Park for Events, as approved on a case-by-case basis by the Department or their designee*

During our site visit, we noted that the Concessionaire uses the space allowed for operations, with the exception of the main beach area at Lake Louisa. Based on discussions with the Concessionaire, Park Manager, and staff from the Division's Bureau of Operational Services (BOS), this area is not available to the Concessionaire due to safety concerns. Due to this limitation, the Division's BOS agreed to amend the Agreement in October 2019 to reduce the Concessionaire's required commission rate and capital improvement financial obligation. However, the Agreement amendment did not include a revision to the Concessionaire's allowed use of facilities, space, and equipment.

Compensation

Under Special Conditions Paragraph F of the original Agreement, the Concessionaire's required commission rate was five percent of gross sales but not less than \$10,000 annually (Minimum Guarantee 1). In the Agreement amendment, beginning October 2019 the commission was reduced to three percent of gross sales, and the Minimum Guarantee was modified to require an additional monthly direct payment of \$726.06 beginning December 20, 2019. We verified that

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the Concessionaire made commission payments to the Department during the audit period at the commission rate specified in the Agreement and Agreement amendment. Payments were made timely as required. However, during FY 2018-2019, the Concessionaire's commission payments totaled \$9,062.05, which did not meet the required Minimum Guarantee 1. The Division did not require the Concessionaire to make payments equivalent to the required Minimum Guarantee 1 amount at the end of the year.

Services Provided

Under Special Conditions Paragraph C of the Agreement, the Concessionaire is authorized and agrees to operate the following services.

1. *Food and Beverage Service*
2. *Retail Merchandise Sales*
3. *Recreation Equipment Rental*
4. *Event Management*
5. *Guided Eco-Tours*
6. *Trail Rides*
7. *Wi-Fi Services*

Additional services authorized, but not required includes the following.

8. *Excursion Camping*
9. *Equestrian Livery*
10. *Vending*

During our site visit, we verified that the Concessionaire provides the required services, with the exception of visitor Wi-Fi. Based on discussions with the Park Manager and Concessionaire, the provision of Wi-Fi services had not been possible due to limited internet service availability in the Park.

In addition to the services allowed under the Agreement, Park management has allowed the Concessionaire to operate the coin-operated laundry service available to visitors in the

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campground. For this service, the Concessionaire has entered into a Laundry Space Lease Agreement (Lease) with a third-party vendor for a seven-year term. According to the Lease, on a sole and exclusive basis, the Concessionaire leases the Park Bath Houses 1 and 2 locations to the vendor for laundry facilities. For use of the laundry facilities, the vendor agrees to pay the Concessionaire a rental fee of 51% of gross revenue derived from the operation of laundry equipment. The Department was not a party to the Lease. Section 253.03, F.S., does not indicate that the Concessionaire has the authority to lease premises in the Park, which operates as state-owned lands vested in the Board of Trustees of the Internal Improvement Trust Fund. Further, according to General Conditions Paragraph 3 of the Agreement, *the Concessionaire shall not use, nor offer or permit any person to use, the Facilities for any purpose in violation of any law, ordinance, or applicable governmental rule or regulation.* Rental revenue from the laundry service vendor has been included in the Concessionaire's reported gross sales in the Monthly Reports of Concessionaire's Total Gross Sales.

Utilities

Under Special Conditions Paragraph D of the original Agreement, the Concessionaire was responsible for costs of utilities associated with its operations at the Park as follows:

1. Electricity: Payment to be made directly to the provider. If this is not possible, the Concessionaire shall pay the Park a fee of \$100 per month.
2. Water: Payment to be made directly to the provider. If this is not possible, the Concessionaire shall pay the Park a flat fee of \$100 per month.
3. Garbage: Concessionaire shall reimburse the Park for half (50%) of the monthly cost for a one, 8-yard dumpster.
4. Telephone/Internet: payment to be made directly to the provider.
5. Vending Machines: payment of a monthly fee to the Park of \$20.00 per machine not requiring heating element or refrigeration, and \$30.00 per machine if Park funded electricity is provided.

For the audit period, we verified that the Concessionaire paid the cost of communication services directly to providers and paid the fee for electricity to the Park. However, no payments were made for water or garbage. Based on discussions with District management and the Concessionaire, municipal services for water and garbage were not available to facilities and space allowed for use by the Concessionaire. Necessary water connections have been provided via a well pump. The Concessionaire has been responsible for disposal of garbage associated with daily operations. As a result, Park management verbally agreed that no fees were due from the Concessionaire for water or garbage. In October 2019, the Agreement was amended to indicate that water will be provided by the Park at no cost and that the Concessionaire will provide for prompt removal of garbage associated with operations in the Park.

Sexual Predator and Offender Checks

According to General Conditions Paragraph 35 of the original Agreement, the Concessionaire was required to *conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and all other officers, employees, and subcontractors of the Concessionaire prior to executing this Agreement.* Under the Agreement amendment, General Conditions Paragraph 35 was changed to require that *the Department will conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and officers. The Concessionaire will conduct a sexual predator and sexual offender check on all employees and subcontractors prior to executing this Agreement and will conduct a sexual predator and sexual offender check on all employees and subcontractors hired subsequent to execution of this Agreement.*

The Concessionaire provided Florida Department of Law Enforcement (FDLE) Sexual Predator and Sexual Offender checks for eight staff and the Concessionaire Manager.

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The check provided for the Concessionaire Manager was dated June 29, 2016. While checks were conducted by the Concessionaire at the time the original Agreement was executed as required, there was no documentation available demonstrating an updated check was conducted by the Department per the Agreement amendment. However, the language contained in the Agreement amendment does not include a timeframe in which the Department is required to conduct checks on the Concessionaire Manager and officers.

Other Agreement Requirements

We verified the Concessionaire's compliance with the following Agreement requirements.

- Security Deposit for Concessionaire's Performance: The Concessionaire established a security deposit as required under Special Conditions Paragraph E of the Agreement.
- Accounting: The Concessionaire provided the Park Monthly Reports of Concessionaire's Total Gross Sales and an Annual Profit and Loss Statement as required. The Concessionaire paid monthly sales tax on applicable sales during the audit period. The Concessionaire also submitted a completed Purchase Card Industry Self-Assessment Questionnaire and Certificate of Compliance for the audit period.
- Insurance Coverage: We verified the Concessionaire had obtained necessary insurance during the audit period as specified under the Agreement.
- Accessibility and Inclusion Policy: During our site visit, we obtained the Concessionaire's Accessibility and Inclusion Policy, which was posted at the Concessionaire's operations in a visible location and posted on the website as required under the Agreement.
- E-Verify Employment Eligibility Verification: The Concessionaire provided employment eligibility records for eight employees and the Concession Manager for the audit period.

Minimum Operational Requirements and Procedures

During our site visit, we observed the Concessionaire's operation and conducted interviews to evaluate the Concessionaire's compliance with the Minimum Operational Requirements and Procedures outlined in Exhibit A. The Concessionaire's business telephone contact, advertisements, and staffing were consistent with the Agreement. Recreational rental

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and safety equipment available per the Agreement appeared to be well maintained. For private events held during the sampled months, the Concessionaire provided written agreements, and collected and remitted Park fees as required.

Minimum Operational Requirements and Procedures Paragraph 1 states that the Concessionaire's *minimum operating hours shall be 10:00 a.m. to 6:00 p.m. Wednesday through Sunday*. During our site visit, we noted that the Concessionaire's canteen and rental operational hours are from 10:00 a.m. to 4:00 p.m. daily. These hours are also documented on the Concessionaire's web site. Per e-mail correspondence, modification of the Concessionaire's operational hours had been agreed upon by Park management in December 2016.

We verified the Concessionaire submitted the required Maintenance and Repair, Environmental, and Safety Plans to the Park Manager for review. The Maintenance and Repair Plan was revised in July 2018. The Safety Plan was updated and reviewed by the Department Safety Officer as of October 2019.

Capital Improvements

According to the Schedule and Scope of Capital Improvements Paragraph 7 of the original Agreement, the Concessionaire was required to establish a Capital Improvement Account (CIA) for future capital improvements and deposit at least four percent of monthly gross sales into the fund by the 20th day of the following month. Paragraph 8 required that *the Capital Improvements will be identified and agreed to in writing by both parties no later than December 31, 2016, unless the parties mutually agree to extend this deadline*. The Concessionaire required to contribute at least \$325,000 to the CIA no later than December 31, 2026. Under the Agreement amendment, the Concessionaire's required capital improvement contribution to the CIA was reduced to \$162,500.

The Concessionaire has maintained and provided the Park a monthly tracking sheet, which provides a running balance with the required contribution as well as a listing of projects and costs incurred to date. As of December 2019, contributions totaled \$20,746.82.

Improvements to date have been made to the Park's bath houses, horse corrals, canteen, and recreational rental areas. Based on a review of correspondence, Park management has been in communication and was in agreement with the Concessionaire's proposed projects. We verified receipts were maintained for capital improvement expenditures during the audit period.

Conclusion

Based on our audit, reported gross sales reported during the audit period were generally supported by the Concessionaire's general ledger and POS documentation. The Concessionaire generally complied with requirements in the Agreement with the exception of Minimum Guarantee payments, operating hours, and refund documentation. We noted weaknesses in the area of the Division's development and oversight of the Agreement and Agreement amendment.

Findings and Recommendations

Finding 1: Minimum Guarantee

Special Conditions Paragraph F.1. of the original Agreement states, *from July 1, 2016 through June 30, 2021 ("Period 1"), the Concessionaire shall remit pay [sic] a commission equal to 5% of Total Gross Sales each month, but not less than \$10,000 annually ("Minimum Guarantee 1"), which shall be assessed and any shortfall remitted at the end of each year of this Agreement during this period, plus the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).* During FY 2018-2019, the Concessionaire paid

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commission payments totaling \$9,062.05. However, the Division did not require the Concessionaire to make payments equivalent to the required Minimum Guarantee 1 amount at the end of the year.

This shortfall was addressed by the Division's BOS in the October 2019 Agreement amendment. In the Agreement amendment, Period 1 dates for which the \$10,000 Minimum Guarantee 1 apply were modified to July 1, 2016 through September 30, 2019.

According to Special Conditions Paragraph F.2. of the Agreement amendment, *from October 1, 2019 through June 30, 2024 ("Period 2"), the Concessionaire will remit a commission equal to 3% of Total Gross sales each month, plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate).* An updated Minimum Guarantee was not included specific for Period 2. Alternatively, the following language was added. *Additionally, the Concessionaire will remit twelve direct payments in order to satisfy Minimum Guarantee 1, according to the following schedule:*

<i>Payment Date</i>	<i>Payment Amount</i>
<i>December 20, 2019</i>	<i>\$726.06</i>
<i>January 20, 2020</i>	<i>\$726.06</i>
<i>February 20, 2020</i>	<i>\$726.06</i>
<i>March 20, 2020</i>	<i>\$726.06</i>
<i>April 20, 2020</i>	<i>\$726.06</i>
<i>May 20, 2020</i>	<i>\$726.06</i>
<i>June 20, 2020</i>	<i>\$726.06</i>
<i>July 20, 2020</i>	<i>\$726.06</i>
<i>August 20, 2020</i>	<i>\$726.06</i>
<i>September 20, 2020</i>	<i>\$726.06</i>
<i>October 20, 2020</i>	<i>\$726.06</i>
<i>November 20, 2020</i>	<i>\$726.06</i>

Each of the Minimum Guarantees listed above constitutes the minimum compensation due each 12-month period in each of the Periods. The amended language appears to present mixed direction regarding the applicability of Minimum Guarantee 1. The amended language lacks clear direction regarding whether the twelve direct payments are to be made in addition to

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calculated commission payments for Period 2 or whether they serve as the minimum compensation due each month. Beginning with the November 2019 Monthly Report of Concessionaire's Total Gross Sales, the Concessionaire has paid the Department the direct payment amount of \$726.06 in addition to the monthly calculated commission amount.

Recommendation:

We recommend the Division work with the Park and Concessionaire to ensure the Department receives the required Minimum Guarantee 1 compensation due for Period 1 in accordance with the amended Agreement. The Division should also work with BOS to amend the Agreement to clarify whether direct payment amounts included in Minimum Guarantee 1 are to be made in addition to required calculated commission payments or serve as the minimum compensation due for each month specified.

Finding 2: Agreement and Agreement Amendment Requirements

Special Conditions Paragraph C of the Agreement outlines services that the Concessionaire is authorized and agrees to operate which includes visitor Wi-Fi. Based on discussions with the Park Manager and Concessionaire, the provision of Wi-Fi services had not been possible due to limited internet service availability in the Park.

Special Conditions Paragraph D of the original Agreement outlined utility costs which were the responsibility of the Concessionaire. This included payments to a provider or the Park for water and garbage collection. During the audit period, no payments were made for water or garbage. According to District management and the Concessionaire, municipal services for water and garbage had not been available to facilities and space allowed for use by the Concessionaire. Necessary water connections have been provided via a well pump and the Concessionaire has been responsible for disposal of garbage associated with daily operations. In October 2019, the

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Division's BOS amended the Agreement to revise utility requirements which established that water will be provided by the Park at no cost and that the Concessionaire will provide for prompt removal of garbage associated with operations in the Park.

Special Conditions Paragraph B of the Agreement specifies the facilities, space, and equipment for Concessionaire use during the term of the Agreement. This includes space near each lake entrance and space at the main beach. The Concessionaire has not been allowed to use space at the main beach area at Lake Louisa due to Park safety concerns. As a result of this limitation, BOS agreed to reduce the Concessionaire's required commission rate and capital improvement financial obligation in the October 2019 Agreement amendment. However, the amendment did not include a revision to the Concessionaire's allowed use of facilities, space, and equipment. The Concessionaire's reported gross sales increased between 2018 and 2019, primarily due to expanded excursion camping service offerings, which began in 2019. However, BOS management's justification for the reduction in required commission payments and capital improvement obligations included a comparison of actual gross sales to original projections.

Recommendation:

To avoid the need for unnecessary amendments going forward, when developing Concessionaire agreements, we recommend the Division work with BOS to establish an evaluation process which incorporates input from a diversified review team. This team should consist of staff with experience in areas of the Park's land management plan and the Park's specific operating and functioning capacity. When determining monetary Agreement terms, the Division should document the justified methodology, factors considered, recent and historical financial data, and analysis by each team member to support the overall final Agreement requirements and conditions. As part of this final determination, the Division should ensure

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Agreements outline Concessionaire obligations for utilities consistent with the Park's location and unique infrastructure. We also recommend the Division work with BOS to amend the current Agreement to ensure it includes requirements only for services, facilities, space, and equipment the Concessionaire is allowed and able to provide at the Park.

Finding 3: Services Inconsistent with the Agreement

Minimum Operational Requirements and Procedures Paragraph 1 states that the Concessionaire's *minimum operating hours shall be 10:00 a.m. to 6:00 p.m. Wednesday through Sunday*. During our site visit, we noted that the Concessionaire's canteen and rental operation hours are from 10:00 a.m. to 4:00 p.m. daily. These hours are also documented on the Concessionaire's web site.

General Conditions Paragraph 48 of the Agreement states that, *any alterations, variations, changes, modifications, or waivers of provisions of this Agreement shall be valid only if reduced to writing, duly signed by all of the parties hereto, and attached to the original of this Agreement*. Based on correspondence with Park management, this change had been approved by the Park Manager in December 2016. However, it had not been incorporated in the Agreement by amendment.

In addition to the services allowed under the Agreement, Park management has also allowed the Concessionaire to operate the coin-operated laundry service available to visitors in the campground. For this service, the Concessionaire has entered into a Lease with a third-party vendor for a seven-year term. According to the Lease, on a sole and exclusive basis, the Concessionaire leases the Park Bath Houses 1 and 2 locations to the vendor for laundry facilities. The Department was not a party to the Lease. Section 253.03, F.S., does not indicate that the Concessionaire has the authority to lease premises in the Park, which operates as

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state-owned lands vested in the Board of Trustees of the Internal Improvement Trust Fund.

Rental revenue from the laundry service vendor has been included in the reported gross sales in the Monthly Report of Concessionaire's Gross Sales reports. Upon inquiry, Park management was aware the Concessionaire was using a vendor for coin-operated laundry service.

Recommendation:

We recommend the Division work with Park management to review the Concessionaire's service offerings for consistency with the Agreement. Any request to expand or modify services should be reviewed for approval in writing by the Division. Any approved service modification should be incorporated in the Agreement by formal amendment. In addition, we recommend the Division work with the Department's Office of General Counsel to address the Concessionaire's Lease of Park facilities.

Finding 4: Refunds

According to the Minimum Accounting Requirements, *customer refunds shall be supported by customer signed documents*. During the sampled months of January and March 2019, we reviewed refund documentation for 17 transactions. Of the 17, three refunds with customer signed receipts were retained by the Concessionaire. The Concessionaire indicated that this circumstance has since improved. If the Concessionaire becomes aware of an incorrectly completed refund, the Concessionaire will ensure cashiers understand correct processes.

Recommendation:

We recommend the Division work with the Park and Concessionaire going forward to ensure all refunds are supported by customer signed receipts as required by the Agreement.

Finding 5: Required Financial Reporting of the Agreement Amendment

In accordance with Section 215.985, F.S., the Florida Department of Financial

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Services (DFS) maintains the Florida Accountability Tracking System (FACTS) in which the Department is required to use for tracking Agreement activity. According to Section 215.985(14)(b), F.S., *within 30 calendar days after an amendment to an existing contract, the state entity that is a party to the contract must update the information described in paragraph (a)² in the contract tracking system. An amendment to a contract includes, but is not limited to, a renewal, termination, or extension of the contract or a modification of the terms of the contract.* The Division has not added the Agreement amendment executed in October 2019 in FACTS as required.

Recommendation:

We recommend the Division take necessary steps to ensure the Agreement amendment is updated in FACTS as required under Section 215.985, F.S.

Management Comments

Management Comment 1: Concessionaire Quarterly Evaluation Reports

Part of the Park Manager's understood responsibility for Concessionaire oversight includes completion of the Concessionaire Quarterly Evaluation Report. This evaluation serves as a management tool by which Park management ensures that Agreement requirements are being met and as a mechanism for Concessionaire performance feedback. We requested Concessionaire Quarterly Evaluation Reports beginning July 2018. Park management obtained these reports from the Concessionaire. All reflected positive results. Of the five reports obtained, none were signed by the Park Manager, one was signed by the Concessionaire, three were dated

² Information described in Section 215.985(14)(a), F.S. includes the names of contracting entities, procurement method, contract beginning and end dates, the nature of services purchased, applicable unit prices, deliverables, total compensation, payments to date, performance measures, contract, and procurement documents.

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over a month after the end of the quarter, and two did not include dates. Direction concerning Park management's responsibility for the Concessionaire Quarterly Evaluation Report is not specified in the Agreement, nor is it part of the Division's Operations Manual (OM). Originally established in the Division's prior OM, written requirements were removed during past OM updates. As a result, Park management does not have clear direction regarding the completion, timing, distribution, and follow-up necessary for the effective and consistent use of this monitoring tool. The Division would benefit from formally addressing Park management requirements for completion and use of the Concessionaire Quarterly Evaluation Report in the Division's OM.

Management Comment 2: Requirements for Sexual Predator and Sexual Offender Checks

General Conditions Paragraph 35 of the original Agreement required the Concessionaire to *conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and all other officers, employees, and subcontractors of the Concessionaire prior to executing this Agreement*. The requirement that a Concessionaire conduct the check on themselves was identified as a control weakness in a prior audit. As a result, the Agreement amendment, General Conditions Paragraph 35 was modified to require that *The Department will conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and officers*. The Concessionaire provided the FDLE Sexual Predator and Sexual Offender check dated June 29, 2016, personally as the Concessionaire Manager. There was no documentation available to demonstrate an updated check was conducted by the Department per the Agreement amendment. However, the amended provision does not specify a timeframe in which the check is to be conducted. Going forward, the Division would benefit by ensuring Agreements specify a timeframe in which the Department is to conduct sexual predator and

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sexual offender checks on the Concessionaire's Agreement Manager and officers so that these checks are conducted prior to the start of operations.

To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of Section 20.055, F.S., and in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Angie Cringan and supervised by Valerie J. Peacock.

Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <https://floridadep.gov/oig/internal-audit/content/final-audit-reports>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

*Valerie J. Peacock,
Director of Auditing*

*Candie M. Fuller,
Inspector General*



FLORIDA DEPARTMENT OF Environmental Protection

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Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

Memorandum

TO: Valerie Peacock, Audit Director
Office of the Inspector General

FROM: Eric Draper, Director
Division of Recreation and Parks

SUBJECT: Audit of Agreement CA-0316 with P3 Lake Louisa LLC at Lake Louisa
State Park

DATE: July 30, 2020

This memorandum will serve as the Division's response to the following subject audit findings and recommendations:

Finding 1: Minimum Guarantee

Special Conditions Paragraph F.1. of the original Agreement states, *from July 1, 2016 through June 30, 2021 ("Period 1"), the Concessionaire shall remit pay [sic] a commission equal to 5% of Total Gross Sales each month, but not less than \$10,000 annually ("Minimum Guarantee 1"), which shall be assessed and any shortfall remitted at the end of each year of this Agreement during this period, plus the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages)*. During FY 2018-2019, the Concessionaire paid commission payments totaling \$9,062.05. However, the Division did not require the Concessionaire to make payments equivalent to the required Minimum Guarantee 1 amount at the end of the year.

This shortfall was addressed by the Division's BOS in the October 2019 Agreement amendment. In the Agreement amendment, Period 1 dates for which the \$10,000 Minimum Guarantee 1 apply were modified to July 1, 2016 through September 30, 2019.

According to Special Conditions Paragraph F.2. of the Agreement amendment, *from October 1, 2019 through June 30, 2024 ("Period 2"), the Concessionaire*

will remit a commission equal to 3% of Total Gross sales each month, plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate). An updated Minimum Guarantee was not included specific for Period 2. Alternatively, the following language was added. Additionally, the Concessionaire will remit twelve direct payments in order to satisfy Minimum Guarantee 1, according to the following schedule:

<i>Payment Date</i>	<i>Payment Amount</i>
<i>December 20, 2019</i>	<i>\$726.06</i>
<i>January 20, 2020</i>	<i>\$726.06</i>
<i>February 20, 2020</i>	<i>\$726.06</i>
<i>March 20, 2020</i>	<i>\$726.06</i>
<i>April 20, 2020</i>	<i>\$726.06</i>
<i>May 20, 2020</i>	<i>\$726.06</i>
<i>June 20, 2020</i>	<i>\$726.06</i>
<i>July 20, 2020</i>	<i>\$726.06</i>
<i>August 20, 2020</i>	<i>\$726.06</i>
<i>September 20, 2020</i>	<i>\$726.06</i>
<i>October 20, 2020</i>	<i>\$726.06</i>
<i>November 20, 2020</i>	<i>\$726.06</i>

Each of the Minimum Guarantees listed above constitutes the minimum compensation due each 12-month period in each of the Periods. The amended language appears to present mixed direction regarding the applicability of Minimum Guarantee 1. The amended language lacks clear direction regarding whether the twelve direct payments are to be made in addition to calculated commission payments for Period 2 or whether they serve as the minimum compensation due each month. Beginning with the November 2019 Monthly Report of Concessionaire's Total Gross Sales, the Concessionaire has paid the Department the direct payment amount of \$726.06 in addition to the monthly calculated commission amount.

Recommendation

We recommend the Division work with the Park and Concessionaire to ensure the Department receives the required Minimum Guarantee 1 compensation due for Period 1 in accordance with the amended Agreement. The Division should also work with BOS to amend the Agreement to clarify whether direct payment amounts included in Minimum Guarantee 1 are to be made in addition to

required calculated commission payments or serve as the minimum compensation due for each month specified.

Division Response:

The Division concurs with the recommendation. The Division will amend the Agreement to define the minimum payments and clearly require that the twelve direct payments are to be made in addition to calculated commission payments.

Finding 2: Agreement and Agreement Amendment Requirements

Special Conditions Paragraph C of the Agreement outlines services that the Concessionaire is authorized and agrees to operate which includes visitor Wi-Fi. Based on discussions with the Park Manager and Concessionaire, the provision of Wi-Fi services had not been possible due to limited internet service availability in the Park.

Special Conditions Paragraph D of the original Agreement outlined utility costs which were the responsibility of the Concessionaire. This included payments to a provider or the Park for water and garbage collection. During the audit period, no payments were made for water or garbage. According to District management and the Concessionaire, municipal services for water and garbage had not been available to facilities and space allowed for use by the Concessionaire. Necessary water connections have been provided via a well pump and the Concessionaire has been responsible for disposal of garbage associated with daily operations. In October 2019, the Division's BOS amended the Agreement to revise utility requirements which established that water will be provided by the Park at no cost and that the Concessionaire will provide for prompt removal of garbage associated with operations in the Park.

Special Conditions Paragraph B of the Agreement specifies the facilities, space, and equipment for Concessionaire use during the term of the Agreement. This includes space near each lake entrance and space at the main beach. The Concessionaire has not been allowed to use space at the main beach area at Lake Louisa due to Park safety concerns. As a result of this limitation, BOS agreed to reduce the Concessionaire's required commission rate and capital improvement financial obligation in the October 2019 Agreement amendment. However, the amendment did not include a revision to the Concessionaire's allowed use of facilities, space, and equipment. The Concessionaire's reported gross sales increased between 2018 and 2019, primarily due to expanded excursion camping service offerings, which began in 2019. However, BOS

management's justification for the reduction in required commission payments and capital improvement obligations included a comparison of actual gross sales to original projections.

Recommendation

To avoid the need for unnecessary amendments going forward, when developing Concessionaire agreements, we recommend the Division work with BOS to establish an evaluation process which incorporates input from a diversified review team. This team should consist of staff with experience in areas of the Park's land management plan and the Park's specific operating and functioning capacity. When determining monetary Agreement terms, the Division should document the justified methodology, factors considered, recent and historical financial data, and analysis by each team member to support the overall final Agreement requirements and conditions. As part of this final determination, the Division should ensure Agreements outline Concessionaire obligations for utilities consistent with the Park's location and unique infrastructure. We also recommend the Division work with BOS to amend the current Agreement to ensure it includes requirements only for services, facilities, space, and equipment the Concessionaire is allowed and able to provide at the Park.

Division Response:

The Division acknowledges the recommendation. The Division will amend the Agreement to remove Wi-fi as a requirement and to remove the beach area as a resource available to the Concessionaire. The Division now requires the inclusion of the Office of Park Planning in the review process. The Division will specify within the Operations Manual the requirement that additional expertise is to be sought to guide the development of pro-forma expectations. The Operations Manual will be edited to require documentation of concession negotiations, including financial analysis and methodology for negotiations and decision making. The Division will amend the current Agreement to include requirements only for services, use of facilities, space and equipment the Concessionaire is allowed and able to provide at the Park.

Finding 3: Services Inconsistent with the Agreement

Minimum Operational Requirements and Procedures Paragraph 1 states that the Concessionaire's *minimum operating hours shall be 10:00 a.m. to 6:00 p.m. Wednesday through Sunday*. During our site visit, we noted that the Concessionaire's canteen and rental operation hours are from 10:00 a.m. to 4:00 p.m. daily. These hours are also documented on the Concessionaire's web site.

General Conditions Paragraph 48 of the Agreement states that, *any alterations, variations, changes, modifications, or waivers of provisions of this Agreement shall be valid only if reduced to writing, duly signed by all of the parties hereto, and attached to the original of this Agreement.* Based on correspondence with Park management, this change had been approved by the Park Manager in December 2016. However, it had not been incorporated in the Agreement by amendment.

In addition to the services allowed under the Agreement, Park management has also allowed the Concessionaire to operate the coin-operated laundry service available to visitors in the campground. For this service, the Concessionaire has entered into a Lease with a third-party vendor for a seven-year term. According to the Lease, on a sole and exclusive basis, the Concessionaire leases the Park Bath Houses 1 and 2 locations to the vendor for laundry facilities. The Department was not a party to the Lease. Section 253.03, F.S., does not indicate that the Concessionaire has the authority to lease premises in the Park, which operates as state-owned lands vested in the Board of Trustees of the Internal Improvement Trust Fund. Rental revenue from the laundry service vendor has been included in the reported gross sales in the Monthly Report of Concessionaire's Gross Sales reports. Upon inquiry, Park management was aware the Concessionaire was using a vendor for coin-operated laundry service.

Recommendation

We recommend the Division work with Park management to review the Concessionaire's service offerings for consistency with the Agreement. Any request to expand or modify services should be reviewed for approval in writing by the Division. Any approved service modification should be incorporated in the Agreement by formal amendment. In addition, we recommend the Division work with the Department's Office of General Counsel to address the Concessionaire's Lease of Park facilities.

Division Response:

The Division will work with Park management to review the Concession's service offerings for consistency with the Agreement. Request to change services will be approved in writing by the District Bureau Chief. Approved service modifications will be made by amendment to the Agreement. The Division concurs with the recommendation regarding leases of park facilities. The Agreement Manager has instructed the Concessionaire to cancel the lease and has confirmed that the Concessionaire has cancelled the lease.

Finding 4: Refunds

According to the Minimum Accounting Requirements, *customer refunds shall be supported by customer signed documents*. During the sampled months of January and March 2019, we reviewed refund documentation for 17 transactions. Of the 17, three refunds with customer signed receipts were retained by the Concessionaire. The Concessionaire indicated that this circumstance has since improved. If the Concessionaire becomes aware of an incorrectly completed refund, the Concessionaire will ensure cashiers understand correct processes.

Recommendation

We recommend the Division work with the Park and Concessionaire going forward to ensure all refunds are supported by customer signed receipts as required by the Agreement.

Division Response:

The Division concurs with the recommendation. The Agreement Manager reviewed this finding with the Concessionaire and directed the Concessionaire to ensure all refunds are supported by customer signed receipts as required by the Agreement. As detailed in a scheduled update to the Concessions chapter of the Division's Operations Manual, the Agreement Manager will conduct inspections of refund documentation as a part of the quarterly review process.

Finding 5: Required Financial Reporting of the Agreement Amendment

In accordance with Section 215.985, F.S., the Florida Department of Financial Services (DFS) maintains the Florida Accountability Tracking System (FACTS) in which the Department is required to use for tracking Agreement activity. According to Section 215.985(14)(b), F.S., *within 30 calendar days after an amendment to an existing contract, the state entity that is a party to the contract must update the information described in paragraph (a)² in the contract tracking system. An amendment to a contract includes, but is not limited to, a renewal, termination, or extension of the contract or a modification of the terms of the contract*. The Division has not added the Agreement amendment executed in October 2019 in FACTS as required.

Recommendation

We recommend the Division take necessary steps to ensure the Agreement amendment is updated in FACTS as required under Section 215.985, F.S.

Division Response:

The Division acknowledges that Amendment #1 was not found in the FACTS system. On October 22, 2019, an updated FACTS workbook and a copy of the fully executed Amendment #1 was provided to the Division of Administrative Services in order to comply with Section 215.985, F.S. The Division has since worked with the Division of Administrative Services to update FACTS and now confirms Amendment #1 is posted as required.