



## Department of Environmental Protection Office of Inspector General

July 27, 2022

Report A-2122DEP-017

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### *Audit of Agreement CA-1617 with Cornelius Enterprises USA, Inc. at Tomoka State Park*

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#### **INTRODUCTION**

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The Office of Inspector General (OIG) conducted an audit of Agreement CA-1617 (Agreement) between the Department of Environmental Protection (Department) Division of Recreation and Parks (Division) and Cornelius Enterprises USA, Inc. (Concessionaire) at Tomoka State Park (Park). This audit was initiated as a result of the Fiscal Year (FY) 2021-2022 Annual Audit Plan.

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#### **BACKGROUND**

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The Agreement was executed on October 1, 2018, and will expire on September 30, 2028. The Concessionaire's monthly commission is 8% of total gross sales but not less than \$8,000 annually. Under the Agreement, the Concessionaire will provide at least \$15,000 in capital improvements to enhance Park facilities, which was to be identified and agreed to in writing by December 31, 2018, and completed by May 31, 2023. If both parties cannot agree on the capital improvements, the Concessionaire will pay the Department the Capital Improvement Funding. To date, no capital improvements have been completed.

Services provided by the Concessionaire includes recreational equipment rentals, food and beverage service including alcoholic beverages, merchandise resale, event management services, guided Eco-tours, and vending. According to the 2021 Monthly Report of Concessionaire's Total Gross Sales, the Concessionaire reported \$294,221.57 in total gross sales and paid \$23,537.68 in commission fees.

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#### **RESULTS OF AUDIT**

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##### **Accuracy of Reported Gross Sales**

To determine the accuracy of reported gross sales, we compared gross sales amounts reported in the Monthly Report of Concessionaire's Total Gross Sales to the Concessionaire's general ledger and amounts reflected in the Department of Revenue report for the months of January to December 2021.

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<b>Reported Gross Sales Comparison for January to December 2021</b>		
Monthly Report of Concessionaire's Gross Sales	General Ledger Gross Sales	Department of Revenue (DR-15) Reports Gross Sales
\$294,221.57	\$293,852.79	\$294,266.90

Reported gross sales were generally consistent with the Concessionaire's Department of Revenue Tax Reports and the general ledger with minor exceptions. Amounts reported to the Department of Revenue differed from amounts reported to the Department by \$45.33 and reported gross sales differed from general ledger amounts by \$368.78. Based on discussion with the Concessionaire and review of source documentation, the differences were attributed to reconciliation adjustments which were not considered material.

We also compared reported gross sales to the Concessionaire's bank deposits for the audit period as follows:

<b>Reported Gross Sales Comparison with Bank Deposits</b>	
Monthly Report of Concessionaire's Total Gross Sales	Bank Deposits (As adjusted for Tax Collections per Department of Revenue Reports)
\$294,221.57	\$294,038.60

Deposits were generally consistent with reported gross sales with a difference totaling \$182.97. Based on discussions with the Concessionaire, overall differences were attributed to reconciliation adjustments.

For the sampled months of June and December 2021, we compared amounts reported in the Monthly Reports of Concessionaire's Total Gross Sales and general ledger amounts to gross sales reflected in the Concessionaire's Square Register Report<sup>1</sup>.

<b>Gross Sales for June and December 2021</b>			
Month/Year	Monthly Report of Concessionaire's Total Gross Sales	General Ledger	Square Register Report
June 2021	\$25,669.96	\$25,483.56	\$25,681.38
December 2021	\$25,456.19	\$25,452.29	\$25,448.95
Total	\$51,126.15	\$50,935.85	\$51,130.33

Reported gross sales were generally supported by general ledger entries and point of sale documentation for the sampled months. Amounts reported in the Monthly Report of Concessionaire's Total Gross Sales differed from general ledger amounts by \$190.30 and from amounts recorded in the Square Register Report by \$4.18, which were attributed to adjustments.

<sup>1</sup>The Concessionaire utilizes the Square point of sale system for all transactions. The Square Register Report reflects register receipt details stored by the system.

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**Compensation/Monthly Commission Fee**

Under Special Conditions Paragraph F of the Agreement, *the Concessionaire will pay the Department a commission fee equal to 8% of Total Gross Sales each month, but not less than \$8,000.00 annually (“Minimum Guarantee”).* Additionally, according to General Conditions Paragraph 17 of the Agreement, the Concessionaire will submit the commission fee payment with the Monthly Report of Concessionaire’s Total Gross Sales documentation to the Park Manager by the 20<sup>th</sup> of each month for gross sales collected from the prior month. Based on the commission payments reviewed for the audit period, we verified the minimum guarantee was met and monthly commission fees were paid as required.

**Revenue Subject to Sales Tax**

The Concessionaire completed the State Use Tax Exempt Certification form (Exhibit H) as required. By completing this form, the Concessionaire indicated selling food and beverage, through a means other than a vending machine, and are therefore exempt from paying state use tax on commission fees paid to the Department, which is consistent with the Concessionaire’s operation.

**Minimum Accounting Requirements**

The Concessionaire has established and maintained two bank accounts<sup>2</sup> that are used solely for operations under the Agreement and separate from any other concession or non-concession agreement. We verified that the Concessionaire retained all checks for the audit period.

The two registers produce customer copies of sales transactions that include recorded tax amounts and are closed out daily. Both registers are equipped with a visual display facing customers and signs are posted reminding customers to ask for a receipt at each collection area. Based on observations and discussions with the Concessionaire, duties associated with cash handling, recording, and reconciling daily receipts are generally assigned to different employees with supervision from the Concessionaire or Concession officer.

Under Paragraph 4, Exhibit C of the Agreement, *the Concessionaire will support all customer refunds by customer signed documents or an alternative method for electronic and online transactions.* During the sampled months, we reviewed refund documentation for two transactions provided by the Concessionaire. Of the two transactions, we verified both were maintained with original receipts by the Concessionaire. Both transactions were maintained electronically in the Concessionaire’s point of sale system and were reflected on the ledger. Based on discussion with the Concessionaire during the site visit, the Concessionaire updated refund procedures to include refund receipt documentation signed by the Concessionaire and customer and to document the reason for each refund. The Concessionaire provided a copy of the refund receipt documentation for April 2, 2022,

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<sup>2</sup>The Concessionaire maintains a primary checking account for operations and an expense account for business purchases.

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signed by the Concessionaire and customer containing the reason for the refund to support the refund procedures update according to Agreement requirements.

**Monthly Profit and Loss Statement**

Based on the reviewed Monthly Report of Concessionaire's Total Gross Sales documentation submitted to the Park for the audit period, the Concessionaire's monthly Profit and Loss Statements were not submitted with these documents as required. Upon request, the Concessionaire provided all of the monthly Profit and Loss Statements from the point of sale system for the audit period. According to the Concessionaire and the review of monthly Profit and Loss Statements provided, cash amounts under "Square Income" in the monthly Profit and Loss Statements were consistent with reported gross sales for the audit period. However, cash amounts were also being recorded under "Sales" by the system when cash was deposited. The Concessionaire is working to correct the system error. Reported gross sales amounts were not affected for the audit period.

**Monthly Profit and Loss Statement  
Agreement – CA-1617 Paragraph  
18.c.**

*The Concessionaire will provide a monthly Profit and Loss Statement to the Department in the form attached as Exhibit E. Such statement will include the results of the Concessionaire's operations pursuant to this Agreement for each calendar month or portion thereof. The Concessionaire will deliver the statement to the Park Manager no later than the 20th day of the succeeding month.*

**Purchasing Card Industry (PCI) Requirements**

Per Paragraph 18.h. of the Agreement, the Concessionaire is responsible for complying with the PCI Data Security Standards, which include a set of comprehensive requirements for enhancing payment account data security, at the Concessionaire's sole cost and expense. Based on the reviewed PCI documentation provided by the Concessionaire, we verified the Concessionaire met PCI requirements under the Agreement.

**Agreement Compliance and Management Oversight**

Under the Agreement, the Concessionaire is required to meet financial, service, and reporting obligations. We reviewed the Concessionaire's compliance with the following requirements, as well as management oversight of the Concessionaire.

- **Use of Facilities, Space, and Equipment:** During the site visit, we verified that the Concessionaire uses the facilities and space allowed for operations as required.
- **Utility Payments:** Utilities were paid as required.
- **Security Deposit for Concessionaire's Performance:** We verified the Security Deposit Bond in the amount of \$6,000 was on file as required.
- **Licenses and Insurances:** The Concessionaire had obtained valid business licenses for all operations and maintained the required insurance certificates in the amounts specified under the Agreement.
- **Accessibility and Inclusion Policy:** During the site visit, we verified the Accessibility and

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Inclusion Policy was made available to visitors at the Concessionaire's operation, which is posted on the Concessionaire's website as required.

**E-Verify Employment Eligibility Verification**

Per Paragraph 34 of the Agreement, the Concessionaire is required to maintain E-Verify Employment Eligibility Verification documentation for all persons employed by the Concessionaire. Based on the two officers and four employees reviewed, the Concessionaire provided all four E-Verify Employment Eligibility Verifications for the employees. However, for the two officers, the E-Verify Employment Eligibility Verifications checks were not available.

**Sexual Predator and Offender Check**

For the two officers and four employees reviewed, the FDLE Sexual Predator and Sexual Offender checks for the two officers were provided as required. However, the FDLE Sexual Predator and Sexual Offender checks were not provided for the four employees. According to discussion, the Concessionaire was not aware that the FDLE checks were required. Additionally, based on the four Concessionaire Quarterly Evaluations reviewed, the Park Manager documented that Sexual Predator and Sexual Offender checks were completed and filed for all employees.

For the National Sex Offender Public Registry (NSOPR) checks, the Concessionaire provided all four of the employee NSOPR checks. These checks were also provided for the two officers.

**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 of the Agreement.

**Operations**

Under Paragraph 1.A., Exhibit A of the Agreement, the Concessionaire's *minimum operating hours will be 8 a.m. to 6 p.m. Eastern, daily, 365 days a year, including weekends and holidays ("Operating Hours"). Any deviation in Operating Hours will be pre-approved, in writing, by the Department.* The Concessionaire's hours of operation were modified to 9 a.m. until 5 p.m. six days a week. The Concessionaire is closed on

**E-Verify Eligibility Verification  
Agreement – CA-1617 Paragraph 34**

*The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Concessionaire will only employ individuals who may legally work in the United States (either U.S. citizens or foreign citizens who are authorized to work in the U.S). The Concessionaire will use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system to verify the employment eligibility of all employees. The Concessionaire will include this provision in all subcontracts it enters into under this Agreement.*

**Sexual Predator and Offender Check  
Agreement – CA-1617 Paragraph 35**

*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. The Concessionaire will keep a copy of its investigation records in the Concessionaire's personnel files and have that file available to the Department during the Concessionaire's regular office hours. The Concessionaire will not employ any person within the Park who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement ("FDLE") or maintained by the U.S. Department of Justice National Sex Offender Public Registry ("NSOPR").*



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Wednesday. This modification was approved by the Park Manager and sent to District management on November 8, 2021.

Pre-Approvals

According to Exhibit A, Minimum Operational Requirements and Procedures of the Agreement, the Department was required to provide written pre-approvals for operations and services provided by the Concessionaire upon execution of the Agreement. These approvals were to be maintained in the Park file. The Agreement was executed July 30, 2018. However, based on our inquiry, written pre-approvals were unable to be located. As a result of a previous audit finding<sup>3</sup> regarding required pre-approvals, the Division is in the process of developing a procedure to ensure that written pre-approvals for Concession operations and services are documented and maintained in the Park file for all executed agreements.

Services

During the site visit, we verified the Concessionaire is providing all required services.

Maintenance and Repair, Environmental, and Safety Plans

Minimum Operational Requirements and Procedures in the Agreement include Concessionaire requirements for the Maintenance and Repair, Environmental, and Safety Plans. We obtained copies of the Maintenance and Repair and Environmental Protection Plans. However, neither of the plans contained a date or management approvals. Based on our inquiry, the previous Park Manager had not maintained documentation demonstrating that the plans had been approved or revised since the execution of the Agreement. According to discussion with Division staff, the Department is working on a procedure to ensure all approved plans are maintained in the Park file as required.<sup>4</sup>

We obtained the Concessionaire's Safety Plan revised in 2021. The Safety Plan had been approved by the Park Manager and the Department Safety Officer in October 2021, as required.

**Maintenance and Repair Plan  
Agreement CA-1417 Exhibit A Paragraph 5**

*Within 30 days of beginning Services under this Agreement, the Concessionaire will provide a draft Maintenance and Repair Plan that will be evaluated by the Department. The Concessionaire will implement a final Maintenance and Repair Plan incorporating the District and Park Manager's comments and approved by the Department within 30 days of Department approval. The Maintenance and Repair Plan will be revised periodically to ensure Facilities are maintained for a quality visitor experience.*

Capital Improvement Requirements

Based on Exhibit B, Paragraph 7 of the Agreement, *the Concessionaire will provide at least a total of \$15,000.00 in Capital Improvements to enhance Facilities at the Park ("Capital Improvement Funding") as follows: A. The Capital Improvement Costs will be identified and agreed to in writing by both parties no later than December 31, 2018, unless the parties mutually agree to extend this deadline. B. The Concessionaire will complete the above Capital Improvements no later than May 31, 2023, or such later*

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<sup>3</sup> The finding was previously addressed by the Division in the OIG Audit Report A-2122DEP-010.

<sup>4</sup> This finding was previously addressed by the Division in the OIG Audit Report A-2122DEP-010.

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*date as the parties may agree. C. If the parties cannot agree on the Capital Improvements, the Concessionaire will pay to the Department the Capital Improvement Funding prior to May 31, 2023. D. Failure to make an improvement will constitute a breach of the Agreement.*

According to discussions with Division staff and the Concessionaire, as well as the review of support documentation, no Capital Improvement Funding has been identified and agreed upon in writing by the Department and Concessionaire to date. However, email correspondence between the Division and the Concessionaire documented efforts being made to identify mutually agreed upon projects. Additionally, the four Concessionaire Quarterly Evaluations completed by the Park Manager did not document the status of the required Capital Improvements.

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## **CONCLUSION**

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Based on our audit, gross sales reported during the audit period were generally supported by the Concessionaire's general ledger, bank statements, and point of sale documentation. The Concessionaire generally complied with requirements in the Agreement, with some exceptions. We noted weaknesses in the submittal of monthly Profit and Loss Statements, written pre-approvals, capital improvements, and management oversight of the Agreement.

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## **FINDINGS AND RECOMMENDATIONS**

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### **Finding 1: Monthly Profit and Loss Statement**

According to Paragraph 18.c. of the Agreement, *the Concessionaire will provide a monthly Profit and Loss Statement to the Department in the form attached as Exhibit E. Such statement will include the results of the Concessionaire's operations pursuant to this Agreement for each calendar month or portion thereof. The Concessionaire will deliver the statement to the Park Manager no later than the 20th day of the succeeding month.* Based on the reviewed Monthly Report of Concessionaire's Total Gross Sales documentation submitted to the Park for the audit period, the Concessionaire's monthly Profit and Loss Statements were not submitted with these documents as required.

### **Recommendation:**

We recommend the Division work with the Park Manager and Concessionaire to ensure that the Monthly Profit and Loss Statements are submitted with the Monthly Report of Concessionaire's Gross Sales documentation as required.

### **Division Response:**

The Division concurs with the finding and will work with the Park Manager and Concessionaire to ensure that the Monthly Profit and Loss Statements are submitted with the Monthly Report of Concessionaire's Gross Sales documentation as required.

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**Concessionaire Response:**

We will be sure to provide an Exhibit E Monthly Profit and Loss every month no later than the 20<sup>th</sup> day of the succeeding month.

**Finding 2: Sexual Predator and Offender Checks**

Under Paragraph 35 of the Agreement, *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. The Concessionaire will keep a copy of its investigation records in the Concessionaire's personnel files and have that file available to the Department during the Concessionaire's regular office hours. The Concessionaire will not employ any person within the Park who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement ("FDLE") or maintained by the U.S. Department of Justice National Sex Offender Public Registry ("NSOPR").* For the two officers and four employees reviewed, the FDLE Sexual Predator and Sexual Offender checks for the two officers were provided as required. However, the FDLE Sexual Predator and Sexual Offender checks for the four employees were not provided by the Concessionaire as required. Based on discussion, the Concessionaire was not aware that the FDLE checks were required.

**Recommendation:**

We recommend the Division work with the Park Manager and Concessionaire to ensure that Sexual Predator and Offender Checks are conducted for all Concession employees as required.

**Division Response:**

The Division concurs with the finding and will work with the Park Manager and Concessionaire to ensure that Sexual Predator and Offender Checks are conducted for all Concession employees as required.

**Concessionaire Response:**

We will be sure to check both the Florida Department of Law Enforcement ("FDLE") and U.S. Department of Justice National Sex Offender Public Registry ("NSOPR") for every employee hired and will keep both of these reports in their files.

**Finding 3: Concessionaire Quarterly Evaluation**

Based on Chapter 8 of the Division Operations Manual, *Quarterly Reports are used to assess the concessionaire's performance and facilities and ensure that the terms outlined in the agreement are being followed. Required Staff -Park Manager, District, Concessionaire's Agreement Manager. During the walk through, the PM will review and complete each item in the concessionaire Quarterly Evaluation form and make notes where appropriate. Once completed, the PM and concessionaire will discuss and sign and date the form. Further, any deficiencies noted in the walk-through must be corrected by the concessionaire. To document the deficiency, the PM needs to issue a*



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*Notice of Non-Compliance.* Based on four Concessionaire Quarterly Evaluations reviewed for the audit period, the Park Manager documented that Sexual Predator and Sexual Offender checks were completed and filed for all employees. Additionally, the Park Manager did not document the status of required Capital Improvements.

**Recommendation:**

We recommend the Division work with the Park Manager to ensure Concessionaire Quarterly Evaluations are completed with accurate information to support the actual performance and compliance of the Concessionaire.

**Division Response:**

The Division concurs with the finding and will work with the Park Manager to ensure Concessionaire Quarterly Evaluations are completed with accurate information to support the actual performance and compliance of the Concessionaire.

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**APPENDIX A - PURPOSE, SCOPE, OBJECTIVES, AND  
METHODOLOGY**

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The scope of this audit includes select Concessionaire activities and financial records during the period beginning January 1, 2021 to December 31, 2021.

The objectives were to:

- Determine the accuracy of reported gross sales;
- Determine the Concessionaire's compliance with the Agreement; and
- Evaluate management oversight of Concession activities and performance under the Agreement.

To achieve our audit objectives, our methodology included:

- Reviewing applicable statutes, regulations, and internal operating procedures;
- Interviewing the Concessionaire, Park and Division staff, and conducting a site visit at the Park
  
- Reviewing Concessionaire and Park records to include Concessionaire activities and financial documents

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**STATEMENT OF ACCORDANCE**

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**Statement of Accordance**

The Mission of the OIG is to promote accountability, integrity, and efficiency by providing quality audits, investigations, management reviews, and technical assistance.

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the *Principles and Standards for Offices of Inspectors General* as published by the Association of Inspectors General and the *International Standards for the Professional Practice of Internal Auditing*, as published by the Institute of Internal Auditors, Inc. The audit was conducted by Angie Cringan and supervised by Candie M. Fuller.

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