

CITY AUDITOR'S OFFICE



Audit of Compliance with the Sportspark Development and Management Agreement

Report OM012-1617-03

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CITY AUDITOR

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**Audit of Compliance with the Sportspark
Development and Management Agreement
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BACKGROUND

The city of Las Vegas (city) entered into the Las Vegas Sportspark Development and Management Agreement (Management Agreement) to have a contractor develop the final two phases of planned development at Bruce Trent Park. The Management Agreement details the management of the recreational facilities built on land owned by the Bureau of Land Management and patented to the city. The original agreement was signed on July 14, 1997. Three amendments have been approved on the following dates: June 25, 1998, December 1, 1999, and October 15, 2008. The Management Agreement was reassigned to another contractor (Contractor) on December 5, 2003.

Through sub-use agreements, the Contractor leases sections of the facility for the operation of various activities. During calendar years 2014 and 2015, facility uses included paintball, soccer, martial arts, dance, gymnastics, office space, educational enrichment, basketball, outdoor trapeze, boy scouts, and baseball.

The Management Agreement is monitored by staff from two city departments including the Department of Parks and Recreation (Parks and Recreation) and the Department of Operations and Maintenance Real Estate Division. Throughout the audit report, these staff members will be referred to as the contract administrators.

OBJECTIVES

The objective of the audit was to assess the adequacy of compliance with the Management Agreement provisions.

SCOPE AND METHODOLOGY

The scope of the audit was limited to the period of January 2014 through December 2015 and Management Agreement provisions relating to current operations. The last date of fieldwork was April 6, 2016.

Our audit methodology included:

- Research of agreement terms,
- Interviews of city and Contractor employees,
- Observations, and
- Analysis and detail testing of available data.

We conducted this performance audit in accordance with generally accepted government auditing standards except for the requirement for an external peer review every three years. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based

on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The exception to full compliance is because the City Auditor's Office has not yet undergone an external peer review. However, this exception has no effect on the audit or the assurances provided.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The following findings and conclusions were noted:

- ***Improvements Needed in the Facility Use Approval Process*** - Improvements are needed with the facility use approval process to ensure that the city approves new facility uses, receives copies of the signed sub-use agreements, the sub-use agreement language is consistent with the Management Agreement language, and the facility use operators have city business licenses. (Finding #1)
- ***Improvements Needed in Monitoring Maintenance of Facility*** - A walk-thru of the Sportspark facility identified maintenance issues. (Finding #2)
- ***Non-Compliance with the Management Agreement Provisions*** - We found non-compliance with Management Agreement provisions relating to the contract administrator's verifying that a majority of the patrons are Clark County residents and the Contractor's submittal of required documentation. (Finding #3)
- ***Improvements Needed in the Annual Land License Fee Process*** - Finance staff routinely invoices the fixed rate annual land license fee instead of determining whether the gross revenue percentage would result in a higher calculated fee. Finance staff does not have the necessary documentation to make this determination. (Finding #4)
- ***Inadequate Information Included in the Gross Revenue Statement*** - We were unable to reconcile the 2014 gross revenue figure to the gross revenue figure shown in the gross revenue statement. (Finding #5)
- ***Lack of the Standard Audit Clause in Management Agreement*** - The Management Agreement was not amended to include the city's standard audit clause. (Finding #6)
- ***Inaccurate Water Usage Invoice Calculation*** - Improvements are needed in the water invoice calculation process to ensure that the Sportspark is correctly invoiced for its water usage. (Finding #7)
- ***Improvements Needed with the Insurance Requirements*** - The contract administrators should evaluate and determine whether the Management Agreement should be amended to reflect the city's current insurance requirements. (Finding #8)

Further information is contained in the sections below.

1. Improvements Needed in the Facility Use Approval Process

Criteria

Las Vegas Sportspark Development and Management Agreement

Section 2 - Purpose

If any portion of the Premises remains undeveloped, City may consent to grant Contractor the right to develop and manage such other recreational facilities and services as City deems appropriate. Contractor will use the Premises to construct and operate the Primary Development Project and shall not use the Premises for purposes other than those specified in the Final Proposal without the consent of the City Council.

Las Vegas Sportspark Development and Management with 1st Amendment Language

Section 7 – Operation

Contractor shall submit to the Director of Parks and Leisure Activities (hereinafter “Director”) on the last month of every quarter a schedule of upcoming uses, activities and events conducted on the Premises. If any such use, activity or event (a) poses a moral concern in the reasonable judgment of the Director or (b) is not provided for in the Final Proposal, Contractor must obtain prior approval from the Director before such use, activity or event takes place.

Contractor may operate food and beverage services, a pro shop and other related services and facilities as set forth in the Final Proposal and may do so through a sub-use agreement, provided that Contractor submits to Director copies of all such agreements and provided further that all such third parties acknowledge that they have read this agreement and agree to be bound by and to all applicable provisions herein. Contractor must, however, first obtain approval from the Director before entering into any sub-use agreement regarding programs or activities performed at Sportspark.

Las Vegas Sportspark Development and Management Agreement 3rd Amendment

Section 2 – Purpose

- A. One ice skating rink which may utilize interior sport surfaces and other related facilities and services (provided such facilities and services are usual and customary for projects similar to the Sportspark);*
- B. One roller skating rink which may utilize interior sport surfaces and other related facilities and services (provided such facilities and services are usual and customary for projects similar to the Sportspark);*
- C. Basketball facility;*
- D. Miniature golf course;*
- E. Paintball course;*
- F. Outdoor and indoor soccer field;*
- G. Baseball field; and*
- H. Rope Course.*

Las Vegas Municipal Code, Title 6.02.060 Business license required

(A) It is unlawful for any person to:

(1) Commence, institute, advertise, aid, carry on, engage in or continue in the City any business without a valid unexpired license issued pursuant to this Code.

Condition

Audit procedures included observations at the Sportspark facility and discussions with representatives of the Contractor to ascertain what the various facilities uses were during calendar years 2014 and 2015. We obtained copies of the sub-use agreements, determined whether the Contractor requested approval for new facility uses, determined whether any inconsistencies between the Management Agreement and the sub-use agreements were found, and verified whether the facility use operators had city business licenses. The following exceptions were noted:

- Paintball courses, indoor and outdoor soccer fields, basketball facility, baseball field, and snack bar are all approved facility uses in accordance with the Management Agreement third amendment. Copies of the sub-use agreements were not on file at the city.
- Approval was obtained for educational enrichment, temporary football, and lacrosse. Sub-use agreements for these facility uses were not submitted to Parks and Recreation as required by the Management Agreement.
- We were unable to determine whether approval was obtained or copies of the sub-use agreements were submitted for cross fit, martial arts, dance, outdoor trapeze, boy scouts, and baseball batting cages.
- At times, the Contractor executes amendments to sub-use agreements. The Management Agreement is unclear as to whether the city is required to approve sub-use agreement amendments or whether the Contractor is required to submit copies of the amendments to the city. The Contractor executed amendments to sub-use agreements for paintball, soccer, and basketball and copies of these amendments were not on file at the city.
- Many of the Contractor's sub-use agreements include a statement that is not consistent with the Management Agreement in that the statement refers to city's *approval within ninety days after execution of the agreement* instead of a requirement to *first obtain approval from the Director before entering into any sub-use agreement regarding programs or activities performed at the Sportspark.*
- The Contractor requested approval for these facility uses after the contract administrators observed the facility uses at the Sportspark instead of requesting prior approval, as follows:
 - Approval for the August 20, 2015 gymnastics agreement was requested on September 3, 2015.
 - Approval for the April 12, 2015 educational enrichment agreement was requested on June 9, 2015.

- The Management Agreement includes a requirement that the sub-use agreements *contain a provision that requires such third parties to acknowledge that they have read this Agreement and agree to be bound by and to all applicable provisions herein*. The following sub-use agreements did not include this provision: cross fit, educational enrichment, baseball, snack bar (March 27, 2015), outdoor trapeze, boy scouts, and office space.
- Many of the sub-use agreements refer to the city's interest in the premises. These sub-use agreements include a "City's Consent to Agreement" form in which the city certifies *that the Contractor is not in default or breach of any of the provisions of the Master Agreement and the Master Agreement has not been amended or modified except as expressly set for in the Agreement*. The contract administrators were not asked to sign the forms for the snack bar (September 8, 2014), lacrosse, paintball (December 17, 2015), outdoor soccer (September 1, 2015), dance (September 18, 2013), and gymnastics sub-use agreements.
- We were unable to verify whether three of the current facility use operators obtained a city business license for their Sportspark operation.

Improvements are needed with the facility use approval process to ensure that the city approves new facility uses, receives copies of the signed sub-use agreements, the sub-use agreement language is consistent with the Management Agreement language, and the facility use operators have city business licenses.

The following current facility uses are not identified as approved usages in the Management Agreement and/or amendments:

- Cross fit
- Dance
- Gymnastics
- Educational enrichment
- Batting cages

The following approved facility uses per the Management Agreement and/or amendments are not currently in use:

- Ice skating
- Roller skating
- Miniature golf
- Rope course

Cause

- Staffing changes occurred within Parks and Recreation for monitoring the Management Agreement.

- The Management Agreement does not provide the contract administrators with a recourse action plan when the Contractor does not request prior approval for facility uses and does not provide signed sub-use agreements to the city.
- A Contractor representative indicated that at times he notifies the contract administrators at face to face meetings of upcoming facility uses instead of submitting written requests.

Effect

- The contract administrators responsible for monitoring the Management Agreement have a limited understanding of the facility uses at the Sportspark when prior approval of facility uses are not obtained and the Contractor does not submit copies of the sub-use agreements to the city.
- When staff changeovers occur, there is no assurance that the employees assuming responsibility for oversight of the Management Agreement have knowledge of verbal facility use requests and approvals.

Recommendations

- 1.1 The contract administrators should document and implement a standard process for the request and approval of new facility uses. Areas of consideration should include:
 - The use of a boiler-plate sub-use agreement.
 - The requirement that requests and approval of facility uses be in writing.
 - The submittal of all signed sub-use agreements and amendments to city staff.
 - The review of the submitted sub-use agreements and amendments by city staff to ensure that the agreements are in compliance with the Las Vegas Sportspark Development and Management Agreement provisions and all facility use operators have city of Las Vegas business licenses.
 - Methodology for saving/retaining documentation in a central file.
 - Recourse action plan to follow when the Contractor does not request pre-approval for and submittal of sub-use agreements for new and amended facility uses.
- 1.2 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address the request and approval of new facility use concerns identified above.
- 1.3 Once the standard process for the request and approval of new facility uses has been implemented, the contract administrators should provide the Contractor with instructions on the revised process.

- 1.4 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to include the current approved facility uses.

2. Improvements Needed in Monitoring Maintenance of Facility

Criteria

Las Vegas Sportspark Development and Management Agreement with 3rd Amendment Language

Section 9 – Maintenance

At all times during the term of this Agreement, Contractor shall maintain all structures, fixtures, furnishings and equipment installed or used on the Premises in a condition similar to that which existed at the time they were first constructed or installed, reasonable wear and tear excepted.

If City reasonably determines that Contractor is not complying with such obligations, City shall give Contractor a written notice which specifies the nature of the defective condition and provides a reasonable time for Contractor to cure such defect. Contractor shall use its best efforts to timely cure such defect, however failure to cure such defect shall constitute a breach of this Agreement. Upon such a breach, the City or designee shall undertake the necessary maintenance activities to maintain the Premises in a good, sightly, and safe condition and such costs shall be paid by the Contractor within thirty days of completion of the necessary maintenance activities.

The City shall provide an annual written evaluation of the on-site parking lot and other infrastructures to the Contractor. The City shall identify necessary maintenance activities that are required to keep the on-site parking lot and infrastructure in a good, sightly, and safe condition. The Contractor shall perform these necessary maintenance activities within sixty (60) days of this written evaluation. If the Contractor disagrees with the City's assessment of condition of the on-site parking lot and infrastructure, the Contractor may appeal to the City's City Manager. Within fourteen (14) calendar days of receipt of the appeal, the City Manager shall determine the necessary maintenance activities. The necessary maintenance activities as determined by the City Manager shall be final and binding. Upon completion of maintenance required maintenance activities on the parking lot and infrastructure, Contractor shall report all maintenance activities to the City's Director of Field Operations or designee. If the Contractor does not perform these necessary maintenance activities within 60 days of receipt of the annual written evaluation, the Contractor's non-performance shall constitute a breach of this Agreement. Upon such a breach, the City or designee shall undertake the necessary maintenance activities to maintain the on-site parking lot and infrastructure in a good, sightly, and safe condition and such costs shall be paid by the Contractor within thirty days of completion of the necessary maintenance activities.

Condition

The Management Agreement instructs the city to provide an annual written evaluation of the on-site parking lot and other infrastructures to the Contractor. However, for other maintenance issues, the contract administrators coordinate with the Contractor on an as needed basis whenever maintenance concerns are identified. Audit procedures included the completion of a walk-thru of the Sportspark facilities on March 22, 2016. The following maintenance issues were identified:

- Hazards associated with loose artificial turf, protruding trapeze guide wires, an inadequate concrete step-off, and loose rubber floor tiles.
- General disrepair of the paintball area.
- The trapeze infrastructure for the sub-use agreement that expired on August 31, 2014 was originally used for a rope course. The infrastructure for this operation was still in place as of March 22, 2016 after the sub-use operator vacated the premises. The potential exists that the city could be held responsible for the costs to remove structures and repair property grounds associated with former sub-use operators if the Sportspark operation were to revert to the city.

Cause

- The Management Agreement includes a requirement for an annual evaluation of the parking lot and infrastructure but not an evaluation of the general maintenance issues at the facility.
- The Management Agreement does not require that structures built for specific sub-use operations are removed when the sub-use agreements expire and are no longer operational.

Effect

- The city could be liable for injuries that occur as the result of hazards.
- The city could be held responsible for the removal of structures and the repair of the property if the Sportspark operation were to revert to the city.

Recommendations

- 2.1 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address general maintenance concerns.
- 2.2 The contract administrators should coordinate with the Sportspark management to address the identified general maintenance issues. A standard process should be implemented to identify and resolve general maintenance issues at the Sportspark.

3. Non-Compliance with the Management Agreement Provisions

Criteria

Las Vegas Sportspark Development and Management Agreement with 1st Amendment language

Section 7 – Operations

Director shall, from time to time, review operations at Sportspark to ensure that: (1) a majority of the patrons of Sportspark are Clark County residents.

Las Vegas Sportspark Development and Management Agreement

Section 7 – Operations

Contractor shall offer free or subsidized use of the facilities and services on the Premises to students and economically disadvantaged residents of Clark County. A list of such special events and free or subsidized uses shall be filed each year at the time required for the filing of the statement of Gross Revenues as provided herein.

Las Vegas Sportspark Development and Management Agreement

Section 7 – Operations

Contractor shall submit to the Director of Parks and Leisure Activities (hereinafter “Director”) on the last month of every quarter a schedule of upcoming uses, activities and events conducted on the Premises.

Las Vegas Sportspark Development and Management Agreement 3rd Amendment

Section 8 – User Fees

Contractor shall establish and maintain a fee structure for all activities that is consistent with the other open-to-the public facilities of comparable quality in Clark County and surrounding states. On the first day of January of each year, Contractor shall submit a proposed fee schedule to the Director of Leisure Services (“Director”) for approval. ... This fee structure will not apply to subcontractors, subleases, or other third party providers that provide services to the public at the Sportspark.

Condition

Audit procedures found non-compliance with the Management Agreement provisions, as follows:

City Employee Responsibilities:

- The contract administrators indicated that their understanding is that a majority of the facility use operators at the Sportspark are local businesses that cater to residents. However, they have never verified that a majority of the patrons are Clark County Residents.

Contractor Responsibilities:

- The Contractor has not filed *the list of free or subsidized uses of the facilities and services on the Premises for students and economically disadvantaged residents* for calendar years 2014 and 2015.
- The Contractor submitted two Tenant Use Updates on February 2, 2015 and January 30, 2016 instead of *the quarterly schedule of upcoming uses, activities and events conducted on the Premises* in accordance with the Management Agreement provisions.
- The contract administrators indicated despite their request that the Contractor submit a proposed fee schedule for approval, they have not received it as of the first day of January 2016. Since the third amendment to the Management Agreement states that *the fee structure not does apply to subcontractors, subleases, or other third party providers that provide services to the public at the Sportspark* and the current facility use operators are third party providers operating under sub-use agreements, it is unclear whether this requirement applies to the current facility use operators at the Sportspark.

Cause

- The contract administrators indicated that the facility use operators are local businesses that cater to residents.
- The contract administrators requested the required documentation; however, there is no contractual recourse for them to pursue if the documentation is not provided.
- The Contractor is operating under a different business model than what was in place when the Management Agreement was initially approved.

Effect

- The Management Agreement does not provide the contract administrators with recourse to follow when the Contractor fails to provide the Management Agreement required submittals.
- Non-compliance with the Management Agreement provisions.

Recommendations

- 3.1 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address the Contractor's non-compliance with the submittal of required documentation.
- 3.2 The contract administrators should determine how to comply with the agreement provision relating to verifying that a majority of the patrons are Clark County residents and implement the process accordingly.

- 3.3 The contract administrators should provide the Contractor with instructions to ensure compliance with the Las Vegas Sportspark Development and Management Agreement provisions.

4. Improvements Needed in the Annual Land License Fee Process

Criteria

Las Vegas Sportspark Development and Management Agreement Section 4 – Land Licenses Fees

Contractor shall pay City an annual land license fee beginning in the calendar year of the Commencement Date and based on the payment schedule set forth in the table below:

Years 16 – 20 -- \$15,000 or 1.25% of gross revenues, whichever is higher

Each annual land license fee payment shall be made on or before the 31st day of January following the completion of the calendar year as set forth in the table above. Such payment shall be accompanied by a written statement prepared by an independent certified public accountant which provides the Gross Revenues for such calendar year.

“Gross Revenues” shall include the sum of all revenues received by the Contractor, or any of its contractors or subcontractors, from sales made and services provided on the Premises less the sum of any refunds or rebates provided to customers and the amount of all sales and use taxes which have to be accounted for to any state and local governmental agency. Gross Revenue shall not include funds retained by independent operators of pay phones or vending and other machines; funds received as payment for claims regarding lost or damaged products; and funds received from sales of trade fixtures or other personal property not sold in the ordinary course of Contractor’s business.

Condition

A Finance employee prepares the annual land license fee payment invoice and routinely invoices the fixed rate annual land license fee instead of determining whether the gross revenue percentage would result in a higher calculated fee. Finance staff does not have the necessary documentation to make this determination based upon the following:

- The Management Agreement language states that *such payment shall be accompanied by a written statement prepared by an independent certified public accountant which provides the Gross Revenues for such calendar year.* The annual land license fee invoice instructs the Contractor to submit a written statement of gross revenue with the annual land license fee payment. Therefore, the Finance staff member doesn’t know what the gross revenue figure was prior to

billing and therefore could not determine whether the gross revenue percentage would result in a higher calculated fee.

- The annual land license fee invoice instructs the Contractor to remit the fee to a Los Angeles, California P.O. Box. If the written statement of gross revenue were submitted with the annual land fee payment, it would be sent to a Los Angeles California address instead of a city address and the Finance staff member would not receive the written statement of gross revenue.
- The 2014 written statement prepared by the Contractor's certified public accountant (CPA) was dated June 30, 2015 subsequent to the payment deadline of January 31. In addition, the gross revenue statement is required to be prepared by an independent CPA. The CPA's written statement stated that they are not independent.

Cause

The Management Agreement language instructions mistakenly require the gross revenue statement be submitted at the same time as the payment.

Effect

- Finance staff is not provided with the necessary documentation to make a determination of whether to invoice the Contractor for the set amount indicated in the Management Agreement or the applicable percentage of gross revenue.
- If Finance staff obtained the gross revenue statement after the annual land license fee was paid and determined that the gross revenue calculation resulted in a higher annual land license fee, Finance would be required to prepare a second annual land license fee invoice to request payment for the fee difference.

Recommendation

- 4.1 The contract administrators in coordination with Finance should determine what process should be used to calculate the annual land use fee and document the process. In addition, they should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to reflect the revised annual land license fee process.

5. Improvements Needed to Better Understand Gross Revenue

Criteria

Las Vegas Sportspark Development and Management Agreement

Section 4 – Land Licenses Fees

Each annual land license fee payment shall be made on or before the 31st day of January following the completion of the calendar year as set forth in the table above. Such payment shall be accompanied by a written statement prepared by an independent certified public accountant which provides the Gross Revenues for such calendar year.

“Gross Revenues” shall include the sum of all revenues received by the Contractor, or any of its contractors or subcontractors, from sales made and services provided on the Premises less the sum of any refunds or rebates provided to customers and the amount of all sales and use taxes which have to be accounted for to any state and local governmental agency. Gross Revenue shall not include funds retained by independent operators of pay phones or vending and other machines; funds received as payment for claims regarding lost or damaged products; and funds received from sales of trade fixtures or other personal property not sold in the ordinary course of Contractor’s business.

Condition

Audit procedures included reconciling the written statement of gross revenues prepared by the Contractor’s CPA for calendar year 2014. This reconciliation consisted of obtaining the sub-use agreements for each facility use operator and calculating rental fees. The monthly calculated rental fees were reconciled to the Contractor’s general ledger postings as well as the CPA’s 2014 calendar year annualized revenue fees for each facility use operator. We were unable to reconcile the 2014 annualized gross revenue fees, as follows:

- For one facility use operator, we were not provided with a copy of the sub-use agreement. Therefore, we were unable to confirm the \$45,000 of rental fees for this facility use operator. According to the Contractor representative on March 30, 2016, this facility use operator co-operated the baseball field with another sub-use operator. However, the sub-use agreement that we were provided for this facility use operator was for the period of September through December 2014 instead of the period of March through December 2014. In addition, the sub-use agreement indicated the monthly rental fee was \$5,000 not \$4,500.
- For one facility use operator, although the sub-use agreement indicated rent should have been charged for the period of September through December 2014, there were no rental fee postings in the Contractor’s general ledger and no revenue was included in the CPA’s 2014 calendar year gross revenue figure.

- For one facility use operator, the annual rental fee total was lower than the calculated fee based upon the sub-use agreement. The Contractor indicated they negotiated a lower rental fee for this operator.

The 2014 written statement prepared by the CPA provides the total gross revenue amount as required by the Management Agreement which defines gross revenue as *the sum of all revenues received by the Contractor, or any of its contractors or subcontractors, from sales made and services provided on the Premises*. The requirement of providing the sum of all revenues instead of the gross revenue for each activity or service offered does not allow for a proper evaluation of the different revenue sources at the Sportspark by the contract administrators.

Cause

- The contract administrators lack adequate information on the Sportspark revenue sources due to the Management Agreement requiring the sum of gross revenues rather than the gross revenue from each activity or service.
- The Management Agreement does not prevent or require the Contractor to notify the contract administrators when two entities co-operate a portion of the Sportspark.
- The Management Agreement does not prevent or require the Contractor to notify the contract administrators when they negotiate different rental fees than the fees shown in the sub-use agreements.

Effect

- The contract administrators lack adequate information on the different revenue sources at the Sportspark which would enable them to effectively monitor the Sportspark.
- When the Contractor re-negotiates the terms of the sub-use agreements relating to rental fees, the gross revenue figure used to calculate the annual land use fee is changed.

Recommendation

- 5.1 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address the written statement of gross revenue submittal concerns. The Contractor should be instructed to report gross revenue for each activity or service operating at the Sportspark.

6. Lack of the Standard Audit Clause in Management Agreement

Criteria

Las Vegas Sportspark Development and Management Agreement

Section 4 – Land Licensee Fees

City may pay for and cause an audit to be performed of Contractor's statement of Gross Revenues for the preceding calendar year. Contractor shall make available to City's auditor any books, receipts, records or other documents regarding the Contractors operations on the Premises which such auditor reasonably deems necessary to complete such audit.

City of Las Vegas Standard Audit Clause Policy (FN608)

All City contracts and agreements shall include a standard audit clause to allow for oversight of contracted activities.

Condition

The city adopted a Standard Audit Clause Policy on May 30, 2002 which requires the inclusion of standard audit clause language for all contracts and agreements. The original Management Agreement as well as the first two amendments were entered before the adoption of this policy and therefore did not include the standard audit clause language. The third amendment was not amended to include the standard audit clause language.

Cause

Management Agreement was never amended to include the city's standard audit clause.

Effect

The Management Agreement language only gives the city the option to audit the statement of gross revenues (a sum of all revenues) rather than the gross revenue for each activity or service offered and it does not allow for an audit of the expenses associated with operating the facility. Under the current agreement, the city lacks the ability to audit the entire financial viability of the Sportspark. This limits the city's ability to obtain a complete understanding of the facility's financial condition.

Recommendation

- 6.1 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to include the city's standard audit clause language.

7. Inaccurate Water Usage Invoice Calculation

Criteria

Las Vegas Sportspark Development and Management Agreement 2nd Amendment Section 6 - Construction

Contractor agrees to reimburse City on a monthly basis for its water usage as determined by the water submeter. The City shall be responsible for reading the water submeter and shall send a statement to the Contractor for reimbursement based upon Sportspark's proportionate share of City's water bill from the Las Vegas Valley Water District for Contractor's water usage as determined by the main water meter servicing Bruce Trent Park.

Condition

A city staff member observes and records the monthly Sportspark water meter readings and forwards them to a Finance staff member who uses the meter readings to calculate and invoice the Sportspark for their monthly water usage. Audit procedures included reviewing the process to calculate water usage for the period of November 2014 through October 2015. The following exceptions were found with the process:

- In assembling the documentation for the audit review, Finance staff found that the Sportspark was not invoiced for their water usage for November and December 2014.
- The water usage calculation is an estimate based upon the previous month's Las Vegas Valley Water District (LVVWD) invoice instead of calculating the actual water usage based upon the current month's invoice.
- Each Sportspark water meter reading calculation is rounded up instead of summarizing the three meter readings and rounding the summarized meter reading.
- The SNWA Reliability charge is 2.5 percent of certain charges on the LVVWD invoice. The Sportspark's portion of the SNWA Reliability charge calculation does not include their portion of the SNWA Commodity Charge.

Improvements are needed in the monthly water invoice calculation process being followed by Finance to ensure that the Sportspark is correctly invoiced for its water usage.

Cause

Staff turnover has occurred in the Finance position that calculates and bills the Sportspark for their water usage.

Effect

The water usage calculation by Finance does not accurately determine the Sportspark water usage.

Recommendations

- 7.1 Department of Finance management should review the deficiencies noted in the Sportspark water usage calculation, document, and adjust the process.
- 7.2 Once the correct amounts are determined, Department of Finance management should ensure the Sportspark water usage invoice is adjusted to reflect the revised amounts.

8. Improvements Needed with the Insurance Requirements

Criteria

Las Vegas Sportspark Development and Management Agreement Section 10 - Insurance

Contractor shall, at its sole cost and expense, obtain as of the Commencement Date and maintain throughout the entire term of this Agreement the following insurance coverages:

- (a) Sufficient coverage to reasonably protect its employees pursuant to the State of Nevada Industrial Insurance Act and Occupational Diseases Act (N.R.S. Chapters 616 and 617) and Employment Security provisions;*
- (b) A policy of comprehensive public liability insurance on the Premises and its use by Contractor, with a combined single limit of liability of at least One Million Dollars (\$1,000,000) per person and property damage protection of at least Two-Hundred Fifty Thousand Dollars (\$250,000). This coverage shall be on a per "occurrence basis and not on a per "accident" basis. At intervals of no less than 3 years, City may require Contractor to increase the amount of the public liability or property damage insurance coverage if, in the reasonable opinion of City or its insurance consultant, such increase is justified based upon the current trends of claims and recoveries; and*
- (c) A policy for fire, casualty, vandalism, malicious mischief and extended coverage insurance covering the Premises, and all of the structures, fixtures, furnishings and equipment that are constructed, installed or used thereon, for the full insurable replacement value of the foregoing items.*

Contractor shall provide to City copies of all policies of insurance required herein prior to Contractor's occupation of the Premises and copies of all policy renewals prior to the respective renewal deadlines.

Condition

Audit procedures included verifying that the Management Agreement Section 10 Insurance language reflects the city's current insurance requirements and the provided certificate of liability insurance dated February 3, 2015 complies with the agreement requirements. To accomplish this, the original Section 10 language and a copy of certificate of liability insurance were forwarded to the city's insurance broker. His review of the provided documents found that improvements are needed to the Sportspark insurance requirements as follows:

- Section 10(a) refers to a requirement for the Contractor to provide workers compensation insurance. The certificate of liability insurance date February 3, 2015 does not include workers compensation insurance. The comprehensive public liability insurance certificate should be modified to include workers compensation requirements.
- Section 10(b) includes old and outdated language that should be rewritten with current language.
- Section 10(c) refers to a requirement for the Contractor to provide fire, casualty, vandalism, malicious mischief and extended coverage insurance covering the premises. This requirement is normally provided through a property ACORD form instead of as part of the policy of comprehensive public liability insurance policy.

Cause

- The original Management Agreement was entered into on July 14, 1997. The subsequent amendments to the agreement were not modified to include changes to the city's insurance requirements.
- The provided liability insurance certificate was not reviewed to ensure it included the Section 10 insurance requirements.

Effect

The city may not be adequately protected against insurance claims.

Recommendations

- 8.1 The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to reflect the city's current insurance requirements.
- 8.2 The contract administrators should implement a process to review the submitted insurance certificates to ensure that they are in compliance with the requirements of the Las Vegas Sportspark Development and Management Agreement.

MANAGEMENT RESPONSE

1. Improvements Needed in the Facility Use Approval Process

Recommendation 1

The contract administrators should document and implement a standard process for the request and approval of new facility uses. Areas of consideration should include:

- The use of a boiler-plate sub-use agreement.
- The requirement that requests and approval of facility uses be in writing.
- The submittal of all signed sub-use agreements and amendments to city staff.
- The review of the submitted sub-use agreements and amendments by city staff to ensure that the agreements are in compliance with the Las Vegas Sportspark Development and Management Agreement provisions and all facility use operators have city of Las Vegas business licenses.
- Methodology for saving/retaining documentation in a central file.
- Recourse action plan to follow when the Contractor does not request pre-approval for and submittal of sub-use agreements for new and amended facility uses.

Management Plan of Action

Parks and Recreation (“P&R”) and Operations and Maintenance (“O&M”) will review the current contract and enforce the current terms and jointly develop a standard process for requests and approval of new facility uses. P&R will take the lead on all programming items and O&M will take the lead for all other contract compliance.

Estimated Date of Completion

The estimated date of completion for enforcing contract compliance and implementation of a standard process based upon the current contract is December 16, 2016.

Recommendation 2

The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address the request and approval of new facility use concerns identified above.

Management Plan of Action

P&R and O&M will enter into discussions with the Sportspark owner to negotiate a new Agreement, or an Amendment to the Agreement, to clarify and address the issues

highlighted in the Audit. Staff will provide reasonable accommodations to facilitate resolution of the negotiations. However, the staff will not attempt to facilitate resolution through improper or excessive allocation of the City's rights or resources

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

Recommendation 3

Once the standard process for the request and approval of new facility uses has been implemented, the contract administrators should provide the Contractor with instructions on the revised process.

Management Plan of Action

P&R will develop a process to approve the new facility uses as to programming, while working with O&M for contract compliance input on process. O&M will be the central repository for written records.

Estimated Date of Completion

The estimated date of completion providing the Contractor written instructions on the revised process is December 16, 2016.

Recommendation 4

The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to include the current approved facility uses.

Management Plan of Action

P&R and O&M will enter into discussions with the Sportspark owner to negotiate a new Agreement, or an Amendment to the Agreement, to clarify and address the issues highlighted in the Audit. Staff will provide reasonable accommodations to facilitate resolution of the negotiations. However, the staff will not attempt to facilitate resolution through improper or excessive allocation of the City's rights or resources.

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

2. Improvements Needed in Monitoring Maintenance of Facility

Recommendation 1

The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address general maintenance concerns.

Management Plan of Action

P&R and O&M will enter into discussions with the Sportspark owner to negotiate a new Agreement, or an Amendment to the Agreement, to clarify and address the issues highlighted in the Audit. Staff will provide reasonable accommodations to facilitate resolution of the negotiations. However, the staff will not attempt to facilitate resolution through improper or excessive allocation of the City's rights or resources.

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

Recommendation 2

The contract administrators should coordinate with the Sportspark management to address the identified maintenance issues. A standard process should be implemented to identify and resolve general maintenance issues at the Sportspark.

Management Plan of Action

O&M will take the lead on this recommendation, with the assistance of P&R. O&M will do an initial condition assessment and then work with the contractor to cure outstanding maintenance issues. O&M will then begin quarterly inspections on the property to ensure contract compliance.

Estimated Date of Completion

The estimated date for providing the Contractor written notice of the maintenance needs is December 16, 2016, and the estimated date of completion for resolution of the concerns is December 31, 2017.

3. Non-Compliance with the Management Agreement Provisions

Recommendation 1

The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement to address the Contractor's non-compliance with the submittal of required documentation.

Management Plan of Action

P&R and O&M will enter into discussions with the Sportspark owner to negotiate a new Agreement, or an Amendment to the Agreement, to clarify and address the issues highlighted in the Audit. Staff will provide reasonable accommodations to facilitate resolution of the negotiations. However, the staff will not attempt to facilitate resolution through improper or excessive allocation of the City's rights or resources.

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

Recommendation 2

The contract administrators should determine how to comply with the agreement provision relating to verifying that a majority of the patrons are Clark County resident and implement the process accordingly.

Management Plan of Action

O&M and P&R will develop a process in accordance with the contract requirements.

Estimated Date of Completion

The estimated date of completion of the process development is December 1, 2016.

Recommendation 3

The contract administrators should provide the Contractor with instructions to ensure compliance with the Las Vegas Sportspark Development and Management Agreement provisions.

Management Plan of Action

Written transmittal of the contract requirements and developed process will be provided to the Contractor.

Estimated Date of Completion

The estimated date of completion for providing the Contractor written notice of the applicable contract requirements and proposed process is December 16, 2016.

4. Improvements Needed in the Annual Land License Fee Process

Recommendation 1

The contract administrators in coordination with Finance should determine what process should be used to calculate the annual land use fee and document the process. In addition, they should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to reflect the revised annual land license fee process.

Management Plan of Action

P&R, O&M, and Finance will review the contract and document the land use fee calculation process in accordance with the contract requirements. That review and analysis of the process will be submitted to the Contractor.

Estimated Date of Completion

The estimated date of completion for providing the Contractor written notice of the City interpretation and application of the annual land use fee calculation is December 16, 2016.

5. Improvements Needed to Better Understand Gross Revenue

Recommendation 1

The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to address the written statement of gross revenue submittal concerns. The Contractor should be instructed to report gross revenue for each activity or service operating at the Sportspark.

Management Plan of Action

P&R, O&M, and Finance will review the contract as it relates to calculation of gross revenue, and determine if contract modifications are necessary. If so the concerns will be addressed through contract negotiations if necessary.

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

6. Lack of the Standard Audit Clause in Management Agreement

Recommendation 1

The contract administrators should determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to include the city's standard audit clause language.

Management Plan of Action

O&M will submit this concern to the Contractor in conjunction with other potential contract modifications.

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

7. Inaccurate Water Usage Invoice Calculation

Recommendation 1

Department of Finance management should review the deficiencies noted in the Sportspark water usage calculation, document, and adjust the process.

Management Plan of Action

O&M will work with Finance to revise the water usage calculation and adjust the process.

Estimated Date of Completion

The estimated date of completion for creation of a revised water usage calculation process is December 1, 2016.

Recommendation 2

Once the correct amounts are determined, Department of Finance management should ensure the Sportspark water usage invoice is adjusted to reflect the revised amounts.

Management Plan of Action

O&M will work with Finance to ensure all subsequent invoices are in accordance with the new process.

Estimated Date of Completion

The estimated date of implementation of the revised water usage calculation process is December 1, 2016.

8. Improvements Needed with the Insurance Requirements

Recommendation 1

The contract administrators should evaluate and determine whether the Las Vegas Sportspark Development and Management Agreement should be amended to reflect the city's current insurance requirements.

Management Plan of Action

O&M will identify current city insurance requirements and will submit this concern to the Contractor in conjunction with other potential contract modifications.

Estimated Date of Completion

The estimated date of completion of negotiations for a new Agreement or an Amendment to the Agreement is December 1, 2017.

Recommendation 2

The contract administrators should implement a process to review the submitted insurance certificates to ensure that they are in compliance with the requirements of the Las Vegas Sportspark Development and Management Agreement.

Management Plan of Action

O&M will review the contract requirements to ensure proper submittal of insurance requirements, plus review the submitted documents for compliance with the requirements. If necessary the Contractor will be provided written notice of any deviations.

Estimated Date of Completion

The estimated date of completion for ensuring insurance certificate compliance, or otherwise providing the Contractor written notice of noncompliance, is December 16, 2016.