

**OFFICE OF THE CITY CONTROLLER**



**PARKS AND RECREATION DEPARTMENT**

**HERMANN PARK CONSERVANCY  
CONTRACT COMPLIANCE AUDIT**

**Annise D. Parker, City Controller**

**Steve Schoonover, City Auditor**



OFFICE OF THE CITY CONTROLLER  
CITY OF HOUSTON  
TEXAS

ANNISE D. PARKER

April 5, 2005

The Honorable Bill White, Mayor  
City of Houston, Texas

SUBJECT: Parks and Recreation Department (Department)  
Hermann Park Conservancy - Contract Compliance Audit (Report No. 05-03)

Dear Mayor White:

The City Controller's Office Audit Division has completed a contract compliance audit of the contract between the City of Houston and the Hermann Park Conservancy (HPC), formerly named The Friends of Hermann Park. The objectives of the audit included determining whether HPC met the objectives of the contract and was in compliance with their contract terms; whether Department personnel responsible for the administration of the contract complied with certain contract terms and with the City's policies and procedures to ensure that the services performed by HPC were within the scope of the contract; and whether the Department and HPC's systems of internal controls related to the contract were adequate.

The report, attached for your review, concluded that both HPC and the Department were in compliance with their contractual obligations. However, due to the lack of adequate recordkeeping by HPC's subcontractors, the auditors could not verify the subcontractor's gross receipts. Draft copies of the matters contained in the report were provided to Department officials. The findings and recommendations are presented in the body of the report and the views of responsible officials as to actions being taken are appended to the report as Exhibit I.

We commend the Department for taking prompt action on recommendations noted in the report. Also, we appreciate the cooperation extended to our auditors by both HPC and Department personnel during the course of the audit.

Respectfully submitted,

Annise D. Parker  
City Controller

xc: City Council Members  
Michael Moore, Chief of Staff, Mayor's Office  
Anthony Hall, Chief Administrative Officer  
Joe Turner, Director, Parks and Recreation Department  
Judy Gray Johnson, Director, Finance and Administration Department

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## EXECUTIVE SUMMARY

- €# Due to the lack of adequate recordkeeping, we could not verify any of the selected Subcontractors' gross receipts. Additionally, HPC Management stated to the auditors that none of its Subcontractors maintain detailed records. We recommend that the Parks and Recreation Department (Department) management either require HPC to enforce the existing contract or work with HPC to develop a verifiable fee schedule that is less burdensome than the percentage of gross receipts currently used. The parties may want to consider a fixed rate with periodic adjustments, tied to an index. Regardless, the fee schedule and the related payments should be verifiable by both HPC and the City.
  
- €# Original contracts with Subcontractors contain no hours/days of operations requirements. We recommend that HPC work with the Subcontractors to establish hours/days of operations that maximize funds generated from the park activities and provide visitors with consistent quality concession services. Any change to the contract HPC uses for Subcontractors should be reviewed and approved by the Department before it is finalized.

## SCOPE AND PURPOSE

We have completed an audit of the contract between Hermann Park Conservancy (formerly known as The Friends of Hermann Park), and the City of Houston (City). The contract dated June 17, 2002, allows Hermann Park Conservancy (HPC), a non-profit organization, to operate the Pedal Boat Concession and other concessions, including novelty and food concessions in Hermann Park. Our objectives were:

- ##To determine whether HPC met the objectives of the contract and was in compliance with their contract terms;
- ##To determine whether the Parks and Recreation Department (Department) personnel responsible for the administration of the contract complied with certain contract terms and with the City's policies and procedures, to ensure that the services performed by HPC were within the scope of the contract;
- ##To determine whether the Department and HPC's systems of internal controls related to the contract were adequate; and
- ##To determine whether receipts and expenditures were appropriately recorded to the proper funds.

The audit scope period was from the contract's inception, June 17, 2002, through June 30, 2004. The scope of our work did not constitute an evaluation of the overall internal control structure of HPC, its Subcontractors, or the Department. Our examination was designed to evaluate and test compliance with procedures and the adequacy of internal controls related to contract compliance. This audit was executed in accordance with Generally Accepted Government Auditing Standards.

HPC, the Subcontractors, and Department management are responsible for establishing and maintaining a system of internal controls to efficiently and effectively perform financial related activities, and to adequately safeguard assets as an integral part of the their overall internal control structure. The objectives of a system are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or theft, and that transactions are executed in accordance with management's authorization and are recorded properly.

Because of inherent limitations in any system of internal accounting controls, errors or irregularities may occur and not be detected timely. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions, or that the degree of compliance with procedures may deteriorate.

## CONCLUSION

Based on the results of our audit, we conclude that internal controls are adequate for both Hermann Park Conservancy (HPC) and the Parks and Recreations Department (Department). Our audit determined that:

##HPC met the objectives of the contract and is in compliance with their contract terms;

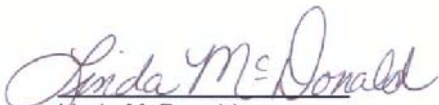
##The Department personnel responsible for the administration of the contract are complying with certain contract terms and with the City's policies and procedures, and ensuring that the services performed by HPC are within the scope of the contract;

##Both the Department and HPC's systems of internal controls related to the contract are adequate; and

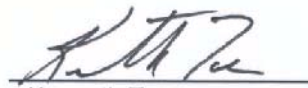
##The receipts and expenditures are appropriately recorded to the proper funds.

However, the three HPC Subcontractors that we tested do not have adequate detailed records and internal controls for us to reach a conclusion regarding their gross receipts and fees paid to HPC and the City. Further, it is our understanding from discussions with HPC personnel that none of its Subcontractors maintain detailed records.

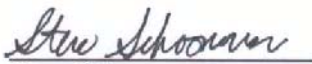
Insignificant matters not included in this report were discussed with HPC and Parks Department management.



Linda McDonald  
Auditor-In-Charge



Kenneth Teer  
Audit Manager



Steve Schoonover  
City Auditor

## INTRODUCTION

The Hermann Park Conservancy (HPC) and the City of Houston (City) entered into a contract dated June 17, 2002, which allows HPC to operate the Pedal Boat Concession and other concessions subject to certain guidelines. HPC operates the pedal boats, and has contracts with 10 independent concessionaires (Subcontractors) who sell novelty items and food. The intent of the contract is to maximize the funds generated from the park activities within Hermann Park, in order to ensure the availability of funds for repairs, maintenance, programming, and other capital improvements to benefit Hermann Park.

The contract between the City and HPC stipulates that HPC is to give the City 10% of the gross receipts it receives from the operation of the Pedal boats and 10% of its Subcontractor's gross receipts. Additionally, HPC receives 5% of the Subcontractor's gross receipts, and this revenue is to be used exclusively for the benefit of Hermann Park. Below is a table comparing fee collections from the vendors from Fiscal Years (FY) 2001 through 2003. Please note that FY03 (*italics*) reflects the time period when the contract between the City and HPC became effective.

### Fees Collected by the City and HPC

Time Period	Fees From Subcontractors	Fees From Pedal Boats	Total to City of Houston	Total to HPC
FY01 - July 00 to June 01	\$20,350	\$407	\$20,757	N/A
FY02 –July 01 to June 02	\$15,825	\$12,400	\$28,225	N/A
<i>FY03 –July 02 to June 03</i>	<i>\$23,610</i>	<i>\$11,215</i>	<i>\$34,825</i>	<i>\$17,412</i>

Prior to the contract, the Parks and Recreation Department (Department) collected various fees from the concessionaires at Hermann Park based on City Ordinance Section 32-221 and Department policy. The Ordinance states “The purpose of this article is to establish procedures and standards by which persons may be licensed to sell food from mobile food units within certain city parks.” It also provides for 6-month licenses for the periods between April through September, and October through March. The fees vary from \$200 to \$275 per 6-month period plus a \$25 renewal fee. Department policy regulated novelty concessionaires. The Policy allowed them to obtain up to 2-week permits for \$10 a day for Monday through Friday, and a \$15 a day fee for Saturdays and Sundays and city holidays.

According to HPC's Annual Report for year ended June 30, 2003, HPC has been in existence for ten years, and has a commissioned Master Plan to revitalize Hermann Park. Through June 2003, over \$31 million in funding had been secured for capital improvements. According to the HPC website, by June 2004, nearly \$30 million had been spent in capital improvement projects at Hermann Park. The City, individuals, foundations, and corporations fund the organization.

## AUDIT FINDINGS AND RECOMMENDATIONS

### I. INADEQUATE SUBCONTRACTOR RECORDS

#### BACKGROUND

Of the ten Subcontractors, the auditors attempted to test three (30%) of HPC's Subcontractors' revenue records. Among the records provided were written statements of how the Subcontractors arrive at their daily gross receipts, and forms that consisted of monthly statements reporting total daily gross receipts. HPC in turn provided us with copies of either money orders or checks remitted by the Subcontractors that were supported by the monthly statements.

The three Subcontractors we reviewed provided explanations of their revenue collection and reconciliation activities. In all instances, the Subcontractors stated that they begin the day with a set amount of cash, and at the end of the day they count the total amount of cash in their cash drawer, subtract the beginning daily cash, and obtain the amount of daily sales. A monthly sales report is provided by HPC to the Subcontractors for their recordkeeping; this report records daily sales. The Subcontractor returns the report to HPC at the end of the month, along with a check for the monthly gross receipts fee. HPC then remits the City its share of the fee.

Observation of five Subcontractors (including the three selected for testing), on October 21, 2004, revealed that cash drawers are used, rather than cash registers, and that no written receipts are issued to customers.

#### FINDING

Section IX of the City's contract with HPC requires HPC and its Subcontractors to keep "...true, accurate and complete records of its revenue received from retail sales...". HPC's Vendor Subcontract Agreements contain identical language in Section VI. HPC's Vendor Subcontract Agreements also state in Section IV, paragraph 11, that "Subcontractor shall use point of sale cash registers with tapes. The cash registers and tapes shall be provided by FHP". According to HPC, battery operated cash registers were supplied to its Subcontractors, but for a variety of reasons, they were not used successfully. Further, in a February 2004 memo to its Subcontractors, HPC stated that the Subcontractors were to begin issuing numbered sales receipts to each customer, in order to maintain complete revenue records. Based on our observations of the Subcontractors at Hermann Park, they do not issue any types of receipts.

Since the fees remitted to the City through HPC by its Subcontractors are based on gross receipts, we expected to be able to verify the Subcontractor's gross receipts. Due to the lack of adequate recordkeeping, we could not verify any of the selected Subcontractors'



gross receipts. Additionally, HPC Management stated to the auditors that none of its Subcontractors maintain detailed records.

**RECOMMENDATION**

We recommend that the Parks and Recreation Department management either require HPC to enforce the existing contract or work with HPC to develop a verifiable fee schedule that is less burdensome than the percentage of gross receipts currently used. The parties may want to consider a fixed rate with periodic adjustments, tied to an index. Regardless, the fee schedule and the related payments should be verifiable by both HPC and the City.

**II. HOURS/DAYS OF OPERATIONS REQUIREMENTS**

**BACKGROUND**

The contract between the City and HPC stated that the “intent of the contract is to maximize the funds generated from the park activities within Hermann Park ..., in order to ensure the availability of funds for repairs, maintenance, programming, and other capital improvements to benefit Hermann Park.” However, the City’s contract with HPC and its contracts with its Subcontractors contain no minimum requirements regarding the Subcontractors hours/days of operations at Hermann Park.

**FINDING**

Only three out of the ten (30%) Subcontractors set up their kiosk in Hermann Park the majority of the year. HPC has been keeping records of how many days the Subcontractors have set up their kiosks. According to HPC, the following table reflects the percentage of days worked and average daily sales and total sales.

**Percentage of Days Worked by HPC’s Subcontractors**

<b>Subcontractor</b>	<b>% Of Days Worked</b>	<b>Average Daily Sales</b>	<b>Total Sales</b>
1	61%	\$283	\$147,636
2	59%	218	109,739
3	54%	47	21,454
4	46%	79	31,067
5	42%	143	51,367
6	33%	59	16,717
7	32%	42	11,373
8	31%	54	14,277
9	26%	98	21,645
10	21%	227	40,569

Many of the Subcontractors are not open for business enough days of the year to fulfill the contract requirement of “maximizing funds generated from the park activities.” Further, visitors cannot expect consistent service under the current method of operations.

HPC provided us with a copy of the new contract that has been drafted, and the new contracts contain hours/days of operations requirements for the Subcontractors. According to the business days required as outlined in Section "F" of the new draft contract, a Subcontractor may take up to 146 days per year off. The schedule is as follows:

€# 365 available days to work	365 days
€# Less Monday and Tuesday off	104 days
€# Less 6 weeks off	<u>42</u> days
€# Minimum days required to work	<u>219</u> days
€# Percentage days required to work	60%

Only one current Subcontractor meets the new requirements of 60% availability.

#### **RECOMMENDATION**

We recommend that HPC continue working with its Subcontractors to establish hours/days of operations that maximize funds generated from the park activities and provide visitors with consistent quality concession services. Any change to the contract HPC uses for Subcontractors should be reviewed and approved by the Department before it is finalized.

# EXHIBIT I



## CITY OF HOUSTON

Parks and Recreation  
Department

## Interoffice

Correspondence

RECEIVED

MAR 4 2005  
CONTROLLERS  
OFFICE

To: Annise Parker, City Controller

From: Joe Turner, Director

Date: March 1, 2005

Subject: DEPARTMENT RESPONSE TO  
CONTRACT COMPLIANCE AUDIT FOR  
CONTRACT C53947 WITH HERMANN  
PARK CONSERVANCY

We agree with the major finding of your report which is:

*"Due to the lack of adequate record keeping, we could not verify any of the selected Subcontractor's gross receipts. . ."*

To remedy this situation, PARD will take the following actions:

1. Present a first amendment to the Conservancy's contract entitled "Hermann Park Pedal Boat and Other Concessions, C53947" to City Council for their approval that:
  - a. Allows the Conservancy to award subcontracts for novelty and food vendors in Hermann Park based on a flat fee, rather than the percentage of gross revenue approach that is currently being used. The current contracts for novelty vendors expire in June 2005 and food vendor's contracts expire in September 2005, therefore, this is the time frame we anticipate this change will be implemented.
  - b. If HPC awards short term vending contracts to subcontractors for special events (e.g., Holiday of Lights celebration, etc.), the revenue must be collected in a manner that will allow HPC to verify the amount of revenue collected.
  - c. Require HPC to obtain evidence from subcontractors that they are conducting sales in a business-like manner by requiring subcontractors to provide evidence that they have remitted sales tax revenues to the State of Texas Controller. Subcontractors will also be required quarterly, to provide HPC with a report that outlines their monthly gross sales. The amount of revenue reported on the quarterly sales report should be consistent with the sales tax remittance. If it is not, the subcontractor will be required to reconcile the difference with HPC. If the subcontractor does not remit sales tax or if the vendor is not able to reconcile differences between his/her quarterly gross sales report and the sales tax remittance, the subcontractor will be considered to be non-compliant and the subcontractors concession agreement will be terminated.
  - d. Establishes a minimum annual concession fee of \$34,100 that HPC will remit to PARD. By establishing this minimum concession fee, PARD will ensure that the change from a percentage of gross receipts to a flat fee does not result in a reduction in revenue received by PARD from HPC.

CONTROLLER'S  
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**Views of Responsible  
Officials**

## **EXHIBIT I**

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2. PARD will work with the HPC to standardize subcontractor's hours of operation in order to ensure that the public is being served and revenue is maximized.



Joe Turner, Director  
Parks and Recreation Department

Cy: Terence Fontaine  
Doreen Stoller  
Cheryl Johnson

**Views of Responsible  
Officials**