



**SP20-003 Parks and Recreation -
Nueces County Victims' Memorial Garden
Contract Review**

City Auditor's Office
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Executive Summary

In accordance with the CY2020 Annual Audit Plan, we conducted an audit of the contract between the City of Corpus Christi (City) and the contractor building Nueces County Victims' Memorial Garden (NCVMG). NCVMG is a memorial garden in Cole Park to recognize Nueces County crime victims. The contract is under the purview of Parks and Recreation (Parks).

This audit was requested and arose out of concerns raised by members of the public brought to the attention of members of City Council and City management. This report presents our review of contract compliance, development of NCVMG's contract, project oversight by Parks staff, permits, inspections and construction of NCVMG plus other matters related to performance under the contract signed by the contractor.

Audit Objective

The objective of this audit was to determine if the department and donor (contractor) is in compliance with the contract terms.

Audit Conclusion

We found that although Parks staff and the contractor met to go over the contract, the contractor did not comply with contract terms in the agreement they signed. Conversely, if Parks management had ensured project continuity after staff turnover, many of the findings identified in this report could have been avoided or addressed timely.

City and Parks and Recreation management agree with this report. See management's responses following each issue. Management's response can be seen in its entirety in Appendix B.

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Introduction

In accordance with the 2020 Annual Audit Plan, we conducted an audit of the contract between the City of Corpus Christi (City), through Parks and Recreation (Parks), and the contractor building Nueces County Victims' Memorial Garden (NCVMG) for donation of a memorial garden in Cole Park recognizing Nueces County crime victims.

The contract provided for the construction and subsequent donation of a memorial to the City. The contractor's purpose behind NCVMG is to "provide a place where family members and loved ones of victims can honor the ones they have lost." The original design of NCVMG, shown in Appendix C.1, included concrete walk paths, monuments, garden/flowers, benches, and a description of the memorial.

This audit was requested and arose out of concerns raised by members of the public brought to the attention of members of City Council and City management. In October 2020, the Audit Committee approved adding this project to the audit plan.

Background

In 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. In July 2019, City Council (Council) approved an ordinance permitting the City Manager to enter into a contract with the contractor. In September 2019, the contractor posted to social media a groundbreaking ceremony.



Parks staff observed the NCVMG site deviated (March 2020) from the original site plan (see Appendix C.1) and conducted a site visit to notate nonconformities. Parks staff then reached out to the contractor to discuss nonconformities from the original site plan and proceeded to work towards resolving the discrepancies. Addressing nonconformities included Parks requesting revised site plans reflecting changes made during construction (see Appendix C.2).

Concerns raised by members of the public regarding oversight of the design and site construction, plaque approval, fundraising, and other financial activities were brought to the attention of Council members and City management. To address safety concerns, Parks installed safety fencing around the site and Development Services assessed windstorm

safety for two angel statues that were not on the original plan. After further review of structural details, Development Services validated construction and/or anchoring of the angel statues.

Audit Objective

The objective of this audit is to determine if the department and the donor were in compliance with contract terms.

Audit Conclusion

We found that although Parks staff and the contractor met to go over the contract, the contractor did not comply with contract terms in the agreement they signed. Conversely, if Parks management had ensured project continuity after staff turnover, many of the findings identified in this report could have been avoided or addressed timely.

Management and Auditor Responsibility

City management is responsible for establishing and maintaining a system of internal controls to ensure assets are safeguarded, financial and non-financial activity is accurately reported and reliable, and management and employees are in compliance with laws, regulations, and agreements with other entities.

This audit report provides independent, objective analysis, recommendations, and information concerning the activities reviewed. The report is a tool to help management discern and implement specific improvements. The report is not an appraisal or rating of management.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit steps were developed to provide sufficient evidence to answer the objectives of this audit. Our methodology can be found in Appendix A - Audit Scope and Methodology.

Audit Results and Recommendations

A. Contract Compliance

Condition: Out of nine key areas of the contract, we found the contractor fulfilled compliance in one area. A summary of these contract areas and their respective statuses are shown in Exhibit 1.

Exhibit 1 Compliance Status Table

NCVMG Contract Compliance Status			
S #	Contract Terms		Compliant?
1	Term 2	Specifications of the Garden Garden shall include walking path, granite monuments, benches, and a flower garden as shown in exhibit one of the agreement.	N
2		Donor may include lighting and may make adjustments to plans with prior written approval by Director of Parks and Recreation.	N
3		Donor may install a plaque recognizing the purpose of the Garden but size, design, and wording shall be subject to final approval by the City Director of Parks and Recreation.	N
4	Term 3	Donor's Responsibilities Donor shall coordinate all work in advance with the City Director of Parks and Recreation	N
5		Donor shall ensure that all work performed on City Property complies with all applicable City, State, and Federal codes, statues, ordinances, and regulations including ADA regulations.	N
6		Donor shall obtain any required permits prior to initiating work.	N
7	Term 8	Installation of Garden Donor shall review final plans for Garden with the City Director of Parks and Rec in advance of work. ¹	Y
8		Donor shall require that any contractor hired by Donor to install the Garden presents and reviews any construction plans with Engineering and Parks for approval.	N

¹ The final plan under contract Term 3 represents the last plan the contractor provided to Parks management prior to the item being presented to City Council. See exhibit Appendix C.1.

NCVMG Agreement Compliance Status			
S #	Contract Terms		Compliant?
9	Term 8	Donor shall require contractors to obtain insurance described in Exhibit 4 and applicable permits prior to beginning work on City property.	N

Section 2, *Specifications of the Garden*, addresses physical elements that were expected in NCVMG itself. Further review of this section revealed deviations from the original site plan (Appendix C.1) included in the contract as follows:

- Addition of a flagpole, remembrance monument, design explanation monument, solar lights along the walkway, and two lantern posts
- Angel statues replacing garden/flower features
- Benches not attached to the walkway
- Relocation of sponsor and memorial description monuments
- Monuments constructed out of concrete

Although the option of installing a plaque recognizing the purpose of the Garden is allowed; size, design, and wording was not approved by the Parks Director.

Section 3 and Section 8 outline City expectations of the contractor regarding costs, repairs and maintenance responsibilities plus installation of the garden, respectfully. These will be addressed in Section C of this report.

Recommendation: Parks management should ensure contractors adhere to all contract terms by developing a checklist or other method to measure compliance. Include in this oversight, completion deadlines for when non-compliance is identified. Compliance should be periodically monitored by Parks management. See Sections B and C for additional recommendations.

Management’s Response:

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
<i>Agree</i>	<i>Roberta Rodriguez, Contracts Funds Administrator, Parks and Recreation</i>	<i>March 31, 2021</i>
<i>Action Plan: Ms. Rodriguez will develop a written checklist for contract management. The checklist will be vetted by the City Contracts and Procurement (CAP) Department. Moving forward, the Parks and Recreation Department (Parks) will utilize the checklist as the standard for managing the NCVMG contract and future projects.</i>		

B. Contract Development and Finalization

Condition: In developing the contract between Parks and Recreation (Parks) and the contractor for Nueces County Victims' Memorial Garden (NCVMG), we found additional interdepartmental collaboration is essential.

The contract's language needed enhancements to greater clarify expectations and protect the City's interests. Enhancements would include, but not limited to, adding scope of work, right to review or audit clause, assignment of a contract administrator, and project appropriate insurance requirements. Additionally, a fully executed contract is not in place. Further description of these findings follows.

Interdepartmental Collaboration

Parks staff reached out to Development Services during contract development; however, those communications were limited to potential windstorm and ADA requirements. No site plan was provided to them. Had more details about the NCVMG project been shared with Development Services, such as the site plan, questions would have been asked to determine what role, if any, they would play and what permits would be needed.

Engineering Services was not included during contract development. If approached, they could have provided insight as to whether the location impacted any future City projects. They would have also considered measures related to making improvements on City property such as inquiring on the project funding, reviewing the project scope, and making recommendations to ensure work meets or exceeds City standards.

The contract itself was written by Legal; however, all project details were not shared to ensure they were incorporated in the agreement. Legal was under the impression the project was to be a garden including plants and flowers, not the structures with plaques the site currently has.

Contracts and Procurement could have provided contract foundational input as they handle contracts on a regular basis. Their department has contract templates inclusive of enhancements addressed next.

Scope of Work

A dedicated scope of work section was not included in this contract. A scope of work describes a project's work requirement, defines project-specific activities and deliverables plus addresses timelines and/or schedules of work to be performed. This contract had some components, such as a maintenance and completion schedule; however, attributed to non-compliance.

Right to Review and Audit Clause

A right to review and audit clause was not included in this agreement. Therefore, audit staff were not able to review the contractor's financial records. This clause grants the City, or its designee, the right to audit, examine or inspect contractor records related to the performance of work under the contract. It also specifies what documents and/or records

to produce and retain. Without a right to review/audit clause, the City does not have authority to review or audit financials of the contractor.

Contract Administrator

Although a Parks employee worked with the contractor during the development of the agreement, when that employee's employment with the City ceased, their role in this contract was not transferred to a successor. Absence of oversight throughout the execution of this project led to loss of project continuity and contract non-compliance.

Certificate of Insurance (COI)

The required insurance holder for this contract and coverage limits were not set by Risk Management. This contract states the contractor is to have their subcontractors obtain insurance naming the City as certificate holder with general liability and auto coverage set at \$500,000. Risk Management states this agreement should have had the contractor obtain coverage set at \$1 million for both general liability and auto coverage.

Site Plan Review

Although engineered stamped plans were provided by the contractor, the site plans (Appendix C.1) presented to City Council did not have an engineer's stamp. A revised site plan (Appendix C.2) with an engineer's stamp and handwritten notes was provided to Parks during review of site plan changes. This will be discussed later in this report.

Construction Without Authorization

Site construction commenced at NCVMG without a "Notice to Proceed" (NTP) letter. NTPs are written approvals Parks issues that allow contractors to begin work. Contractors must submit permits, proof of insurance, and other deliverables specific to their project and/or contract to Parks to obtain an NTP. The construction start is estimated to have occurred September 2019.

Absence of Fully Executed Contract

The contract provided to us contained the signature of the contractor only. Without a fully executed contract in place, the City has no partnership with the contractor. There is no obligation to allow for continued installation of plaques. The City can do as it chooses to the NCVMG site to include removing it, redesigning, or relocating it to another City owned property.

Cause: Parks used internal processes similar to Adopt-a-Park and Park Use agreements as a basis for this contract. These processes did not fully address the uniqueness of this project and do not promote the need for interdepartmental engagement.

The contractor interpreted City Council approval of the ordinance permitting the City Manager to enter into a contract for the project as authorization to proceed with construction.

Criteria: The City Charter states contracts are not binding or fully executed until (1) signed by the City Manager or an authorized representative and (2) approved in writing by the

City Attorney. *Physical Contract Protocol for Council Items* states the sponsoring department is to route the contracts signed by the contractor to City Agenda Coordinator who will route the contract to the City Secretary's Office for final signatures.

The contract signed by the contractor states they are to coordinate all work in advance with the Parks Director.

Recommendation: Parks Management should re-examine the existing contract and, with assistance from Legal, rewrite terms or amend agreement. In doing so, Parks should:

- 1) Obtain input from other City departments.
- 2) Add a scope of work, a right to review/audit clause, termination clause, and any other relevant stipulations.
- 3) Assign a contract administrator in the contract and plan for a successor to ensure continuity in contract oversight.
- 4) Re-examine insurance requirements and adjust in the contract as needed.
- 5) Require submission of revised site plans with a professional engineer's stamp.
- 6) Present and review the contract with the contractor and ensure it is understood compliance is expected going forward.

Management's Response:

<i>Agree/Disagree</i>	<i>Action Plan</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
<i>Agree</i>	<i>1) Currently, there is not an executed contract between the City and NCVMG. Staff is working to draft a proper contract that ensures the City's interests are protected.</i>	<i>Neiman Young, ACM</i> <i>Sarah Munoz, Interim Director, Parks</i> <i>Lisa Aguilar, Assistant City Attorney</i>	<i>March 31, 2021</i>
	<i>2) A scope of work, a right to review/audit clause, a termination clause, and any other relevant stipulations will be incorporated into the contract.</i>	<i>Neiman Young, ACM</i> <i>Sarah Munoz, Interim Director, Parks</i> <i>Lisa Aguilar, Assistant City Attorney</i>	<i>March 31, 2021</i>

	<p>3) Ms. Munoz will assign the NCVMG contract to the Parks Contracts Funds Administrator (CFA), a newly established position within the department. In addition, Ms. Munoz intends to pursue funding for a Management Analyst position in the FY 2022 budget. This position will be established to oversee special projects and assure the department remains in administrative compliance.</p>	<p>Sarah Munoz, Interim Director, Parks</p>	<p>April 8, 2021</p>
	<p>4) Ms. Aguilar will address this concern in the new contract between the City and NCVMG.</p>	<p>Lisa Aguilar, Assistant City Attorney</p>	<p>March 31, 2021</p>
	<p>5) Ms. Munoz will work with the Developer to acquire a revised site plan with an engineer's stamp.</p>	<p>Sarah Munoz, Interim Director, Parks</p>	<p>April 15, 2021</p>
	<p>6) Once the contract is drafted, Ms. Munoz will review the document with the developer's contractor and ensure that future improvements remain in compliance with City code.</p>	<p>Sarah Munoz, Interim Director, Parks</p>	<p>April 7, 2021</p>

City Management should, with assistance from Legal, should restrict the contractor from further modifying City property until a fully executed contract or amendment is in place.

Management's Response:

Agree/Disagree	Responsible Party, Title	Completion Date
Agree	Neiman Young, ACM, City Manager's Office	March 9, 2021
<p><i>Action Plan:</i> Mr. Young has verbally advised the NCVMG of the need to cease any additional work on the site until compliance is met. Mr. Young then followed up with written correspondence to the NCVMG.</p>		

C. Public Access, Site Plans, Permits and Inspections

Condition: NCVMG remains open to the public although it is unpermitted and has not undergone necessary inspections. Protocols intended to provide proper oversight, ensure quality construction, and reduce safety risks were not followed on the NCVMG site through appropriate coordination by the contractor.

The existing NCVMG site was constructed under plans (Appendix C.2) not pre-approved by the City. The contractor changed the site plans based on safety recommendations from their subcontractor. However, the revised plans were not presented to the Parks Director for pre-approval.

Public Access

Public access to the NCVMG site was not blocked off during construction of this project. Upon discovery of deviations from the original site plan, Parks management installed safety fencing to restrict access to monuments and angel statues due to safety concerns. During this period Development Services addressed concerns related to wind loads. Generally, the City restricts public access to construction projects until projects have been accepted.



It is unknown if the NCVMG site is accessible for persons with disabilities.

Site Plans, Permits and Inspections

NCVMG did not go through the proper planning, reviews, and inspection processes required of other City projects. Changes to site plans resulted in a building permit being needed. A permit has not been obtained. In similar situations, Development Services would still require a permit application after work has been completed to ensure compliance with applicable City codes.

According to Engineering Services, Development Services, and Parks, reviews and site inspections necessary for this project include initial and post modification plan reviews, preliminary site inspection, drainage review, daily activity inspections, digging and concrete pour reviews (compaction tests), quality assurance checks, and safety inspections. The only inspection to occur was performed by the Gas department resulting from an 8-1-1 call.

Cause: Although Parks staff and the contractor met to go over the contract, the findings surrounding public access, site plans and permits and inspections occurred because the contractor did not adhere to terms in the contract they signed.

Americans with Disabilities Act (ADA) compliance is unknown because the value of the project was not estimated by NCVMG's designer. Also, site plans were not filed with Texas Department of Licensing and Regulations (TDLR) prompting a Registered Accessibility Specialist (RAS) inspection.

By the contractor not notifying Parks of plan changes and construction start, site access restrictions, appropriate reviews and inspections were not triggered.

The contractor did not pull a permit because they relied on their sub-contractors to obtain permits and inspections. A permit was not pulled by the subcontractor working on the site because they believed, based on their past experiences, a permit was not needed.

Not filing for a permit paired with not coordinating work in advance with Parks resulted in the absence of appropriate reviews and inspections. However, had Parks assigned a contract administrator successor to this project, many of the findings identified could have been avoided or addressed timelier.

Criteria: The contract signed by the contractor requires:

- final plan review and all work to be coordinated in advance with the Parks Director,
- prior written approval to make changes to site plans,
- subcontractors to review constructions plans with Parks and Engineering Services for approval,
- permits prior to beginning work, and
- compliance with Federal, State, and City codes, statutes, ordinances, and regulations, including ADA regulations.

City construction sites in public spaces, such as parks, beaches, and publicly accessible buildings are to be fenced or cordoned off for the general safety and well-being of the public.

The Texas Occupations Code states engineered stamped plans are required on public improvement projects valued over \$20,000. Engineered stamped plans for projects valued more than \$50,000 must be filed with TDLR followed by a RAS inspection. However, the City could require a contractor to obtain a RAS inspections and the TDLR regulation has provisions for this.

In the agreement signed by the contractor, it states acceptance of NCVMG is contingent on inspections by Parks and Engineering Services. It also states, "the City will accept NCVMG at a mutual acceptable time and place with the contractor."

Recommendation: Parks management should:

- 1) Restrict public access to the site until the project has been accepted by the City or obtain documented exception from City Management.
- 2) Require contractor to apply for a permit and get appropriate inspections from Development Services or obtain documented exception from management at Development Services.

- 3) Not accept the project until contractor has completed all plan reviews and successfully passed all City inspections with Engineering Services and Parks.
- 4) Obtain assurance from a RAS inspection the site is ADA compliant or documentation excepting the site from ADA requirements.

Agree/Disagree	Action Plan	Responsible Party, Title	Completion Date
Agree	<p><i>Action Plan:</i></p> <p><i>1) According to the Al Raymond (City Director of Development Services), only structures with a height of 5'9" and above require inspections. Structures within the memorial garden that meet this requirement include the wings, flagpole, and solar lights.</i></p> <p><i>On September 18, 2020, Peter Zaroni (City Manager) requested Al Raymond to examine the wings. On September 19, 2020, Mr. Raymond determined the wings to be safe for public access but required NCVMG to submit an engineer's report regarding new improvements to the facility. On October 19, 2020, NCVMG submitted the requested engineer's report (see Exhibit A).</i></p> <p><i>On March 18, 2021, Peter Zaroni requested Al Raymond to examine the flagpole and solar lights. The inspection will be completed and a report provided to the City no later than March 20, 2021.</i></p>	<p><i>Al Raymond, Director Development Services</i></p>	<p><i>March 20, 2021</i></p>

Agree	2) On March 4, 2021, City Management and the City Attorney met with the developer. During the meeting, the City officials advised the developer of the permits and inspections that are needed to complete the facility.	Peter Zanoni, City Manager Neiman Young, ACM Sarah Munoz, Interim Director, Parks Miles Risley, City Attorney	November 30, 2021
	3) The Parks and Recreation Department will not accept the facility until all the issues identified in the City Auditor's report are addressed.	Neiman Young, ACM Sarah Munoz, Interim Director, Parks	November 30, 2021
	4) The Parks and Recreation Department will assure ADA compliance is met by requiring the developer to obtain an RAS inspection and address any issues that are identified by the examination.	Neiman Young, ACM Sarah Munoz, Interim Director, Parks and Recreation	November 30, 2021

For projects not managed by City staff that includes construction on City property, City management should require:

- 1) 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.
- 2) Sponsoring department involve key departments and City staff appropriate to the project.

Agree/Disagree	Responsible Party, Title	Completion Date
Agree	Peter Zanoni, City Manager's Office Jeffery Edmonds, Director, Engineering Services	June 1, 2021
<p>Action Plan: To assure consistency, Mr. Zanoni has instructed the Engineering Department to develop a business plan that details a minimum standard for third party construction contracts. In addition, departments that contract with third party agencies will be required to retain City engineering services for consultation through the contracting and construction process. In turn, the supported departments will be responsible for the fee-for-service incurred for the City Engineering Department's assistance.</p>		

D. Other Matters

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

Condition: A consent form for anyone wanting to purchase a plaque for placement in NCVMG implies affiliation with the City and assigns duties to Parks. An excerpt from the form is shown in Exhibit 2.

Exhibit 2 – Excerpt from Consent Form

This contract is for the Nueces County Victims Memorial Garden, here forward known as NCVMG and Corpus Christi Parks and Recreation here forward known as CCPR. Once we donate and place your plaque in the garden only CCPR has the right to remove a plaque from the garden.

By signing this I understand I am fully waiving my rights to CCPR decisions and NCVMG has no recourse for these actions.

By signing this agreement, I fully understand this and waive any and all legal action against NCVMG if my plaque is removed by CCPR. I agree to release all rights to the plaque to the City of Corpus Christi Parks and Recreation.

I hereby give full consent and donate this plaque and hereby swear and affirm I have permission to do so regarding the name and photographic representation of the individual on the plaque.

If removal of plaque by CCPR occurs, it will be returned to the person named on this agreement by CCPR.

No refunds are issued or entitled after plaque is ordered.

This misrepresented affiliation has led parties to seek Park's assistance resolving disputes surrounding denial of plaques and refund requests from the contractor.

Although NCVMG's website outlines plaque qualification, screening, and approval process, these terms are not included in the contract. Excluding such processes could lead to inequitable treatment for anyone wanting a plaque. For example, allowing multiple plaques for an individual, but not offering the same treatment to others.

Cause: Plaque criteria was not included in the contract because Legal was not notified individual plaques would be installed on an ongoing basis. The contractor utilized this form after verbal approval was obtained from Parks management.

Criteria: The contract signed by contractor states "no agent, employee, representative or subcontractor of [the contractor] shall be deemed to be the employee, agent, representative or subcontractor of the City."

From Legal, we learned the City is under no obligation to uphold the terms on this form because it was not approved by both Legal and Parks.

Recommendation: Parks management should:

- 1) Require any forms used by the contractor be pre-approved by both Legal and Parks before use.
- 2) Include any consent forms and plaque criteria in the contract as exhibits plus require revisions to be approved by City management.
- 3) Seek Legal direction on how to address previously used forms and communicate those results with the contractor.

<i>Agree/Disagree</i>	<i>Action Plan</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
<i>Agree</i>	<i>Action Plan: 1) On March 8, 2021, Mr. Young has acquired the plaque consent and release form used by NCVMG (Exhibit B) and has turned the document in to Ms. Aguilar for legal review.</i>	<i>Neiman Young, ACM Lisa Aguilar, Assistant City Attorney</i>	<i>March 31, 2021</i>
	<i>2) Ms. Aguilar will ensure these requirements are captured in the new contract. In addition, the NCVMG will be required to gain the City's approval before issuing any new forms that are not captured in the contract.</i>	<i>Neiman Young, ACM Lisa Aguilar, Assistant City Attorney</i>	<i>March 31, 2021</i>
	<i>3) Mr. Young is consulting with Ms. Aguilar regarding the original forms and will draft correspondence to the NCVMG to address previously used forms.</i>	<i>Neiman Young, ACM Lisa Aguilar, Assistant City Attorney</i>	<i>March 31, 2021</i>

D.02 Contractual Obligations and Future Partnership Considerations

Condition: Engagement between City staff and the contractor to correct the areas of non-compliance has impacted execution of City business. Future financial sustainability of the contractor and their ability to perform maintenance and repair of NCVMG is unknown because they are not obligated to provide financial records to the City.

Communicating the enforcement of contract terms or other City protocols with the contractor, at times, is challenging. City staff received responses from the contractor questioning rejections of items installed at the NCVMG site. The changes, as noted in Section B of this report, were not on plans presented to City Council or approved by Parks

management. The contractor requested a quick removal of safety fencing installed around the site during a structural review, and it was removed. Generally, site access to newly constructed projects is restricted until accepted by the City. The City has not formally accepted this project.

Since the valuation of this project was not established by NCVMG's designer, Auditors obtained information from City Council meetings, the contractor, and subcontractors to estimate financial amounts raised and spent on the project. The contractor informed City Management funding for the project was sourced through fund raising efforts (\$10,000) and two personal loans (\$40,000). To determine project costs, we obtained two invoices from subcontractors (\$49,680) and an itemized list (\$8,464) from the contractor themselves. Using this information, we estimate project costs to be \$58,144². A summary of project estimates is displayed in Exhibit 3.

These amounts do not include amounts individuals pay for plaques installed in NCVMG. Offerings on the contractor's website allow for purchasing gift cards and plaques in various sizes ranging from \$160 – \$5,000, including those sold out. The contractor has discretion on how much it charges for plaques.

Exhibit 3 Contractor's Unaudited Financial Activity Estimates

Fundraising	\$10,000
Financing Sources	\$40,000
Estimated Funding	<u>\$50,000</u>
Subcontractor Invoices	(49,680)
Miscellaneous	(8,464)
Estimated Project Costs	<u>(58,144)</u>
Net Over/(Short)	<u><u>(\$8,144)</u></u>

Since the contract does not include a right to audit clause or provide direct access to original financial records, financial information for the contractor is not transparent as with other with other "Friends of the City" organizations. The Friends of the Corpus Christi Library, Friends of the Corpus Christi Museum of Science and History and Parks' PALS (Parks, Arts, Leisure, and Seniors), organizations whose existence and benefit contingent on the City or City function, provide either audited financial statements or direct access to financial records.

This is the first contract the City has engaged with this contractor. There is no City policy or process that requires additional consideration before partnering with newly formed organizations or those unfamiliar with working with the City. As a result, City staff is not

² Unaudited amounts provided by the contractor and subcontractor.

obligated to obtain copies of the organization's bylaws, list of board of directors, proof of funding or perform other screening steps.

Recommendation: City management should:

- 1) Meet with the contractor of NCVMG's to ensure they understand the business surrounding contract compliance and City expectations.
- 2) Require organizations, whose existence and/or purpose is contingent on the City or City activity, to submit official bylaws (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.
- 3) 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.

Agree/Disagree	Action Plan	Responsible Party, Title	Completion Date
Agree	<p><i>Action Plan:</i> 1) <i>City Management and Legal met with the Developer and Contractor to ensure they understand the City's processes and expectations. In addition, the meeting helped the City leadership to validate its concern that the Parks and Recreation Department did not do an exceptionally good job at managing the relationship with this non-profit start up. The previous department leadership is no longer with our organization and the City Manager is addressing business engagement concerns across the administration.</i></p>	<p><i>Peter Zaroni, City Manager</i></p> <p><i>Neiman Young, ACM</i></p> <p><i>Sarah Munoz, Interim Director, Parks</i></p> <p><i>Miles Risley, City Attorney</i></p>	<p><i>March 4, 2021</i></p>
	<p><i>2) Mr. Young has acquired NCVMG's official by-laws (Exhibit C), list of board of directors (Exhibit D), and other documents relevant to the organization and their contribution to the City (Exhibit E). Mr. Young spoke with the organization and was advised of the fact that the nonprofit is collecting its financial records and is willing to submit to a financial audit.</i></p>	<p><i>Neiman Young, ACM</i></p>	<p><i>March 8, 2021</i></p>

	<i>3) Mr. Zanoni will require departments entering into relationships with newly formed agencies to maintain close engagements with the organizations and assist them with navigating through the City's business processes.</i>	<i>Peter Zanoni, City Manager</i>	<i>April 1, 2021</i>
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Appendix A – Audit Scope, Methodology, and Staffing

This audit scope included a review of the contract between the City of Corpus Christi (City) through Parks and Recreation (Parks) and Nueces County Victims' Memorial Garden (contractor) in the organization's construction of a memorial in Cole Park. The scope includes contract development, construction process, and compliance of both parties during planning of NCVMG beginning around November 2018 through the latest site activity occurring in October 2020. We conducted this audit between October 2020 and January 2021.

Our methodology included review of contract terms plus supporting documentation and inquiries with Parks, Engineering Services, Development Services, Contracts and Procurement, Risk Management, Legal and the contractor. Additionally, we performed a site visit to NCVMG to review for contract compliance. The audit program included detailed steps to obtain sufficient understanding of contract terms, general City contract development processes related to the construction of NCVMG to determine permits or inspections.

We reviewed City policy on contracts, construction projects and permit applications. We reviewed Federal and State laws on Americans with Disabilities Act.

To determine compliance with contract terms, audit staff reviewed each term within the contract and judgmentally selected nine key areas for review. Parks staff inquiries, project documentation, and site visits were made to determine compliance. Federal and state laws were referenced for compliance with American with Disabilities Act.

To determine if adequate procedures were utilized in developing the contract, audit staff relied on input from City staff on general contract development from Contracts and Procurement, Engineering Services procedures for construction projects, and council agenda procedures related to obtaining a fully-executed contract. To determine if insurance requirements were suitable for this contract, we consulted with Risk Management.

To determine if proper procedures were followed by the contractor prior to and during construction, inquiries were made with Parks staff and the contractor. Site walkthroughs were held with Parks, Development Services and Engineering Services. We also obtained supporting documents from Parks.

To determine if contractor's consent form implied affiliation with City, audit staff consulted with Legal.

To determine what other Friends of the City organizations disclose to the City, we obtained documentation from the Library, Parks and the Friends of the Corpus Christi Museum of Science and History.

In conducting our audit, we relied on the following authoritative guidelines to serve as criteria:

- Americans with Disabilities Act of 1990
- Texas Administrative Code Title 4, Subtitle E, Chapter 469,
- Texas Administrative Code Title 16, Part 4, Chapter 68
- Texas Occupation Code Sec. 1001.053, 1001.402 and 1001.407
- City Charter Article X Section 2
- Contract between City and Nueces County Victims' Memorial Garden

We believe this testwork provides sufficient and appropriate evidence for our audit conclusion and finding.

Staff Acknowledgement

Grayson Meyer, Senior Auditor
Brianna Annas, Auditor

Appendix B – Management Response

March 17, 2021


Kimberly Houston
Interim City Auditor
Corpus Christi, Texas

Re: SP20-003 NCVMG Contract Review

We have carefully reviewed the findings presented in the audit report referenced above, and our plans to correct the issues are described on the following pages.

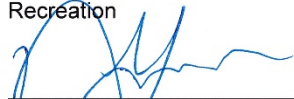
We are committed to correcting the findings in the audit report by implementing the action plans in a timely fashion.

Sincerely,



Sarah Munoz
Interim Director of Parks and
Recreation

March 17, 2021
Date



Neiman Young
Assistant City Manager

MARCH 17, 2021
Date Date



Peter Zaroni
City Manager

March 17, 2021
Date

A. Contract Compliance

Recommendation: Parks management should ensure contractors adhere to all contract terms by developing a checklist or other method to measure compliance. Include in this oversight, completion deadlines for when non-compliance is identified. Compliance should be periodically monitored by Parks management. See section B and C for additional recommendations.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
<i>Agree</i>	<i>Roberta Rodriguez, Contracts Funds Administrator, Parks and Recreation</i>	<i>March 31, 2021</i>
<i>Action Plan: Ms. Rodriguez will develop a written checklist for contract management. The checklist will be vetted by the City Contracts and Procurement (CAP) Department. Moving forward, the Parks and Recreation Department (Parks) will utilize the checklist as the standard for managing the NCVMG contract and future projects.</i>		

B. Contract Development and Finalization

Recommendation: Parks Management should re-examine the existing contract and, with assistance from the Legal department (Legal), rewrite terms or amend agreement. In doing so, Parks should:

- 1) Obtain input from other City departments.
- 2) Add a scope of work, a right to review/audit clause, termination clause, and any other relevant stipulations.
- 3) Assign a contract administrator in the contract and plan for a successor to ensure continuity in contract oversight.
- 4) Re-examine insurance requirements and adjust in the contract as needed.
- 5) Require submission of revised site plans with a professional engineer's stamp.
- 6) Present and review the contract with the contractor and ensure it is understood compliance is expected going forward.

<i>Agree/Disagree</i>	<i>Action Plan</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
<i>Agree</i>	<i>Action Plan: 1) Currently, there is not an executed contract between the City and NCVMG. Staff is working to draft a proper contract that ensures the City's interests are protected.</i>	<i>Neiman Young, ACM Sarah Munoz, Interim Director, Parks Lisa Aguilar, Assistant City Attorney</i>	<i>March 31, 2021</i>

Agree	2) A scope of work, a right to review/audit clause, a termination clause, and any other relevant stipulations will be incorporated into the contract.	Neiman Young, ACM Sarah Munoz, Interim Director, Parks Lisa Aguilar, Assistant City Attorney	March 31, 2021
Agree	3) Ms. Munoz will assign the NCVMG contract to the Parks Contracts Funds Administrator (CFA), a newly established position within the department. In addition, Ms. Munoz intends to pursue funding for a Management Analyst position in the FY 2022 budget. This position will be established to oversee special projects and assure the department remains in administrative compliance.	Sarah Munoz, Interim Director, Parks	April 8, 2021
Agree	4) Ms. Aguilar will address this concern in the new contract between the City and NCVMG.	Lisa Aguilar, Assistant City Attorney	March 31, 2021
Agree	5) Ms. Munoz will work with the Developer to acquire a revised site plan with an engineer's stamp.	Sarah Munoz, Interim Director, Parks	April 15, 2021
Agree	6) Once the contract is drafted, Ms. Munoz will review the document with the developer's contractor and ensure that future improvements remain in compliance with City code.	Sarah Munoz, Interim Director, Parks	April 7, 2021

City Management, with assistance from Legal, should restrict the contractor from further modifying City property until a fully executed contract or amendment is in place.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	Neiman Young, ACM, City Manager's Office	March 9, 2021
<p><i>Action Plan:</i> <i>Mr. Young has verbally advised the NCVMG of the need to cease any additional work on the site until compliance is met. Mr. Young then followed up with written correspondence to the NCVMG.</i></p>		

C. Public Access, Site Plans, and Inspections

Recommendation: Parks management should:

- 1) Restrict public access to the site until the project has been accepted by the City or obtain documented exception from City Management.
- 2) Require contractor to apply for a permit and get appropriate inspections from Development Services; or, obtain documented exception from management at Development Services.
- 3) Not accept the project until contractor has completed all plan reviews and successfully passed all City inspections with Engineering Services and Parks.
- 4) Obtain assurance from a RAS inspection the site is ADA compliant or documentation exempting the site from ADA requirements.

<i>Agree/Disagree</i>	<i>Action Plan</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
Agree	<p><i>Action Plan:</i> <i>1) According to the Al Raymond (City Director of Development Services), only structures with a height of 5'9" and above require inspections. Structures within the memorial garden that meet this requirement include the wings, flagpole, and solar lights.</i></p> <p><i>On September 18, 2020, Peter Zanoni (City Manager) requested Al Raymond to examine the wings. On September 19, 2020, Mr. Raymond determined the wings to be safe for public access but</i></p>	<p><i>Al Raymond, Director Development Services</i></p>	<p><i>March 20, 2021</i></p>

	<p><i>required NCVMG to submit an engineer's report regarding new improvements to the facility. On October 19, 2020, NCVMG submitted the requested engineer's report (see Exhibit A).</i></p> <p><i>On March 18, 2021, Peter Zanoni requested Al Raymond to examine the flagpole and solar lights. The inspection will be completed and a report provided to the City no later than March 20, 2021.</i></p>		
		<p>Exhibits mentioned in Management's Response can be requested directly from the City Auditor's Office.</p>	
Agree	<p><i>2) On March 4, 2021, City Management and the City Attorney met with the developer. During the meeting, the City officials advised the developer of the permits and inspections that are needed to complete the facility.</i></p>	<p><i>Peter Zanoni, City Manager</i></p> <p><i>Neiman Young, ACM</i></p> <p><i>Sarah Munoz, Interim Director, Parks</i></p> <p><i>Miles Risley, City Attorney</i></p>	<p><i>November 30, 2021</i></p>
Agree	<p><i>3) The Parks and Recreation Department will not accept the facility until all the issues identified in the City Auditor's report are addressed.</i></p>	<p><i>Neiman Young, ACM</i></p> <p><i>Sarah Munoz, Interim Director, Parks</i></p>	<p><i>November 30, 2021</i></p>
Agree	<p><i>4) The Parks and Recreation Department will assure ADA compliance is met by requiring the developer to obtain an RAS inspection and address any issues that are identified by the examination.</i></p>	<p><i>Neiman Young, ACM</i></p> <p><i>Sarah Munoz, Interim Director, Parks and Recreation</i></p>	<p><i>November 30, 2021</i></p>

For projects not managed by City staff that includes construction on City property, City management should require:

- 1) 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.
- 2) Sponsoring department involve key departments and City staff appropriate to the project.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>
<i>Agree</i>	<i>Peter Zanoni, City Manager's Office Jeffery Edmonds, Director, Engineering Services</i>	<i>June 1, 2021</i>
<p><i>Action Plan:</i> <i>To assure consistency, Mr. Zanoni has instructed the Engineering Department to develop a business plan that details a minimum standard for third party construction contracts. In addition, departments that contract with third party agencies will be required to retain City engineering services for consultation through the contracting and construction process. In turn, the supported departments will be responsible for the fee-for-service incurred for the City Engineering Department's assistance.</i></p>		

D. Other Matters

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

Recommendation: Parks management should:

- 1) Require any forms used by the contractor be pre-approved by both Legal and Parks before use.
- 2) Include any consent forms and plaque criteria in the contract as exhibits plus require revisions to be approved by City management.
- 3) Seek Legal direction on how to address previously used forms and communicate those results with the contractor.

<i>Agree/Disagree</i>	<i>Responsible Party, Title</i>	<i>Completion Date</i>	<i>Agree/Disagree</i>
<i>Agree</i>	<p><i>Action Plan:</i> 1) <i>On March 8, 2021, Mr. Young has acquired the plaque consent and release form used by NCVMG (Exhibit B) and has turned the document in to Ms. Aguilar for legal review.</i></p>	<p><i>Neiman Young, ACM</i> <i>Lisa Aguilar, Assistant City Attorney</i></p>	<i>March 31, 2021</i>

	<p>2) Ms. Aguilar will ensure these requirements are captured in the new contract. In addition, the NCVMG will be required to gain the City's approval before issuing any new forms that are not captured in the contract.</p>	<p>Neiman Young, ACM</p> <p>Lisa Aguilar, Assistant City Attorney</p>	<p>March 31, 2021</p>
	<p>3) Mr. Young is consulting with Ms. Aguilar regarding the original forms and will draft correspondence to the NCVMG to address previously used forms.</p>	<p>Neiman Young, ACM</p> <p>Lisa Aguilar, Assistant City Attorney</p>	<p>March 31, 2021</p>

D.02 Contractual Obligations and Future Partnership Considerations

Recommendation: City management should:

- 1) Meet with the contractor of NCVMG's to ensure they understand the business surrounding contract compliance and City expectations.
- 2) Require organizations, whose existence and/or purpose is contingent on the City or 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.
- 3) 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.

Agree/Disagree	Action Plan	Responsible Party, Title	Completion Date
<p>Agree</p>	<p>Action Plan: 1) City Management and Legal met with the Developer and Contractor to ensure they understand the City's processes and expectations. In addition, the meeting helped the City leadership to validate its concern that the Parks and Recreation Department did not do an exceptionally good job at managing the relationship with this</p>	<p>Peter Zaroni, City Manager</p> <p>Neiman Young, ACM</p> <p>Sarah Munoz, Interim Director, Parks</p> <p>Miles Risley, City Attorney</p>	<p>March 4, 2021</p>

	<i>non-profit start up. The previous department leadership is no longer with our organization and the City Manager is addressing business engagement concerns across the administration.</i>		
Agree	<i>2) Mr. Young has acquired NCVMG's official by-laws (Exhibit C), list of board of directors (Exhibit D), and other documents relevant to the organization and their contribution to the City (Exhibit E). Mr. Young spoke with the organization and was advised of the fact that the nonprofit is collecting its financial records and is willing to submit to a financial audit.</i>	Neiman Young, ACM	March 8, 2021
Agree	<i>3) Mr. Zanoni will require departments entering into relationships with newly formed agencies to maintain close engagements with the organizations and assist them with navigating through the City's business processes.</i>	Peter Zanoni, City Manager	April 1, 2021

Appendix C – Exhibits to Report

C.1 – Original site plan presented to City Council

