

Audit Report

# Mexic-Arte Contract Monitoring Audit

August 2020



The City did not adequately develop and oversee its agreements with the Mexic-Arte Museum (Mexic-Arte). The Parks and Recreation Department (PARC) did not ensure that the City received contractual deliverables or that Mexic-Arte complied with all agreement requirements. PARC staff decided not to enforce some of the performance measures included in the agreement. Also, some performance measures are ambiguous and difficult to measure.

Monitoring for the agreements is decentralized in two departments and this structure appears to cause challenges and inefficiencies. The agreements have some similar requirements, but departments do not coordinate to ensure that Mexic-Arte meets these requirements. Also, two separate departments responsible for monitoring agreements appears to result in the duplication of monitoring efforts.

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Cover: Mexic-Arte Museum building, photo by Seth Anderson via Flickr, <https://flic.kr/p/8XNCfp>.

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## Objective

Is the City effectively monitoring its agreements with the Mexic-Arte Museum to ensure that Mexic-Arte is providing all services and meeting all agreement obligations?

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## Background

The mission of the Mexic-Arte Museum (Mexic-Arte), a Texas non-profit, is to enrich and educate the community through the collection, preservation, and presentation of traditional and contemporary Mexican, Latino, and Latin American art and culture to promote dialogue and develop understanding for visitors of all ages.

The City has contributed significant funding to the Mexic-Arte for the purchase and rehabilitation of the Mexic-Arte Museum located at 419 Congress Avenue, Austin, Texas.

### Exhibit 1: To date, the City has allocated \$20,740,000 for the purchase and rehabilitation of the Mexic-Arte Museum

In 2001, the City authorized \$740,000 from the General Fund for the purchase of a permanent home for the Mexic-Arte Museum.

In 2010, the City authorized \$5 million from 2006 voter-approved bonds for rehabilitation of the facility.

In 2018, the City allocated \$15 million from 2018 voter-approved bonds for rehabilitation of the facility.

SOURCE: OCA review of the funding agreements between the City and Mexic-Arte Museum management, February 2020

The City also provides funding to Mexic-Arte for its operations from the City's Hotel Occupancy Tax. The City provided about \$360,000 to Mexic-Arte for its operations in fiscal years 2018 and 2019.

In total, the City has five agreements with the Mexic-Arte Museum for both facility and operational needs. The Parks and Recreation Department and the Economic Development Department are responsible for overseeing these agreements.

**Exhibit 2: The City has 5 agreements with Mexic-Arte Museum**

<b>Agreement</b>	<b>Type</b>	<b>Responsible Department</b>	<b>Purpose</b>
<b>2001 Lease Agreement</b>	Facility	Parks and Recreation Department	The City leased the facility from Mexic-Arte for the purposes of rehabilitating the facility.
<b>2001 Sublease Agreement</b>	Facility	Parks and Recreation Department	The City subleased the facility back to Mexic-Arte to allow management to continue providing services to the community.
<b>2010 Agreement for Improvement of Cultural Facilities for Public Use Funded with Bond Funds</b>	Facility	Parks and Recreation Department	Provided City funds (\$5 million) for improvements of the museum approved by voters in 2006.
<b>2010 Amended and Restated Services Agreement</b>	Operational	Parks and Recreation Department	The original agreement executed in 2001 provided City funding (\$740,000) to buy the facility on behalf of Mexic-Arte in exchange for services. The 2010 agreement restated and clarified the ongoing and future relationship between the City and Mexic-Arte.
<b>2019 Cultural Services Agreement</b>	Operational	Economic Development Department	The City provided Hotel Occupancy Tax funding to Mexic-Arte for museum operations. Mexic-Arte Museum management has to apply for this annually.

SOURCE: OCA review of the agreements between the City and Mexic-Arte Museum management, February 2020

This audit looked at contract management activities for the two operational agreements: the 2010 Restated Services Agreement and the 2019 Cultural Services Agreement.

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# What We Found

## Summary

The City did not adequately develop and oversee its agreements with Mexic-Arte. This increases the risk that the City may not receive all contracted services, and it exposes the City to negative public perception. Parks and Recreation Department (PARC) staff did not monitor the agreement to ensure that the City received the contractual deliverables and that Mexic-Arte complied with all applicable agreement requirements. Even if the City's agreement monitoring process had been effective, some of the performance expectations are ambiguous and difficult to measure. Also, PARC staff decided not to enforce some of the performance measures included in the agreement.

In addition, the agreements' governance structures appear to cause monitoring challenges and inefficiencies. Monitoring of the agreements is decentralized in two departments and the agreements have some similar reporting, notification, and performance requirements. However, the two departments do not coordinate to ensure that Mexic-Arte meets these requirements. Further, having two separate departments monitor agreements appears to result in duplication of monitoring efforts.

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## Finding

The City did not adequately develop and monitor agreements with Mexic-Arte, making it difficult to ensure the desired services were delivered to the community.

The funding agreements require Mexic-Arte to provide certain services and meet specific requirements. These agreements also require Mexic-Arte to annually submit performance reports to demonstrate they met all the requirements of each agreement.

We found issues in the way the Parks and Recreation Department (PARC) and Economic Development Department (EDD) staff monitored the agreements.

Issues specific to the PARC-managed 2010 Restated Service Agreement  
PARC staff did not ensure that performance information submitted by Mexic-Arte was accurate, complete, and timely submitted

The 2010 Restated Service Agreement requires the Director of PARC to review the services provided by Mexic-Arte annually to determine whether the museum has provided the required level of services.

We found that PARC staff performed desk reviews to verify that Mexic-Arte submitted the required reports. However, they did not verify the accuracy and completeness of the performance information reported.

Also, Mexic-Arte did not submit annual performance reports timely. In July 2018, PARC staff noted that Mexic-Arte had not submitted the annual reports for fiscal year 2017. A review done by PARC staff in July 2019 indicated that Mexic-Arte had submitted the reports for fiscal year 2018, but staff noted the reports were not submitted timely.

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Best practices recommend that organizations contracting for goods and services monitor and evaluate contractor performance to determine whether a contractor meets contract terms and other requirements.

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PARD staff did not enforce some of the performance measures included in the agreement

PARD staff did not enforce four of the requirements included in the 2010 Restated Service Agreement. We did not find evidence that Mexic-Arte:

- gave PARD a copy of their annual audit;
- loaned artwork to the City for public exhibition;
- worked with PARD to put on an annual program; or
- provided an annual work plan.

PARD management noted that they are planning to review all performance measures in the agreement to determine if changes to these measures are needed.

These contract monitoring weaknesses appear to be caused by a lack of accountability. PARD management does not have measures in place to ensure that PARD staff perform contract monitoring duties. Also, there are no consequences for Mexic-Arte if they do not submit the required reports timely.

PARD management noted that the heavy workload for the manager in charge of this agreement may have limited the manager’s ability to effectively monitor this agreement. During the course of this audit, PARD management said they assigned some of the manager’s duties to another employee to ease the manager’s workload.

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Best practices recommend that agreement terms should be well-defined, explicit, and measurable. They should clearly define attributes such as quantity and quality.

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Some performance measures included in the agreement are ambiguous and difficult to measure

Based on our review of the Restated Service Agreement, we noted that some performance measures are not specific or measurable.

**Exhibit 3: Some measures are vague and subject to interpretation**

Performance measure	Issues noted
“Allow <u>reasonable</u> loan of artwork in the museum’s permanent collection for public exhibition in public City-owned facilities.”	<ul style="list-style-type: none"><li>• “Reasonable” is vague and subject to interpretation.</li><li>• The measure does not specify the quantities to be provided.</li></ul>
“Provide reduced-fee or no fee access to senior groups as requested by these groups as long as the access does not <u>unreasonably interfere</u> with regular museum activities. Each year Mexic-Arte shall report the number of groups and number of seniors who received this type of service.”	<ul style="list-style-type: none"><li>• “Unreasonably interfere” is vague and subject to interpretation.</li><li>• The measure does not specify the target number of senior groups.</li></ul>
“Provide no fee access to dignitaries who are visiting the City of Austin, provided City staff give Mexic-Arte <u>reasonable notice</u> of need for such access, and the access does not unreasonably interfere with regular museum business.”	<ul style="list-style-type: none"><li>• “Reasonable notice” and “unreasonably interfere” are vague and subject to interpretation.</li></ul>

SOURCE: OCA analysis of the 2010 Restated Service Agreement and best practices related to contract development, December 2019



Without adequate monitoring, the City cannot be sure that Mexic-Arte is meeting all agreement requirements. In addition, unclear performance expectations make it difficult for PARD to effectively monitor and evaluate Mexic-Arte's performance.

#### **Economic Development Department-managed 2019 Cultural Services Agreement**

EDD had a process in place for monitoring the 2019 Cultural Services Agreement. EDD implemented a tool for managing and tracking all information related to the agreement, such as funding applications and monitoring reports. In addition, EDD staff compare reports submitted by Mexic-Arte to agreement terms and deliverable requirements. Overall Mexic-Arte timely submitted reports and met most of the contractual performance deliverables.

#### **Issues with two departments managing agreements with Mexic-Arte**

We found that having two departments manage the City's operational agreements with Mexic-Arte presents some challenges to monitoring the agreements. This structure makes it more difficult to ensure that Mexic-Arte meets its deliverables and can also lead to a duplication of monitoring efforts. Mexic-Arte submits the same annual performance report to comply with both agreements. However, there is no coordination between PARD and EDD to ensure that Mexic-Arte management complies with all requirements in both agreements.

Both agreements require Mexic-Arte to present an exhibition by Totally Cool Totally Art participants every year. Mexic-Arte was supposed to perform two separate exhibitions every year. However, Mexic-Arte used one exhibition to comply with both agreements in fiscal years 2017 and 2018. This discrepancy was not identified or corrected by PARD or EDD.

In addition, both agreements require Mexic-Arte to have insurance. The agreements require the insurance company to send notifications of coverage changes to both PARD and EDD. However, the language in the insurance certificates only requires the insurance company to send notices to EDD.

Without effective coordination between the two departments, the City may not be able to effectively detect if Mexic-Arte does not comply with performance expectations and requirements. Also, changes to the insurance coverage may not be timely communicated to all required parties.

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## Additional Observation

The City is currently in negotiations on how the \$20 million voter-approved funding authorized for the rehabilitation of the Mexic-Arte Museum will be used.

In 2009, Council authorized \$5 million for the rehabilitation of the Mexic-Arte Museum from 2006 voter-approved bonds. However, based on the condition of the facility at the time, staff determined that the funding was not enough to complete the required rehabilitation work. In 2018, Council approved an additional \$15 million for the rehabilitation of the Mexic-Arte Museum from 2018 voter-approved bonds, bringing the total of available funding to \$20 million. Under the arrangement between the City and Mexic-Arte, Mexic-Arte is required to raise \$3.5 million in addition to the bond funding. At the time of this audit, the rehabilitation work had not started. According to City and Mexic-Arte staff, the City and Mexic-Arte management are currently negotiating the agreement that will guide how to apply the approved rehabilitation funds.

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# Recommendations and Management Response

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To ensure that the monitoring resources for the City's agreements with the Mexic-Arte Museum are effectively and efficiently utilized, the City Manager should evaluate the current governance structure of the City's operational agreements with Mexic-Arte to determine if there is a need to centralize management of the agreements.

**Management Response:** Agree

**Proposed Implementation Plan:** PARD will work in cooperation with the Economic Development Department to determine a long-term proposal to identify the most appropriate single Department to manage agreements with Mexic-Arte. Develop and execute a plan to transition agreement(s) to the single identified Department.

**Proposed Implementation Date:** September 2021

2

To ensure that the City receives all the contracted deliverables and that Mexic-Arte complies with all agreement requirements, the Director of Parks and Recreation Department should implement accountability measures for staff, and put in place a supervisory process for verifying the accuracy of the performance information submitted by Mexic-Arte.

**Management Response:** Agree

**Proposed Implementation Plan:** PARD has recently reorganized the Museum and Cultural Division, which directly oversees this contract. In the short-term, the reorganization will allow for the Mexic-Arte agreement to be assigned to a single PARD contract manager that can diligently verify the accuracy of performance information submitted by Mexic-Arte. The contract management will be added to this individual's SSPR. In the long-term, should the most appropriate Department to assume oversight of the contract is not PARD, the agreement management responsibilities will be transitioned to the appropriate Department.

**Proposed Implementation Date:** October 2020 for immediate PARD contract management; September 2021, transition contract management to appropriate Department.

3

To ensure that Mexic-Arte's performance expectations in the 2010 Restated Service Agreement are clear and unambiguous, the Director of the Parks and Recreation Department should work with stakeholders to review the current performance expectations and revise the measures to ensure that they are clearly stated, measurable, and enforceable.

**Management Response:** Agree

**Proposed Implementation Plan:** PARD is currently working with the Office of Performance Management to revise and align performance measures with SD23. Mexic-Arte performance measures are a part of the alignment process. In the near term, based upon the alignment outcomes, the PARD contract manager will revise the existing agreement with Mexic-Arte to clearly state measurable and enforceable performance expectations.

**Proposed Implementation Date:** September 2021



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# Management Response

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## Scope

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The audit scope included the City's contracts with the Mexic-Arte Museum.

## Methodology

To complete this audit, we performed the following steps:

- interviewed management and staff from Parks and Recreation Department, Economic Development Department, Public Works Department, Law Department, and Mexic-Arte Museum management;
- analyzed Mexic-Arte Museum performance reports;
- researched best practices about contract administration;
- reviewed background, historical information, consultant reports, and media reports about the Mexic-Arte Museum;
- reviewed the City's agreements with Mexic-Arte Museum and compared deliverables to current practices;
- evaluated the risk of fraud, waste, and abuse with regards to Parks and Recreation Department's and Economic Development Department's processes and procedures included in the audit; and
- evaluated internal controls related to oversight of City agreements with the Mexic-Arte Museum.

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## Audit Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve City services. We conduct performance audits to review aspects of a City service or program and provide recommendations for improvement.

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