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**Auditor General**

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January 4, 2016

**FINAL REPORT TRANSMITTAL LETTER**

Honorable Wayne County Commissioners:

Enclosed is our final copy of the Office of Legislative Auditor General's Compliance Engagement of the Department of Public Services, Parks & Recreation and Buildings Divisions, Concessionaire Agreements. Our report is dated November 5, 2015; DAP No. 2014-57-006. The contents of this report did not change from the draft report previously issued. The report was accepted by the Audit Committee at its meeting held on December 9, 2015 and formally received by the Wayne County Commission on December 17, 2015.

We are pleased to inform you officials from the Departments of Public Services, Management and Budget, and Corporation Counsel provided their complete and full cooperation during our review. If you have any questions, concerns, or desire to discuss the report in greater detail, we would be happy to do so at your convenience. This report is intended for your information and should not be used for any other purpose. Copies of all Office of Legislative Auditor General's reports can be found on our website: <http://www.waynecounty.com/commission/743.htm>

Marcella Cora, CPA, CIA, CICA, CGMA  
Auditor General

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**Wayne County Executive**



**County of Wayne, Michigan  
Department of Public Services  
Parks & Recreation and Buildings Divisions  
CONCESSIONAIRE AGREEMENTS  
Compliance Engagement  
November 5, 2015**

*EXECUTIVE SUMMARY*

Type of Engagement, Scope, and Methodology

The Office of Legislative Auditor General has conducted a Compliance Engagement of the ***Concession Agreements within Wayne County***. Our objectives for this engagement were to: (1) determine concessionaire's level of compliance with the key provisions of the contracts; (2) assess the concessionaire's financial reporting of revenues and expenditures; and, (3) assess the extent and effectiveness of monitoring and supervision by management of the concessionaire's agreement.

The fieldwork was substantially completed on August 6, 2015, and the scope of our engagement was for fiscal years ending September 30, 2012 and 2013 and from October 1, 2013 through April 30, 2014. The principal methodology used for this engagement included the review of agreements to identify key provisions to test for compliance and interviews with key members of management within the Department of Public Services-Buildings Division and other county officials, as deemed necessary.

Introduction

Wayne County has entered into several concessionaire agreements for the operations of concessions at county owned venues. Listed below are the specific locations, the vendor's name; and a brief description of the services provided.

**Hines Park**

- **Heavner Canoe & Kayak Rental, INC.** – Provides canoeing and kayaking and paddle boat rental services.

**Elizabeth Park**

- **MI Segway Rental, Inc.** – Provides personal glider and bicycle rental services.



- **Children's Pony Ranch** – Provides saddle pony rides and a petting farm.
- **City of Trenton** – Operates and manages the Marina and the Boat Launch/Slips.
- **Kosch Hospitality, LLC** – Manages and Operates the Elizabeth Park Shelter Bldg, Tourist Lodge & Concession Stand.

### **Frank Murphy Hall of Justice**

- **Birmingham Deli** – Operates the food and beverage shop.

### **Chandler Park Family Aquatic Center**

- **MICO Management** – Manages and operates the county owned Family Aquatic Center.

The areas of controls we identified that could be strengthened include:

- Vendor contract reporting requirements. (page 7)
- Vendor periodic submission of financials to the county. (page 7)
- Proper vendor remittance fees/late fees. (page 7)
- Approved vendor contracts with the county. (page 12)
- Monitoring of vendor insurance requirements. (page 14)

### **Summary of Issues**

We determined there are three (3) areas of concern and five (5) recommendations. One (1) recommendation is considered to be an operational and control deficiency which is classified as relatively low risk; one (1) recommendation is classified as a significant deficiency which is deemed medium risk; and, three (3) recommendations are classified as a material weakness that is deemed high risk and could impair management's ability to operate in an effective and efficient manner and achieve its business objectives. See the appendix for a definition of the various types of deficiencies.

Officials within Management & Budget (M&B), the Department of Public Services – Parks and Recreation and Buildings Divisions, and Corporation Counsel agreed in principle with two (2) of the recommendations, and disagreed with three (3). (See Report Details.)

### **Noteworthy Accomplishment**

Wayne County Parks provides a variety of recreational, athletic, educational and nature opportunities that are available for the citizens of Wayne County as well as visitors. To enhance the County Parks experience, DPS – Parks Division has contracted with various vendors to provide additional services such as: canoeing, kayaking, and boat rental services; personal glider and bicycle rentals; and, saddle pony rides and a petting farm.

Corrective Action Plan (CAP) – A CAP will be due within 30 days after this report is formally received and filed by the Wayne County Commission. If sufficient corrective action is not taken, a follow-up review may be necessary.

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This report is intended solely for the information and use of the Departments of Public Services, Management & Budget, and Corporation Counsel officials and is not intended to be and should not be used by another other than these specified parties. This restriction is not intended to limit the distribution of the report, which is a matter of public record.



## REPORT DETAILS

## PURPOSE / OBJECTIVE

The Office of Legislative Auditor General has conducted a compliance audit of the Department of Public Services –Parks and Recreation and Buildings Divisions. The purpose of our audit was to identify key areas of compliance with concessionaire service agreements with the county and assess areas of risk. We also evaluated whether management has appropriate controls in place to sufficiently manage or mitigate the identified risks.

The **objectives** were to: (1) determine concessionaire's level of compliance with the key provisions of the contracts; (2) assess the concessionaire's financial reporting of revenues and expenditures; and, (3) assess the extent and effectiveness of monitoring and governance by management of the concessionaire's agreement.

## SCOPE

We conducted this compliance engagement in accordance with Generally Accepted Governmental Auditing Standards (GAGAS) issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable assurance basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our work primarily encompassed FY 2012 and FY 2013; and from October 1, 2013 through April 30, 2014. The fieldwork for this engagement was substantially completed on August 6, 2015.

## METHODOLOGY

To address the objectives outlined for this engagement we reviewed concessionaries' contracts to assess management's governance over compliance with the contract terms, including financial reporting.

We reviewed vendor monthly operating reports, general ledgers, bank statements, copies of concession fee payments submitted to Wayne County, among other documents.

We conducted on-site visits with selected concessionaires to observe their operations including the recording of admission revenues and the process for submission of contractual fees to the county.

We spoke with officials in the Department of Public Services Divisions of Parks and Recreation, and Buildings; as well as officials within the Departments of Management & Budget, and Corporation Counsel.

Finally, we met with management officials to discuss our findings, obtain their input, and their concurrence and/or disagreement with the report's findings and recommendations.

## BACKGROUND

Wayne County has entered into several Concessionaire agreements for the operations of concessions at county owned venues. Listed below are the specific locations, the vendor's name; and a brief description of the services provided.

### Hines Park

- **Heavner Canoe & Kayak Rental, INC.** – Provides canoeing and kayaking and paddle boat rental services.

### Elizabeth Park

- **MI Segway Rental, Inc.** – Provides personal glider and bicycle rental services.
- **Children's Pony Ranch** – Provides saddle pony rides and a petting farm.
- **City of Trenton** – Operates and manages the Marina and the Boat Launch/Slips-.
- **Kosch Hospitality, LLC** – Manages and Operates the Elizabeth Park Shelter Bldg, Tourist Lodge & Concession Stand.

### Frank Murphy Hall of Justice

- **Birmingham Deli** – Operates the food and beverage shop.

### Chandler Park Family Aquatic Center

- **MICO Management** – Manages and operates the county owned Family Aquatic Center.

## CONCESSIONAIRE'S COMPLIANCE WITH KEY PROVISIONS OF THE CONTRACT

### **Objective No. 1- DETERMINE CONCESSIONAIRE'S LEVEL OF COMPLIANCE WITH KEY PROVISIONS OF THE CONTRACT**



## Conclusion

We obtained and examined contracts executed between various vendors and the Department of Public Services (DPS) to assess the concessionaires' level of compliance with key provisions of their agreements.

We reviewed, and tested, various concessionaire agreements/contracts to ensure the following contractual requirements were adhered to: (1) remittance of monthly operating statements; (2) remittance of contractually required fees; and, (3) remittance of any other specifically required monthly/annual reports.

We determined the various concessionaires were in compliance with the key provisions of their respective agreements. However we did note one concessionaire, Kosch Hospitality, who was not. (See detailed discussion under Objective No. 2 below.)

### **CONCESSIONAIRE'S FINANCIAL REPORTING OF REVENUE AND EXPENDITURES**

#### **Objective No. 2 – ASSESS CONCESSIONAIRE'S FINANCIAL REPORTING OF REVENUE AND EXPENDITURES**

## Conclusion

We obtained and examined contracts executed between various vendors and the Department of Public Services (DPS) to assess the financial reporting of revenue and expenditures by the various concessionaires.

We reviewed, and tested, various concessionaire agreements/contracts to ensure the following contractual requirements were adhered to: (1) remittance of monthly operating statements; (2) receipt of required vendor monthly operating statements; (3) receipting/depositing of monthly vendor fees; and, (4) assurance that required insurance coverage was maintained by the vendor.

We determined while management has established policies and procedures to ensure effective monitoring and governance over concessionaire agreements/contracts, we found areas that could be strengthened related to: (1) ensuring vendors are conducting business with an approved contract; and, (2) monitoring over contractual insurance requirements.

### **NON-COMPLIANCE WITH CONCESSION AGREEMENT**

## Condition

On May 15, 2013 Wayne County entered into a five (5) year concession agreement (with two (2), five-year options to renew) with Kosch Hospitality, LLC (Kosch) to manage and operate concessions at the Elizabeth Park Shelter, Tourist Lodge (Chateau on the River) and Concession Stand. Our review of compliance with the contractual agreement noted the following:

1. Kosch has not submitted the Annual Statement of Total Gross Sales for the fiscal years ending September 30, 2013 and 2014.

2. Kosch has not remitted any concession revenues/fees to the county since the inception of the contract.
  - a. Kosch recorded sales of approximately \$11,913 in FY 2013.
  - b. Recorded sales in FY 2014 were approximately \$144,054.
3. Amendment No. 1 to the original agreement was passed by the Wayne County Commission in December, 2014.
  - a. Kosch remitted fee payments to the county totaling \$5,945.88 beginning in January 2015.
  - b. The county did not assess any late fees for the fees not remitted for FY 2013 or FY 2014 sales.

### *Criteria*

#### Concessionaire agreement, Section 5.3 **Concessionaire's Records and Reports; County's Right to Audit**

##### **C. Annual Statement**

**"Within 120 days after the end of the County's fiscal year ending September 30 during the term of this Agreement, and at the time of any cancellation, Concessionaire, at its sole expense, must submit to the County a certified annual statement prepared by an independent Certified Public Accountant, of the total Gross Sales the concession operation during the preceding calendar year."**

***Exhibit C-Concession Fees* "On a monthly basis, on or before the 25th of each month, Concessionaire will pay to the County a percentage of Gross Sales for the prior month:**

##### **Shelter Building & Tourist Lodge**

\$0-\$100,000.....	5%
\$100,001-\$200,000.....	7.5%
\$200,001-\$300,000.....	10%
>\$300,001...	12.5%

##### **Concession Stand**

\$0-\$50,000.....	5%
\$50,001...	10%

#### **Article I Definitions and Exhibits**

##### **1.1 Definitions:**

**E. Gross Sales "Gross Sales means all amounts, charges and revenues derived by Concessionaire from all concession transactions whether placed in person, by telephone, regular or electronic mail, or any other manner, at, from or through the Concession Premises and for use of space or services performed on or at the assigned Concession Premises, whether for cash or credit, regardless of when or whether or not collected."**

#### **Section 5.2 Late Payment Charge**

**If Concessionaire fails to pay any fee or charge required hereunder when the same is due and payable to the County, County may require Concessionaire to pay, in addition to the full amount due, a late payment charge equal to one percent (1%) of the amount due for each month, or part thereof, that such sums have not been paid.**



## *Cause*

1 A senior DPS official stated that Kosch was remitting monthly operating statements but had not remitted the required Annual Statements of Total Gross Sales for fiscal years ending September 30, 2013 and 2014.

2. DPS management stated no revenues have been received under this agreement since its inception because the county and Kosch are in negotiations to *re-define* what constitutes “gross sales”.

## *Consequences*

1. Kosch is not in compliance with the contractual requirements. Without receiving the annual operating statement, DPS management has no mechanism to monitor the Concessionaire’s financial performance.

2. Kosch has not remitted fees to the county, in violation of its contractual obligations. Based on Concessionaire documentation, fees of approximately \$596 (on recorded sales of \$11,913) and \$10,804 (on recorded sales of \$144,054) should have been remitted to the county for 2013 and 2014, respectively.

3. The county could have assessed Kosch late fees totaling approximately \$114 for non-remittance of fees in FY 2013 and FY 2014.

## Recommendation 2014-01 – Control Deficiency - Operational – Material Weakness

We recommend:

- A. DPS management implement policies and procedures to ensure Kosch Hospitality submit its Annual Statement of Total Gross Sales as contractually required.
- B. DPS Management, in conjunction with Corporation Counsel, resolve the issue of defining what constitutes “gross sales” and require Kosch to remit fees for past events/sales conducted by the concessionaire.
- C. DPS Management should assess late payment charges as defined in the Concessionaire’s contract.

## Views of Responsible Officials

**Response to Issue 3.a and 3.b.** Management disagrees with the dates set forth in Issue 3.a in that the first payment remitted to the County by Kosch was in November 2014 (not January of 2015). This first payment from Kosch represented fees owed to the county by Kosch from January ’14 to October ’14. All the subsequent monthly payments remitted by Kosch have been done so per the contract. They are:

January ’14-October ’14	\$4,821.04
November ’14	\$378.31
December ’14	\$0.00
January ’15	\$ 582.69
February ’15	\$ 143.98



March '15	\$ 19.86
April '15	\$ 0.00
May '15	\$1,062.98
June '15	\$3,143.42

**Response to Issue 3.a and 3.b.** Management disagrees with the statements in Issue 3.a and 3.b. The county did not assess any late fees against Kosch because the county initiated further negotiations regarding the definition of “gross sales” with Kosch. As a result of these county-requested negotiations, Kosch would not have known what it owed the county. It didn’t appear fair to assess late fees against Kosch when the county raised the concerns of the original contractual language and Kosch would not have known at that time how much it would have owed the county. Furthermore, there was no financial hardship to the county, because the dollar value was minimum, therefore assessing late fees wasn’t appropriate.

**Criteria A2. Definitions of Gross Sales** - The auditor general did not use the complete definition of “Gross Sales” that is set forth in the contract.

### **Consequences**

**Consequence 1.** DPS management disagrees with the statements set forth in Consequence A1. The county is receiving the monthly statements every month and annual statements from Kosch as required by the contract; therefore, the county is able to monitor the financial performance of Kosch.

**Consequence 2.** DPS management disagrees with the statements set forth in Consequence A2. Kosch has submitted payment in accordance with the approved contractual language regarding gross sales. The auditor’s reference to “gross sales” is incomplete and not in compliance with the Contract.

**Consequence 3.** DPS management disagrees with the premise set forth in Consequence A3. The county declined to assess any late fees because the county initiated further negotiations regarding the definition of “gross sales” with Kosch. As a result of these county-requested negotiations, Kosch would not have known what it owed the county. It didn’t appear fair to assess late fees against Kosch when the county raised the concerns of the original contractual language and Kosch would not have known at that time how much it would have owed the county. Furthermore, there was no financial hardship to the county, because the dollar value was minimum, therefore assessing late fees is not appropriate.

### **Recommendations**

**Recommendation A.** DPS management has implemented policies and procedures to ensure Kosch Hospitality submits Annual statements as contractually required.

**Recommendation B.** DPS management has resolved the definition of “gross sales” and has collected all “fees” for past events and sales that were due to the county by Kosch.

**Recommendation C.** DPS management has declined to assess or collect late fees against Kosch for the 2013 and 2014 years as a result of county-requested negotiations where Kosch would not have known what it owed the county. It didn’t appear fair to assess late fees against Kosch when



the county raised the concerns of the original contractual language and Kosch would not have known at that time how much it would have owed the county. However, management intends to assess and collect late fees as it deems necessary pursuant to the contractual language.

### OAG Response

The OAG notes the following:

- The January remittance date was when the posting of Kosch's fee remittance was made in JD Edwards. The fact remains that Kosch did not remit fees as required per the contract.
- The complete definition of Gross Sales, as detailed in the contract, is: **"Gross Sales means all amounts, charges and revenues derived by Concessionaire from all concession transactions whether placed in person, by telephone, regular or electronic mail, or any other manner, at, from or through the Concession Premises and for use of space or services performed on or at the assigned Concession Premises, whether for cash or credit, regardless of when or whether or not collected. Gross Sales includes monies or the value of discounts received by the Concessionaire from vendors or suppliers in exchange for any County approved promotions, sponsorships or displays that are directly attributed to the benefits provided by the Concession Premises. Gross Sales does not include rentals, florals, linens, staffing changes, entertainment, franchise taxes or taxes levied on concession activities, facilities, equipment, or on Concessionaire's real or personal property, nor federal, state, or municipal taxes now or hereafter levied or imposed if separately stated and collected from customers and remitted directly to the taxing authority by the Concessionaire, income and Michigan Single Business Taxes, refunds, returns, exchanges, transfers or gratuities."** Even with the inclusion of the full definition of "Gross Sales", the OAG's observations and recommendations do not change.
- The OAG appreciates management's comments; however, the fact remains that Kosch was not in compliance with its contractual obligations, which became effective in May 2013, nor did the county enforce the contractual terms accordingly.

## **ASSESS THE EXTENT AND EFFECTIVENESS OF MONITORING AND GOVERNANCE**

### **Objective No. 3 – ASSESS THE EXTENT AND EFFECTIVENESS OF MONITORING AND GOVERNANCE BY MANAGEMENT OF CONCESSIONAIRE'S AGREEMENTS**

#### Conclusion

We obtained and examined contracts executed between various vendors and the Department of Public Services (DPS) to evaluate the effectiveness of DPS management's monitoring and supervision over concessionaire agreements.

We reviewed, and tested, DPS's procedures over the following: (1) validation the vendor was operating with a properly executed agreement/contract; (2) receipt of required vendor monthly operating statements; (3) receipting/depositing of monthly vendor fees; and, (4) assurance that required insurance coverage was maintained by the vendor.

We determined while management has established policies and procedures to ensure effective monitoring and governance over concessionaire agreements/contracts, we found areas that could be strengthened related to: (1) ensuring vendors are conducting business with an approved contract; and (2) monitoring over contractual insurance requirements.

## **VENDOR CONDUCTING BUSINESS WITHOUT APPROVED CONTRACT**

### *Condition*

Wayne County entered into a contract with The Food Plaza, Inc. (of Detroit) to provide for the operation of a food and beverage concession at the Frank Murphy Hall of Justice (FMHJ). The term of the contract was from October 17, 2002 through October 16, 2007, with a five year renewal option. The concessionaire was to remit \$400 on a monthly basis to the county.

According to discussion with Corporation Counsel, the contract renewal option was not exercised. There was no provision in the contract authorizing month-to-month services, yet the vendor was permitted to operate the concession premises on a month-to-month basis from October 2007 through February 2014 (almost seven years). We were unable to determine if The Food Plaza maintained its required insurance coverage during this period.

In February 2014 a contract was executed between the county and A&A Deli, Inc. (Birmingham Deli). (The contract was awarded through the RFP process.) The new concessionaire must remit the greater of 10% of gross sales or \$2,000 on a monthly basis to the county.

### *Criteria*

The county's procurement ordinance **Article VII, Section 120-121 (c)** states: "The Commission shall approve all agreements with other units of government or corporate entities regarding revenue collection, distribution, or expenditure."

The contract with The Food Plaza, Section 2.6 **Renewal** stated: "The Concessionaire and the County may renew this Agreement for a period of Five (5) years, provided that the Concessionaire is not in default of any of its obligations thereunder and provided that the renewal is approved by the Wayne County Commission."

### *Cause*

Corporation Counsel stated they did not know why the Food Plaza was allowed to continue conducting business at FMHJ past the expiration date of its contract.

### *Consequences*

Permitting the concessionaire to conduct business after its contract expired was a violation of the county's procurement ordinance. Without ensuring insurance coverage was in place, this could have lead to potential liability to the county had there been a catastrophic events.



Further, the county may have not maximized potential revenue during the seven year period the contract was not renewed by not amending the required fee payment, or by rebidding the contract upon its expiration. For fiscal years 2008 through 2013, the Food Plaza remitted approximately \$28,000 in fees to the county. Had the contract been rebid and awarded to Birmingham Deli, the minimum fees remitted during this period would have been approximately \$144,000. Thus, the county potentially lost approximately \$116,000 in fees revenue.

#### **Recommendation-2014-02 – Significant Deficiency - Compliance**

We recommend that the Department of Public Services (DPS), in conjunction with Corporation Counsel, implement policies and procedures to ensure concessionaire contract renewals are presented to the County Commission for approval, as required by the county's procurement ordinance.

#### **Views of Responsible Officials**

##### ***Management agrees with the recommendation.***

The Department of Public Services now has better methods in place to monitor contracts. These methods include reviewing a monthly report generated from DoT which lists all contract expiration dates. These methods will help safeguard against situations like this from occurring in the future. DPS will also work with Corporation Counsel to ensure that the Department's policies and procedures are consistent with the County Charter and County Ordinances for contract renewal and approval.

The Department of Corporation Counsel is in receipt of the OAG's document titled Iss#4, Vendor Conducting Business Without Approved Contract. Based on its contents, the Department of Corporation Counsel is compelled to clarify its role as it relates to the Concession Agreement.

Pursuant to the County Charter, the Department of Corporation Counsel provides legal services to County departments; it is not tasked with making business decisions for those departments. Historically, the Department of Corporation Counsel has not been responsible for monitoring or retaining the final executed contracts for County departments. There are instances when a County department does not request the Department of Corporation Counsel's assistance in drafting and preparing a contract. Instead, the County department utilizes a template contract or accepts the vendor's contract without consultation with the Department of Corporation Counsel. Even with contracts that the Department of Corporation Counsel negotiates, the County departments do not engage the Department of Corporation Counsel to monitor each and every aspect of the contract, its approval and the execution process. This type of engagement would be cost prohibitive to the County department, the Department of Corporation Counsel is not staffed to provide this service, and it is questionable whether this type of contract monitoring is consistent with the County charter.

As it relates to the Concession Agreement, it is unclear from your report whether the Department of Corporation Counsel negotiated this agreement. Nevertheless: (1) the amount of monthly remittance; (2) the length of the initial Agreement; and, (3) the ability to exercise the renewal option are all business decisions of the County department that initiated the contract approval process (the "Initiating Department"). As it relates to insurance, the Initiating Department and/or

the Department of Management and Budget are typically responsible for monitoring whether a vendor maintains adequate insurance coverage.

As it relates to your discussion with a member of the Department of Corporation Counsel, the attorney's response was consistent with the Department's aforementioned roles. The attorney cannot provide relevant information regarding the Initiating Department's business decision to allow the Agreement to continue after its expiration date. This inquiry is better suited for the Initiating Department.

Notwithstanding all of the foregoing, upon the request of the Department of Public Services ("DPS"), the Department of Corporation Counsel will work with DPS to ensure there are policies and procedures created which are consistent with the County Charter and County Ordinances for contract renewal and approval. However, given the OAG's Findings do not relate to legal services, the Department of Corporation Counsel respectfully requests that the OAG modify its report to accurately reflect the Department of Corporation Counsel's role, if any, in the Concession Agreement and direct any further inquiries to the Initiating Department of the Agreement.

## **LACK OF MONITORING OVER INSURANCE REQUIREMENTS**

### ***Condition***

We obtained and reviewed eight (8) concessionaire agreements executed between Wayne County and various vendors. Each agreement contains a section regarding each concessionaire's required insurance coverage. We reviewed the **Certificate of Liability Insurance** provided by each concessionaire to the county's Risk Management division. We noted the following required insurance coverage that apparently was not obtained as well as questioning why certain coverage was required for a few of the following six (6) concessionaires:

#### **A. Children's Pony Ranch**

- Worker's Compensation
- Employer's Liability
- Automobile Liability (Why is this coverage required given the nature of services provided?)
- All Risk Hazard
- Liquor Liability (Why is this coverage required given the nature of services provided?)

#### **B. Heavner Canoe & Cross Country**

- Employer's Liability
- Automobile Liability (Why is this coverage required given the nature of services provided?)

#### **C. Michigan Segway Rental**

- Worker's Compensation
- Employer's Liability
- Automobile Liability (Why is this coverage required given the nature of services provided?)



D. Riverside Kayak

- Worker's Compensation
- Automobile Liability (Why is this coverage required given the nature of services provided?)

E. Birmingham Deli

- Commercial General Liability
- Worker's Compensation
- Automobile Liability (Why is this coverage required given the nature of services provided?)
- Liquor Liability (Why is this coverage required given the nature of services provided?)

F. Chandler Park Family Aquatic Center (MICO Management)

- Worker's Compensation
- Commercial Excess (Umbrella)

We made numerous requests from Risk Management regarding the lack of insurance coverage as well as why certain coverage was required from a concessionaire given the nature of the services they provided. We received no response to our requests.

*Criteria*

A. Children's Pony Ranch:

- Concession agreement Section 7.2 **Insurance** states:
  - A. **Types and Amounts.** Concessionaire, at its own expense and in its own name, and in the names of the County of Wayne as additional insured, as their respective interests may appear, must provide and keep in force during the term of this Agreement the following policies of insurance, which must be approved by the County, and written by a company or companies that are licensed to conduct business in the State of Michigan:
    - 1) **Commercial General Liability Insurance**
    - 2) **Automobile Liability Insurance**
    - 3) **All Risk Hazard Insurance**
    - 4) **Liquor Liability Insurance**
    - 5) **Worker's Compensation Insurance**
    - 6) **Employer's Liability Insurance**

B. Heavner Canoe & Cross Country:

- Concession agreement Additional Terms and Conditions
  - A. **Commercial General Liability Insurance/Hold Harmless Agreement:**
    - 1) Licensee, at its own expense, shall secure, prior to the commencement of operations hereunder, and maintain continuously in effect for purposes of this License:
      - a. commercial general liability insurance...
      - b. auto vehicle liability insurance...
      - c. worker's compensation insurance...
      - d. employer's liability insurance.



C. Michigan Segway Rental:

- Concession agreement Additional Terms and Conditions

A. **Commercial General Liability Insurance/Hold Harmless Agreement:**

- 1) Licensee, at its own expense, shall secure, prior to the commencement of operations hereunder, and maintain continuously in effect for purposes of this License:
  - a. commercial general liability insurance...
  - b. auto vehicle liability insurance...
  - c. worker's compensation insurance...
  - d. employer's liability insurance.

D. Riverside Kayak:

- Concession agreement Additional Terms and Conditions

A. **Commercial General Liability Insurance/Hold Harmless Agreement:**

- 1) Licensee, at its own expense, shall secure, prior to the commencement of operations hereunder, and maintain continuously in effect for purposes of this License:
  - a. commercial general liability insurance...
  - b. auto vehicle liability insurance...
  - c. worker's compensation insurance...
  - d. employer's liability insurance.

E. Birmingham Deli:

- Concession agreement Section 6.2 **Insurance** states:

A. **Types and Amounts.** Concessionaire, at its own expense and in its own name, and in the names of the County of Wayne as additional insured, as their respective interests may appear, must provide and keep in force during the term of this Agreement the following policies of insurance, which must be approved by the County, and written by a company or companies that are licensed to conduct business in the State of Michigan:

- 1) **Commercial General Liability Insurance**
- 2) **Automobile Liability Insurance**
- 3) **All Risk Hazard Insurance**
- 4) **Liquor Liability Insurance**
- 5) **Worker's Compensation Insurance**
- 6) **Employer's Liability Insurance**

F. Chandler Park Family Aquatic Center (MICO Management)

- Concession agreement Section 6.2 **Insurance** states:

B. **Types and Amounts.** Management Firm, shall maintain and keep in force in its own name, and in the names of the County of Wayne as additional insured, as their respective interests may appear, must provide and keep in force during the term of this Agreement the following policies of insurance, which must be approved by the County, and written by a company or companies that are licensed to conduct business in the State of Michigan:

- 1) **Worker's Compensation Insurance**
- 2) **Commercial General Liability Insurance**
- 3) **Commercial Excess (Umbrella) Liability Insurance**

**4) Commercial Automobile Liability Insurance, including Contractual Liability (if an automobile is required to meet the terms of this Agreement)**

*Cause*

Risk Management does not appear to have procedures in place to ensure that the applicable certificates of insurance are received from the concessionaire for the required insurance coverage stated in their contract. Also, there appears to be no documented follow-up procedures to ensure the concessionaire obtains the required insurance coverage if not originally obtained.

Finally, it appears templates are being used for contracts when writing the concessionaire agreements because certain insurance coverage requested in the contracts were neither required nor applicable given the nature of services provided by a concessionaire.

*Consequences*

Without proper monitoring and/or follow-up by Risk Management on ensuring vendors obtained the required insurance coverage, the county may be exposed to potential litigation and enhanced risk related to concessionaire operations that should have been covered under an appropriate insurance policy.

Further, by not tailoring each and every contract to the services performed, a concessionaire may be required to obtain unnecessary insurance policies thus incurring additional cost.

**Recommendation 2014-03 – Control Deficiency - Operational**

**A. We recommend that Risk Management:**

- Implement policies and procedures place to ensure that the applicable certificates of insurance are received from the concessionaire for the required insurance coverage stated in their contract.
- Document follow-up procedures to ensure the concessionaire obtains the required insurance coverage if not originally obtained.

**B. We also recommend the Department of Public Services:**

- Forego the use of templates in drafting concessionaire agreements and assess the insurance requirements of each concessionaire based on services provided and/or performed.

**Views of Responsible Officials**

***Management agrees with recommendation***

Risk Management as the custodian of the insurance certificates historically has not had the resources to monitor that all contracts awarded have obtained the required insurance.

Corrective Action:



Policies and Procedures – M & B is currently reviewing the process flow and is considering placing the task of receiving the insurance certificates for awarded contracts within the Purchasing Department, prior to the Blanket/Purchase orders being issued. The county's insurance broker/advisor will train the buyers on how to review the certificates to assure they are in compliance with the contract requirements. In addition, an electronic filing and management application is being explored to assist in the overall certificate management which will allow immediate access to past and current history and information. Once this process flow is finalized a policy will be drafted clearly identifying the process flow and requirements for insurance certificate receiving, review, approval and storing in an accessible application.

Use of Contract Templates – Currently the county's insurance broker/advisor is working closely with the County revising the insurance requirements in the various contract templates. Once this is completed there will be training seminars scheduled for the contract managers, Corporation Counsel and the Purchasing Department as to the specific requirements based on the scope of contracted services being requested. The expectation of this is to match the insurance requirements closely to the services/products being contracted.

## OTHER MATTERS

### **Elizabeth Park Chateau on the River Marketing Plan**

Wayne County entered into a concession agreement with Kosch Hospitality, LLC (Kosch) to manage and operate concessions at the Elizabeth Park Shelter, Tourist Lodge and Concession Stand. The term of the agreement was from May 13, 2013 through December 31, 2018 with two, five-year options to renew.

The former shelter building was renovated and renamed the Chateau on the River. This facility can be reserved for weddings, graduations, meetings, and other events.

In its response to the RFP, Kosch submitted the following plan to market its services:

- **On-line Marketing:** In cooperation with the City of Trenton and Wayne County web site administrators, Kosch would like to put in place on both web sites links to [www.koschcatering.com](http://www.koschcatering.com) for more information on food services available throughout Elizabeth Park, such as menus, pricing & contact information.
- **Google Places:** Kosch would like to register the Elizabeth Park Reception Hall & Monguagon Lodge with Google Places so anyone searching for catering halls or event facilities in the Trenton area using Google, will be shown these locations with contact information and directions.

On December 18, 2014 the Wayne County Commission approved Amendment No. 1 to the concessionaire contract between the county and Kosch Hospitality. The Amendment contained, in part, the following language:

- “Concessionaire will operate the concession premises...for the purposes for which the buildings are suitable, such as banquets, receptions, meetings, photographic shoots, and other private/public events, including food and beverage service.
- “The Concessionaire must operate the concession...to maximize gross sales produced by the concession.”

### **Chateau on the River Marketing**

To ascertain the marketing Kosch performs for the Chateau, and the ease of accessibility to the services available, the following web sites were visited:

#### **City of Trenton**

- On the city’s home page, clicked on the “Departments” link.
- On the “Departments” page, clicked on “Parks and Facilities” link.
- On the “Parks and Facilities” page, clicked on “Elizabeth Park Chateau on the River” link.
- When this last link is accessed, the “2013 Banquet Menu” for the Chateau on the River is displayed.

#### **Conclusion**

- A person would have to specifically be searching for the Chateau on the River; there is no way to randomly search the City of Trenton’s web site for banquets, wedding reception venues, etc.
- The only item on the Chateau link is the aforementioned banquet menu, which is specifically designed only for weddings. There is no other information regarding the potential use of the facility for meetings, showers, other special events, etc.

#### **Wayne County**

- On October 22, 2015 the county announced **“Finding Services on Waynecounty.com is now easier”** with the subheading **“New user-friendly web site features improved user experience.”** To test this improved feature, we performed the following:
  - Entered “banquet facilities” in search dialog box.
  - Message was returned stating no matches were found.
  - Entered “wedding reception sites” in search dialog box.
  - This also resulted in no matches being found.
  - On county’s home page, clicked on “View All Services” link.
  - Clicked on “Locate a Park” link.
  - Clicked on “Elizabeth Park” link.
  - Clicked on “Kosch Catering” link.
  - Error message was returned stating web site was not available.

#### **Conclusion**

- A person would have to specifically search for the Chateau on the River; there is no way to randomly search on the county’s web site for banquets, wedding reception venues, etc.
- Kosch’s web site was not available through the county’s web site.



### **Other Web Sites**

- **Google Places** and **The Knot** websites were accessed and the search words “banquet facilities” and “wedding reception venues” were entered.
- **Kosch Catering** web site was not returned for either search.

DPS – Parks and Recreation management provided a listing of events held at the Chateau on the River for calendar years 2014 and 2015.

- In 2014, there were 25 potential booking walk-throughs and 38 events held at the Chateau.
- In 2015, there were 24 potential booking walk-throughs and 47 events held at the Chateau.

### **Conclusion**

It does not appear that Kosch has neither a detailed nor a widely distributed marketing plan for the Chateau at Elizabeth Park. Thus, it may be hindering their ability to maximize its gross sales from this venue. DPS - Parks and Recreation management should work with Kosch to develop and implement a comprehensive marketing plan for the Elizabeth Park Chateau on the River in order to increase the public’s awareness and accessibility to its services.

### **Noteworthy Accomplishment**

Wayne County Parks provides a variety of recreational, athletic, educational and nature opportunities that are available for the citizens of Wayne County as well as visitors. To enhance the County Parks experience, DPS – Parks Division has contracted with various vendors to provide additional services such as: canoeing, kayaking, and boat rental services; personal glider and bicycle rentals; and, saddle pony rides and a petting farm.

## **OAG OVERALL CONCLUSION**

We determined there are three (3) areas of concern and five (5) recommendations. One (1) recommendation is considered to be an operational and control deficiency which is classified as relatively low risk; one (1) recommendation is classified as a significant deficiency which is deemed medium risk; and, three (3) recommendations are classified as a material weakness that is deemed high risk and could impair management’s ability to operate in an effective and efficient manner and achieve its business objectives. See the appendix for a definition of the various types of deficiencies.


Officials within Management & Budget (M&B), the Department of Public Services – Parks and Recreation and Building Divisions, and Corporation Counsel agreed in principle with two (2) of the recommendations, and disagreed with three (3). (See Report Details.)

A corrective action plan will be due within 30 days after this report is formally received by the Wayne County Commission. If sufficient corrective action is not taken, a follow up review may be necessary.

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This report is intended solely for the information and use of the Departments of Public Services, Management & Budget, and Corporation Counsel officials and is not intended to be and should not be used by another other than these specified parties. This restriction is not intended to limit the distribution of the report, which is a matter of public record.

Sincerely,

A handwritten signature in cursive script that reads "Marcella Cora".

Marcella Cora, CPA, CIA, CICA, CGMA  
Auditor General



## Appendix

### **Control Deficiency (low risk)**

A control deficiency exists when the internal control design or operation does not allow management or employees, in the normal course of performing their assigned functions, to prevent, detect or correct errors in assertions made by management on a timely basis. A deficiency in design exists when (1) a control necessary to meet the control objective is missing or (2) an existing control is not properly designed is that, even if the control operates as designed, the control objective is not met.

A deficiency in operation exists when a properly designed control does not operate as intended, or when the person(s) performing the control does not possess the necessary authority or qualifications to perform the control effectively.

### **Significant Deficiency (medium risk)**

A matter that, in the auditor's judgment, represents either an opportunity for improvement or significant deficiency in the management's ability to operate a program or department in an effective and efficient manner. A significant deficiency in internal control, or combination of deficiencies, that adversely affects the organization's ability to initiate, authorize, record, process or report data reliably in accordance with applicable criteria or framework such that is more than a remote likelihood that a misstatement of the subject matter that is more than inconsequential will not be prevented or detected.

### **Material Weakness Deficiency (high risk)**

A significant deficiency that could impair the ability of management to operate the department in an effective and efficient manner and/or affect the judgment of an interested person concerning the effectiveness and efficiency of the department. A significant or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of subject matter will not be prevented or detected.