

Special Project



Parks and Recreation

Nueces County Victims' Memorial Garden Contract Follow-Up Review

February 13, 2024



**City of Corpus Christi
Office of the City Auditor**

**George H. Holland
City Auditor**

Executive Summary

Introduction:

In accordance with the FY2023 Annual Audit Plan, the City Auditor's Office (CAO) conducted a Follow-up Contract Review of the SP20-003 Parks and Recreation – Nueces County Victims' Memorial Garden (NCVMG) Contract Review dated March 23, 2021.

The Nueces County Victim's Memorial Garden is located at Oleander Point in Cole Park. Currently, the NCVMG provides solace to the families of an estimated 110 loved ones. The construction and subsequent donation of a memorial to the City began in March 2019. Private donors provided funds of \$49,110 for the initial construction of the memorial.

Background:

The objective of the NCVMG Contract Follow-Up Review is to determine if the Parks and Recreation Department and the Donor have implemented the City Auditor's Recommendations.

Of the original recommendations affecting four City departments, only two recommendations were implemented. There was no movement in implementing the other key recommendations. Upon commencing the NCVMG Contract Follow-Up Review, Parks and Recreation collaborated with the other involved departments to implement the Recommendations.

The current status of the recommendations is:

- Seven have been implemented
- Ten are still in progress
- Two are not applicable

Although the NCVMG is being utilized fully by the public, two major issues remain:

1. The terms of the contractual agreement were never fully developed to have a finalized agreement. The contract was never finished to be presented to the NCVMG organization in the correct sequence for project completion of the memorial gardens.

2. The site work was never completed to conform to the Americans with Disabilities Act (ADA) specifications. A Registered Accessibility Specialist (RAS) was not commissioned to issue a certificate of completion to certify that the project was officially finalized.

Within the City departments there was a need for:

- Formal coordination with other City Departments.
- Consideration of ADA and other safety risks.
- Complete and effective compliance with contractual terms.
- Consideration of potential legal liability to the City.
- Follow-up with the donor organization (NCVMG) for project completion.

Timeline of Events:

- **December 2018.** The Parks and Recreation Advisory Committee (PRAC) approved Oleander Point in Cole Park as the location of a memorial for victims of violent crimes.
- **December 2018.** The donor of the NCVMG accepted the design of the memorial from BHP Engineering and Construction, L.P. Construction of the memorial was completed at no cost for the design or engineering.
- **March 2019.** The initial cost of the materials and labor per the invoice from A.Z. Construction, Inc. was \$49,110.00 in private donated funds.
- **May 2019.** The donor (NCVMG) signed an unapproved version of the agreement per the Legal Department.
- **July 2019.** The City Council (Council) approved an ordinance permitting the City Manager to initiate a contract with the donor of the Nueces County Victim's Memorial Garden (NCVMG).
- **October 2020.** NCVMG submitted the requested engineer's report for the angel wings.
- **April 2021.** The NCVMG Contractual Agreement was modified and delivered to the Parks and Recreation staff for execution.
- **October 2022.** Emails between staff at Parks and Recreation and the Legal Department indicate that the contractual agreement does not appear to have been finalized.

Conclusion:

The Parks and Recreation Department is expanding its outreach program to improve coordination on similar projects.

- The **Development Services Department** provided much-needed guidance of steps to be taken to complete acceptance of the NCVMG project by the City.
- The **Parks and Recreation Department** has taken significant steps since the start of the Follow-Up Review by the CAO to implement the recommendations.
- The **Legal Department** moved quickly to add necessary clauses to the new contract such as scope of work, city audit participation, insurance requirements, termination, consent and release, and volunteer release of liability.
- The **Engineering Department** explained to us that they were not consulted by the NCVMG Engineer and Design team. The Engineering Department would not be involved with this project since it was not a City Project. More details can be found in Appendix A.

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Implementation Status of Recommendations

Issue No.	Recommendation	Original Due Date	Status	Responsible Party
A. Contract Compliance				
A. 1	Parks management should ensure contractors adhere to all contract terms by developing a checklist or other methods to measure compliance. Included in this oversight, completion deadlines for when non-compliance is identified. Compliance should be periodically monitored by Parks management.	Mar 2021	<u>In Progress</u> Jan 2024	Roberta Rodriguez, Senior Management Analyst, Parks and Recreation Department
B. Contract Development and Finalization				
B. 1	Parks Management should re-examine the existing contract and, with assistance from Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should obtain input from other City departments.	Mar 2021	<u>Implemented</u> Jan 2024	Adelita Cavada, Attorney Robert Dodd, Director of Parks and Recreation
B. 2	Parks Management should re-examine the existing contract and, with assistance from Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should add a scope of work, a right to review/audit clause, termination clause, and any other relevant stipulations.	Mar 2021	<u>Implemented</u> Jan 2024	Adelita Cavada, Attorney Robert Dodd, Director of Parks and Recreation
B. 3	Parks Management should re-examine the existing contract and, with assistance from Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should assign a contract administrator in the contract and plan for a successor to ensure continuity in contract oversight.	Apr 2021	<u>Implemented</u> Jan 2024	Monica Benavides, Special Projects Manager, Parks and Recreation Department
B. 4	Parks Management should re-examine the existing contract and, with assistance from Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should re-examine insurance requirements and adjust in the contract as needed.	Mar 2021	<u>Implemented</u> Jan 2024	Robert Dodd, Director of Parks and Recreation
B. 5	Parks Management should re-examine the existing contract and, with assistance from Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should require submission of revised site plans with a professional engineer's stamp.	Apr 2021	<u>Implemented</u> Jan 2024	Robert Dodd, Director of Parks and Recreation
B. 6	Parks Management should re-examine the existing contract and, with assistance from Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should present and review the contract with the contractor and ensure it is understood compliance is expected going forward.	Apr 2021	<u>In Progress</u> Q2 - CY 2024	Robert Dodd, Director of Parks and Recreation

Issue No.	Recommendation	Original Due Date	Implementation Status	Responsible Party
C. Public Access, Site Plans, and Inspections				
C. 1	Parks management should restrict public access to the site until the project has been accepted by the City or obtain documented exception from City Management.	Mar 2021	Implemented Jan 2024	Al Raymond, Director of Development Services
C. 2	Parks management should require contractor to apply for a permit and get appropriate inspections from Development Services; or, obtain documented exception from management at Development Services Department.	Nov 2021	In Progress Q2 - CY 2024	Robertta Rodriguez, Senior Management Analyst, Parks and Recreation Department
C. 3	Parks management should not accept the project until contractor has completed all plan reviews and successfully passed all City inspections with Development Services and Parks.	Nov 2021	In Progress Q2 - CY 2024	Robert Dodd, Director of Parks and Recreation
C. 4	Parks management should obtain assurance from a RAS inspection the site is ADA compliant or documentation exempting the site from ADA requirements.	Nov 2021	In Progress Q3 - CY 2024	Robert Dodd, Director of Parks and Recreation
C. 5	Management should require contractors to ensure construction plans are reviewed and pre-approved by sponsoring department and Engineering Services to protect the City's assets and mitigate risk that may arise when working with third parties when appropriate.	Jun 2021	Not Applicable	Robert Dodd, Director of Parks and Recreation
C. 6	Sponsoring department involve key departments and City staff appropriate to the project.	Jun 2021	Not Applicable	Robert Dodd, Director of Parks and Recreation
D.01 Donor Implied Affiliation with the City and Plaque Placement				
D.01.1	Parks management should require any forms used by the contractor be pre-approved by both Legal and Parks before use.	Mar 2021	In Progress Q2 - CY 2024	Robert Dodd, Director of Parks and Recreation
D.01.2	Parks management should include any consent forms and plaque criteria in the contract as exhibits plus require revisions to be approved by City management.	Mar 2021	In Progress Q2 - CY 2024	Robert Dodd, Director of Parks and Recreation
D.01.3	Parks management should seek Legal direction on how to address previously used forms and communicate those results with the contractor.	Mar 2021	In Progress Q2 - CY 2024	Robert Dodd, Director of Parks and Recreation
D.02 Contractual Obligations and Future Partnership Considerations				
D.02.1	City management should meet with the contractor of NCVMG's to ensure they understand the business surrounding contract compliance and City expectations.	Mar 2021	In Progress Q2 - CY 2024	Heather Hurlbert, Assistant City Manager
D.02.2	City management should require organizations, whose existence and/or purpose is contingent on the City of City activity, to submit official by-laws (ex. Signed or notarized, as applicable), list of board of directors, financial records and/or other documents relevant to the organization and their contribution to the City.	Mar 2021	In Progress Q2 - CY 2024	Heather Hurlbert, Assistant City Manager
D.02.3	City management should require departments to more thoroughly screen organizations that are newly formed and/or unfamiliar with working with the City to safeguard the City from risks and ensure the contractor will be a good partner for the City.	Apr 2021	Implemented Jan 2024	Heather Hurlbert, Assistant City Manager

Appendix A- Additional Follow-up Information

A. Contract Compliance

A.1 The terms of the original contract were reviewed, and 8 out of the 9 contract terms were not in compliance. The agreement recommendation was to create a checklist or other methods of measuring compliance when starting a new project. During the NCVMG Contract Review Follow-up, Parks and Recreation determined a checklist was created but was not approved by the Legal Department. The checklist will be used for present and future projects.

Recommendation No. 1

Parks management should ensure contractors adhere to all contract terms by developing a checklist or other methods to measure compliance. Included in this oversight are completion deadlines for when non-compliance is identified. Compliance should be periodically monitored by Parks management.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q1 – CY2024

B. Contract Development and Finalization

B.6 The revised contract was not re-examined nor was the contract provided to the Donor (NCVMG) for signatures. Once the agreement is finalized by the Legal and Parks and Recreation Department, and the project is completed and accepted by the City, the Special Projects Manager will meet with the Donor (NCVMG).

Recommendation No. 6

Parks and Recreation Management should re-examine the existing contract and, with assistance from the Legal department, rewrite the terms or amend the agreement. In doing so, Parks and Recreation should present and review the contract with the contractor and ensure it is that understood compliance is expected going forward.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q2 – CY2024

C. Public Access, Site Plans, and Inspections

C.2 – C.4 The Development Services Department assisted the Donor (NCVMG) in the process of obtaining and applying for a permit. Parks and Recreation Management has not accepted the project since the Donor (NCVMG) has not completed all City inspections. The last part is to obtain a certificate of completion to have a Registered Accessibility Specialist (RAS) inspect the site to be ADA-compliant.

Recommendation No. 2

Parks and Recreation Management should require the NCVMG’s contractor to apply for a permit and get appropriate inspections from Development Services; or obtain documented exceptions from management at Development Services.

Management Assertion: In Progress

Audit Status: In Progress

Expected completion date: Q2 – CY2024

Recommendation No. 3

Parks and Recreation Management should not accept the project until NCVMG’s contractor has completed all plan reviews and successfully passed all City inspections with Engineering Services and Parks.

Management Assertion: In Progress

Audit Status: In Progress

Expected completion date: Q2 – CY2024

Recommendation No. 4

Parks and Recreation Management should obtain assurance from a RAS inspector that the site is ADA compliant or documentation excepting the site from ADA requirements.

Management Assertion: In Progress

Audit Status: In Progress

Expected completion date: Q3 – CY2024

C.5 – C.6 The Engineering Department did not take part in this project regarding the NCVMG. In the example of the NCVMG Project, the Engineering Department would not be involved since it was not a city-related project. The Parks and Recreation Department has assured all parties will be involved when appropriate.

Recommendation No. 5

For projects not managed by City staff that include construction on City property, City management should require contractors to ensure construction plans are reviewed and pre-approved by the sponsoring department and Engineer Services to protect the City’s assets and mitigate risk that may arise when working with third parties.

Management Assertion: Not Applicable

Audit Status: Not Applicable

Recommendation No. 6

For projects not managed by City staff that include construction on City property, City management should require the sponsoring department to involve key departments and designate City staff appropriate to the project.

Management Assertion: Not Applicable

Audit Status: Not Applicable

D.01 Donor Implied Affiliation with the City and Plaque Placement

D.01.1 - D.01.3 It was found in the original audit, that the Donor (NCVMG) used a consent form for plaque(s) purchased for the memorial. These plaques implied the City and the Parks and Recreation Department had affiliation; in fact, the Parks and Recreation Department and Legal Department had not signed nor authorized the approval of the consent form. Any forms used for the NCVMG agreement between the City should be reviewed and approved by the Parks and Recreations Department and the Legal Department.

Recommendation No. 1

Parks and Recreation Management should require that any forms used by the NCVMG's contractor be pre-approved by both the Legal and Parks and Recreations Department before use.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q2 – CY2024

Recommendation No. 2

Parks and Recreation Management should include any consent forms and plaque criteria in the contract as exhibits plus require revisions to be approved by City management.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q2 – CY2024

Recommendation No. 3

Parks and Recreation Management should seek the Legal Department's direction on how to address previously used forms and communicate those results with the contractor.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q2 – CY2024

D.02 Contractual Obligations and Future Partnership Considerations

D.02.1 – D.02.2 Communication between the City Management and Donor (NCVMG) was not appropriately executed. Miscommunication and misinterpretation were issues noted from the beginning of this NCVMG Contract Follow-Up Review. Moving forward, it is the responsibility of the Parks and Recreation Department and the Donor (NCVMG), to agree with the parties to effectively resolve the issues. In doing so, each party will understand the roles and requirements that need to be met.

Recommendation No. 1

City management should meet with the contractor of NCVMG to ensure they understand the business surrounding contract compliance and City expectations.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q2 – CY2024

Recommendation No. 2

City management should require organizations, whose existence and/or purpose is contingent on the City activity, to submit official by-laws (ex. Signed or notarized, as applicable), a list of board of directors, financial records, and/or other documents relevant to the organization and their contribution to the City.

Management Assertion: *In Progress*

Audit Status: *In Progress*

Expected completion date: Q2 – CY2024

Additional Follow-Up Information:

See Appendix A for Additional Follow-Up Information.

Management Responses:

See Appendix B for Management Responses.

Staff Acknowledgment:

Wendy Pullin, CPA, Senior Auditor

Belia Fuentes, Auditor

Appendix B - Management Response

February 13, 2024

George H. Holland
 City Auditor
 Corpus Christi, Texas

Re: SP23-F01 Parks and Recreation – Nueces County Victims' Memorial Garden
 Contract Review – Follow-up

The Parks and Recreation Department has reviewed the follow-up report and provided its comments below. As there are no recommendations for management, no responses are required.

Agree

Do Not Agree

Sincerely,

1/24/24

Robert Dodd Date
 Director of Parks and Recreation

1/24/24

Heather Hurlbert Date
 Assistant City Manager

Constance P. Sanchez 1-25-2024

Constance Sanchez Date
 Chief Financial Officer

1-6-24

Peter Zanon Date
 City Manager

**City of Corpus Christi
Parks and Recreation Department**

THIRD PARTY ORGANIZATION PROJECT PLANNING CHECKLIST

Checklist of the key activities that need to be performed when accepting a third party organization on Parks and Recreation designated land.

Checklist Item #	Activity	Responsible Person	Task Completion Date
1	The project is presented to City Parks and Recreation Department Director.		
2	The Parks and Recreation Director either approves or denies the project. If approved, see checklist item 3. Projects over \$50,000 will need City Council approval. (see Step 12). If denied attach reason for denial for documentation, no further checklist action needed.		
3	The Special Projects Manager is assigned to project.		
4	The Special Projects Manager should gather third party contact information. Attach Contact Information Form.		
5	The Special Projects Manager should identify project objective, goal, and end result. Work with third party organization to build project scope of work and schedule for project implementation. Obtain any Engineering signed and sealed designs as needed.		
6	Submit project plans to Development Services for permits.		
7	Evaluate Risk Assessments . 1. Consider ADA requirements. 2. Consider Safety risks such as Lighting, Fencing, Security Cameras, Fencing and Property Maintenance such as mowing and weedeating. 3. Consider Windstorm Risk and other risks inherent to the project. 4. Determine if manned security is necessary.		
8	The Parks and Recreation Director should present the Project and the Scope of Work to the Assistant City Manager for approval. If applicable, obtain City Manager approval.		
9	When the project is approved, Special Projects Manager should work with the Legal department to draft the donation agreement.		
10	The Special Projects Manager should send the Donation Agreement to the third party for review and changes.		
11	The Parks and Recreation Director should obtain third party signatures on the finalized agreement.		
12	The Parks and Recreation Director should schedule the executed documents to be approved by the City Council if necessary.		
13	The City Council votes to approve or deny the project, as necessary. If approved, then Parks and Recreation Director should obtain the signed third party agreement for reference in their Department. If denied, contact		
14	The Parks and Recreation Director should schedule a construction kick-off meeting: Also, they should obtain the construction schedule and address any questions prior to ground breaking.		
15	Beginning of construction start. The third party organization should follow all City standards, codes, ordinances and other governing documents. The third party organization should obtain all permitting, ADA, and construction requirements set forth by City standards and codes.		
16	The Director of Parks and Recreation should schedule on site visits and monitoring of construction on a routine basis.		
17	At completion of construction, Development services should do an onsite walkthrough with the Parks and Recreation Director. Development Services would then issue the Certificate of Completion. This certificate indicates the completion of construction.		
18	The Parks and Recreation Director should issue a project acceptance letter to the third-party organization for the donated asset.		
19	The Parks and Recreation Department should schedule ribbon cutting if needed.		
20	The project should be closed out. This would include wrapping up payment of outstanding invoices and filing all documents in appropriate City filing		