



## City of Irvine

Poor Governance of the \$1.7 Million Review of the Orange County Great Park Needlessly Compromised the Review's Credibility

Report 2015-116

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August 9, 2016

2015-116

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the city of Irvine's management of the Orange County Great Park contract performance review (park review).

This report concludes that poor governance of the park review, which ultimately cost the city about \$1.7 million, compromised the review's credibility. Specifically, Irvine did not ensure that the park review was conducted according to the industry standards most appropriate for achieving the city's goals. City council members had stressed the importance of an independent audit. However, the standards under which Irvine chose to conduct the park review did not require the independence or rigor intrinsic to an audit. Further, the city's request for proposal for the park review did not stipulate that Irvine was seeking bids for an audit.

Also, Irvine did not always follow its policies and procedures when selecting and overseeing the consultants performing the park review. Specifically, in 2013 Irvine altered the way it selected a consultant to perform the review. Toward the end of a competitive process to select a consultant for the park review, Irvine modified its selection and evaluation process by augmenting the scores of one bidder, and by including interview performance in its scoring and finalizing the methodology used to calculate scores after it had conducted the interviews. This, coupled with not notifying bidders of the changes to the process, unnecessarily cast doubt on the impartiality of Irvine's selection of the consultant that would conduct the park review. Further, Irvine's disjointed management of its contracts with consultants for the park review limited transparency related to the review's cost and scope, and it also led to cost overruns.

Additionally, in January 2013, the city council unnecessarily created an advisory committee—a subcommittee composed of two city council members—to oversee the park review. State law allows the creation of such committees and allows them to conduct their business without adhering to state open meeting laws. Although we found no evidence to conclude that the subcommittee operated outside of its legal authority, we found that the subcommittee added little value to the process. For example, Irvine contracted with outside law firms who undertook many of the oversight activities that the subcommittee should have performed. Further, we found little evidence that the subcommittee advised the city council, even though the role of an advisory committee, in the context of open meeting laws, is to counsel, suggest, or advise. We believe Irvine would have been better served had the city council chosen not to establish a subcommittee for this high-profile review, but instead chosen to deliberate and decide openly at city council meetings the issues regarding the park review. Greater transparency could have increased public confidence in the park review.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

Our examination of the review of the contracts related to the city of Irvine's Orange County Great Park (Great Park) concluded that Irvine could have better managed this contracted review. Also, greater transparency could have increased public confidence in the process of selecting and monitoring the consultants that conducted the review and in the results. Specifically, the city council members had expressed the desire to contract with consultants for an audit but ultimately required those consultants to meet standards significantly less rigorous. Further, Irvine did not always follow its policies and procedures when selecting and overseeing these consultants, and we found little evidence that the subcommittee that oversaw both phases of the performance review of Great Park contracts (park review) added value. As a result, Irvine spent about \$1.7 million related to the park review in a manner that compromised the review's credibility.

Irvine's decade-long effort to develop Great Park on the site of the former United States Marine Corps Air Station El Toro has come under scrutiny in recent years. In 2013 the Irvine city council began the park review and retained the firm of Hagan, Streiff, Newton & Oshiro, Accountants, PC (HSNO) to conduct it. In January 2014, HSNO presented its first report to the city council and made a number of recommendations for additional work. As part of its work, HSNO reported that Irvine had spent more than \$210 million on Great Park as of the end of 2012. After receiving HSNO's first report, the city council approved a second phase of the review and retained special counsel to assist HSNO and issue subpoenas to individuals involved with developing Great Park. In March 2015, HSNO and the special counsel for the park review at that time—Aleshire & Wynder, LLC (Aleshire)—each issued a report critical of certain entities involved in the project.

In contracting with HSNO and Aleshire, Irvine did not ensure that the park review was conducted according to the industry standards most appropriate for achieving the city's goals for the review. Specifically, city council members had stressed the importance of commissioning an independent audit. However, the standards under which Irvine chose to conduct the park review did not require the independence or rigor intrinsic to an audit, and the city's request for proposal (RFP) for the park review did not stipulate that Irvine was seeking bids for an audit. City staff informed firms submitting proposals that the city wanted a performance review of contracts and that the winning consultant would conduct such a review in accordance with the *Statements on Standards for Consulting Services* (consulting standards)

### Audit Highlights . . .

*Our audit concerning the performance review of the Orange County Great Park contracts (park review) revealed the following:*

- » *Irvine did not ensure that consultants conducting the park review applied the most appropriate standards for achieving the city's goals.*
  - *The standards were less rigorous and did not require an independent audit, although the city council had stressed the importance of commissioning such an audit.*
- » *Irvine altered the way it selected a consultant, Hagan, Streiff, Newton & Oshiro, Accountants, PC (HSNO), to perform the park review.*
  - *It modified its selection and evaluation process after it had accepted bidders' proposals and interviewed selected firms.*
  - *After the interview phase, Irvine increased HSNO's scores by 12 percent, making it the top-ranked firm for the park review.*
  - *It did not notify the other bidders of the changes in the process.*
- » *Disjointed contract management decreased transparency related to the park review's cost and scope, and also led to cost overruns.*
- » *The city council unnecessarily created a park review subcommittee to oversee the park review that was exempt from state open meeting laws, reducing the park review's transparency to the public.*

promulgated by the American Institute of Certified Public Accountants (AICPA)—the national organization that promotes and maintains high professional standards of practice for certified public accountants. However, these consulting standards are less rigorous than other standards used within the auditing profession. In fact, one firm that had worked with Irvine in the past declined to bid on the park review because it felt that consulting standards would reduce its ability to operate as a neutral, independent analyst.

Further, toward the end of its competitive bidding process, Irvine altered the way it evaluated bidders. For reasons it could not adequately explain, Irvine modified its selection and evaluation process after it had accepted bidders' proposals and interviewed selected firms. Following city policies, city staff evaluated the proposals of the five firms that responded to the park review RFP. After this process, however, Irvine added an additional phase to the selection process—interviewing the top four firms—a practice the city's purchasing agent stated was rare, although she also noted that interviews have been used for certain city projects and services. Although Irvine had informed bidders that it might interview the highest-rated firms, the city's RFP did not explicitly state that interview performance would be part of the selection criteria. Further, Irvine did not finalize the priority it would assign to its criteria for evaluating firms' proposals until after it had conducted the interviews, nor did it inform bidders of the methodology it would use to evaluate their proposals. During the initial review of proposals, city staff rated HSNO's proposal as tying for third among the five bidders; HSNO received about 80 percent of the points that the first- and second-place candidates received. However, after the interviews with bidders, the scores for HSNO's proposal notably increased—by about 12 percent—whereas the scores for the other firms' proposals remained unchanged. According to our analysis, by changing the selection methodology, Irvine made HSNO the top-ranked firm for the park review. Coupled with not notifying the other bidders of the changes to the process, this unnecessarily cast doubt on the impartiality of Irvine's selection of HSNO as the park review consultant and increased the risk that the city did not select the most qualified vendor to meet its needs.

Irvine also structured its park review RFP in a manner that all but ensured that the winner would receive another contract without having to undergo a competitive bidding process. The city's RFP stated in its scope of services that the chosen consultant might need to perform additional procedures based on findings in the report, and other parts of the RFP encouraged bidders to consider this additional work when submitting proposals. The RFP's allusion to this additional work made it more likely Irvine would be able to justify a later sole-source contract from the winner of the initial contract. In fact, in January 2014, HSNO received a

\$400,000 sole-source contract partly based on recommendations from its own initial report; most of these recommendations advised additional work related to the report's findings. By soliciting the procurements in a manner that all but assured a future sole-source contract for the winning bidder, Irvine missed the opportunity to solicit competitive bids for these services and to ensure that the city received the best value for its procurement. Further, Irvine risked that the winning bidder would structure its work to promote the need for additional work through a sole-source contract, raising further questions about the credibility of the park review.

Moreover, Irvine's city council did not review and approve a 2014 contract with Aleshire, the special counsel for most of the second phase of the park review, even though the value of that contract exceeded the contracting authority of city staff. The contract for legal services did not state a maximum amount; however, city staff authorized a purchase order for \$30,000. A subsequent increase caused the value of Aleshire's services to rise from \$30,000 to \$285,000—well above the \$100,000 threshold amount requiring city council approval. According to the purchasing agent, because the contract did not have a stated maximum budget, Irvine's policies allowed its staff to increase the budget using a revised purchase order without obtaining approval for a contract amendment for the amount. Irvine's policies do not specifically allow for or prohibit this exception; however, such an exception is counter to the spirit of Irvine's policies. Although subsequent purchase orders served to increase Aleshire's contract and received council approval, the council never approved the contract itself. Ultimately, Aleshire's contract cost the city more than \$600,000. Maintaining a policy that lacks clarity and allows Irvine to approve high-value contracts without public consideration by the city council limits transparency and creates the appearance that staff and not the council made significant financial decisions without council or public scrutiny.

When it decided to conduct a review of Great Park contracts, the city council elected to form a two-member advisory subcommittee in January 2013 to oversee the park review; however, the city council did not adequately ensure that the subcommittee undertook the activities it was tasked with performing. State law allows such committees to meet and conduct their business without adhering to the rules prescribed by state law for open meetings, such as announcing meeting dates, times, and locations or publishing agendas. Although the subcommittee operated within this authority, we believe Irvine would have been better served had the city council chosen not to establish a subcommittee for this high-profile review but had chosen instead to deliberate and decide openly at city council meetings the issues regarding the park review. There is little evidence to

indicate that the subcommittee advised the council, even though such advice is a key function of such subcommittees. According to city council minutes, the subcommittee presented no reports or recommendations to the council until January 2014, when it recommended conducting the second phase of the park review. The subcommittee also made no recommendations to the city council after January 2014. Because Irvine created a subcommittee that did not need to meet openly, the city reduced the park review's transparency. Further, we found little evidence that the subcommittee added value to the process.

Finally, Irvine could have better handled the deposition transcripts created as a result of subpoenas of individuals who testified to HSNO and Aleshire regarding Great Park. State law, regarding depositions that may be used in court, requires that the individual giving the testimony—the *deponent*—be given 30 days to correct and sign the transcript of the testimony, unless both parties agree upon another due date. State law further requires that the deposition officer certify the transcript before it may be admitted in court. Between April 2014 and May 2015, Irvine posted 24 deposition transcripts from 23 individuals to its website. Of those 24 transcripts, only one original transcript was signed by the deponent, and only one was signed by the individual taking the deposition. Irvine may or may not have intended to use these deposition transcripts in court proceedings; nevertheless, waiting to publish signed and dated deposition transcripts would have demonstrated that the city and its representatives followed established procedures for ensuring the accuracy of the transcripts by giving the deponents adequate time to review and make any needed changes to the transcripts.

### Recommendations

To ensure that local government audits are conducted with independence and rigor, beginning immediately Irvine should incorporate into its RFPs and contracts the requirement that consultants follow appropriate, sufficient audit standards when performing audit services.

To make certain that it conducts its competitive bidding process in a more transparent and fair manner, Irvine should do the following by December 2016:

- Require city staff to include in every RFP the specified methodology for selecting contractors and not to deviate from it without adequate notice to potential bidders. Further, Irvine should include this requirement in its contracting manual.

- Examine and update its preferred selection criteria listed in its contracting manual and abide by these criteria when creating RFPs and evaluating bidders.
- Further clarify the manner in which an interview may factor into the decision regarding awarding a contract. Specifically, Irvine should include in its procedures whether an interview may change scores from an earlier phase of the proposal review process. Additionally, Irvine should include in the published RFP the details of how it will use interviews in its review process.

To make certain that Irvine complies with the intent of competitive bidding for professional services, beginning immediately it should not include provisions in its RFPs for potential future services that are above and beyond the desired scope of work.

To maintain appropriate, transparent fiscal accountability, Irvine should amend city contracting and purchasing policies by December 2016 to make certain that all of its contracts and contract amendments with a proposed cost exceeding the threshold requiring city council or other approval receive the appropriate approvals. Further, city policies should require appropriate approvals when increases in spending authority are accomplished through a purchase order or other means.

To foster public confidence in its processes and findings, Irvine should conduct self-initiated investigations, reviews, or audits in an open and transparent manner that ensures independence. Specifically, Irvine should not establish advisory bodies exempt from open meeting laws to oversee these investigations, reviews, or audits. Instead, any required reports from contractors conducting such investigations, reviews, or audits should go to the city council or a standing committee of the city council to be discussed in either open or closed session, as appropriate.

To ensure that Irvine follows best practices related to depositions as outlined in state law, the city council should adopt a policy requiring that Irvine only post deposition transcripts for the public after the deponents have had adequate opportunity to correct and sign their depositions.

### **Agency Comment**

Irvine disagreed with various conclusions in our report; however, it indicated that it would implement some of our recommendations.

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## Introduction

### Background

The Orange County Great Park (Great Park) is a park under development on the grounds of the former Marine Corps Air Station El Toro (air station). In 1993 the United States Department of Defense recommended closing the air station, and it officially closed in July 1999. In 1994 Orange County voters approved a measure to change Orange County's General Plan for air station property to use it as an airport. However, in March 2002, following a multiyear legal and political battle, Orange County voters approved the Orange County Central Park and Nature Preserve Initiative, overturning the previous measure and amending Orange County's General Plan to create a park instead of an airport at the site of the former air station. The city of Irvine annexed the former air station in January 2004, giving itself control of zoning and other powers over much of the property. According to the 2009-2020 Strategic Business Plan (business plan) of the Orange County Great Park Corporation (park corporation), in September 2004 the Navy issued an invitation for bids for the 3,700-acre site. An auction was held for four parcels and closed in February 2005. A developer purchased all four parcels. Irvine entered into an agreement with the developer that granted the developer rights to build on a portion of the land in exchange for transferring more than 1,300 acres to public use and contributing \$200 million to the development of Great Park. According to the business plan of the park corporation, the agreement also included \$201 million through a bond sale, secured by taxes levied on the development's properties, to provide funding for public infrastructure and facilities. Thus, Irvine was to receive \$401 million for the development and maintenance of Great Park.

Irvine established the park corporation in July 2003 to develop and operate Great Park. Until 2013 the park corporation's board consisted of nine directors, including all five members of Irvine's city council. In January 2013, the city council eliminated the four members who were not part of the city council and consolidated Great Park employees under the authority of the Irvine city manager. Finally, in November 2014, Irvine voters approved a measure that reaffirmed and expanded upon a previous city council resolution giving Irvine the final authority over all financial matters concerning Great Park.

### Development of Great Park

In March 2005, the park corporation decided to launch an international design competition to select the firm to create a master plan for the park. In January 2006, the park corporation

selected a team of design professionals, which became known as the Great Park Design Studio. The Irvine planning commission approved a master plan in August 2007 that included a canyon, a wildlife corridor, a promenade, a sports park, a wooded area known as a *bosque*, an aircraft museum, and other features.

According to a 2015 report of the Orange County Grand Jury, when in 2007 home construction started grinding to a halt, the developer told Irvine that its agreement to provide \$201 million to Irvine toward Great Park infrastructure was not possible. According to the business plan, in 2009 the developer agreed to provide about \$60 million in revenue over five years and additional revenue for park maintenance as needed beginning in fiscal year 2014–15. According to city staff, as of the beginning of 2013, an area encompassing 88 acres of attractions had been developed. Figure 1 shows a map of Great Park, including current and planned developments.

In November 2013, Irvine approved a new development plan for a portion of Great Park. According to a staff report filed with the agenda for the November 2013 meeting, Irvine approved a proposal to develop 688 acres of Great Park for \$172 million in improvements. This new plan included a wooded area, a golf course, and a sports park. According to city staff, the master plan was updated in 2014 to reflect the plans for the development of the 688 acres, but for those portions of Great Park outside of the 688 acres, the master plan did not change.

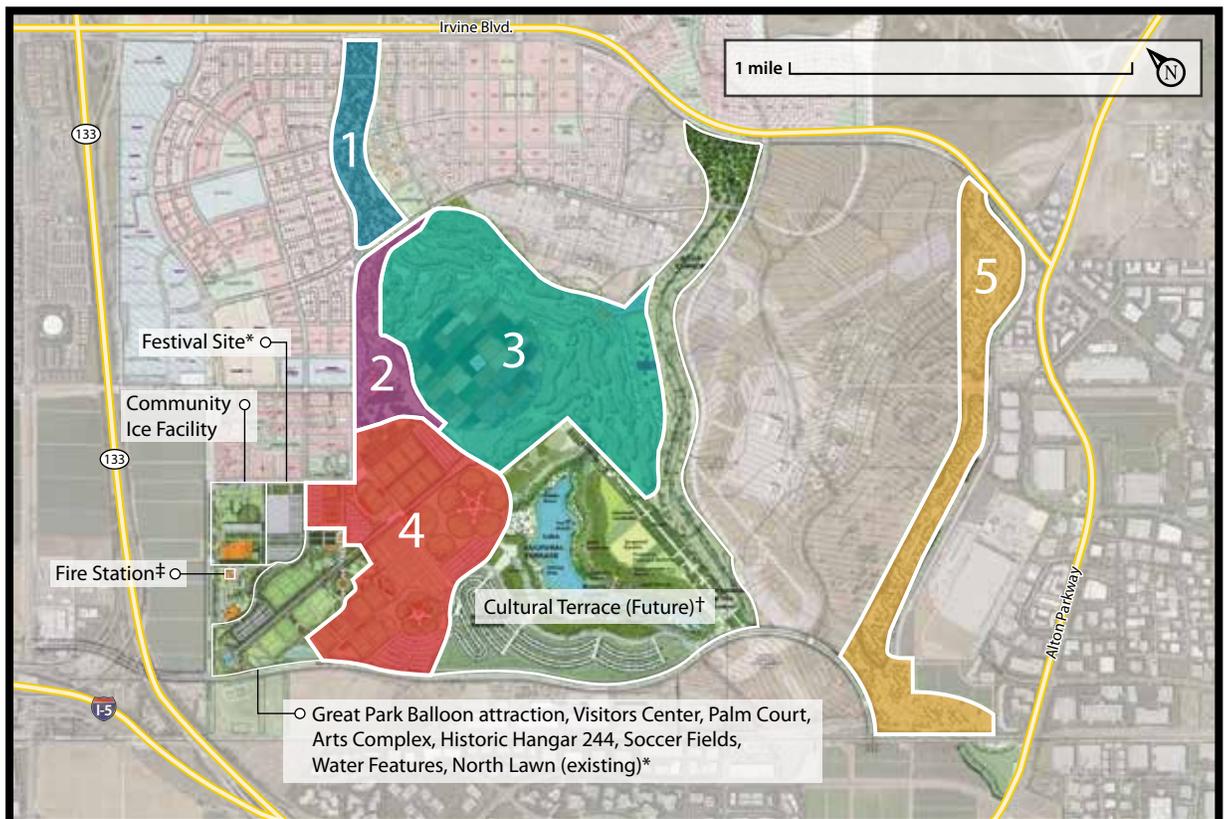
### **Irvine's Previously Commissioned Reviews of Great Park**

During Great Park's design and development, Irvine contracted for formal reviews of certain aspects of the project. Specifically, in an October 2009 joint meeting of the city council and the park corporation's board of directors, an accounting firm reported on its compliance review of the contract for Great Park's master design services. The accounting firm's report included findings that contractor invoices did not contain sufficient information to tie the descriptions of work performed to deliverables and that contractors performed work before the park corporation drafted written orders. In the same meeting, the city council considered a motion to conduct another audit of Great Park based on these findings, but the motion failed.

In December 2011, Irvine engaged another accounting firm to conduct a compliance review of Great Park's schematic design contract. This review, published in June 2012, did not yield any significant or material findings. However, the firm's review did detect some discrepancies between the insurance information

that contractors provided and the contract’s requirements for insurance. It also detected about \$4,000 in overpayments to the Great Park Design Studio. According to the review, the city received reimbursement for the overpayments.

**Figure 1**  
Current and Planned Development of Orange County Great Park



- 1 Upper Bee Canyon** 36 acres, under construction. Estimated completion: end of 2016.
- 2 Bosque<sup>§</sup>** 40 acres, under construction. Includes landscaped areas and areas for activities. Estimated completion of the upper portion: end of 2016.
- 3 Agricultural Area and Golf Course** 259 acres. Construction scheduled to begin: 2017.
- 4 Sports Park** 175 acres, under construction. Construction will be completed in phases. Estimated completion for the first components: the end of 2016. Estimated full completion: end of 2018.
- 5 Wildlife Corridor** 178 acres. Construction scheduled to begin: 2018.

Sources: The city of Irvine’s website and statements from Irvine staff.

\* According to city staff, the festival site and the area encompassing the balloon, visitors center, and other facilities cover 88 acres already developed as of the beginning of 2013.

† According to city staff, the cultural terrace is part of the original master plan for Great Park. There is no timeline for development of the terrace.

‡ Construction of the fire station is to begin in fiscal year 2016–17.

§ *Bosque* is a Spanish word meaning forest.

### The Great Park Review and Its Subcommittee

In January 2013, the city council unanimously approved a motion directing city staff to solicit proposals for a comprehensive compliance/forensic audit performance review of Great Park contracts. The city council also appointed a two-member subcommittee to receive periodic updates on the findings from the consultant performing the park review and to bring such information to the full city council.

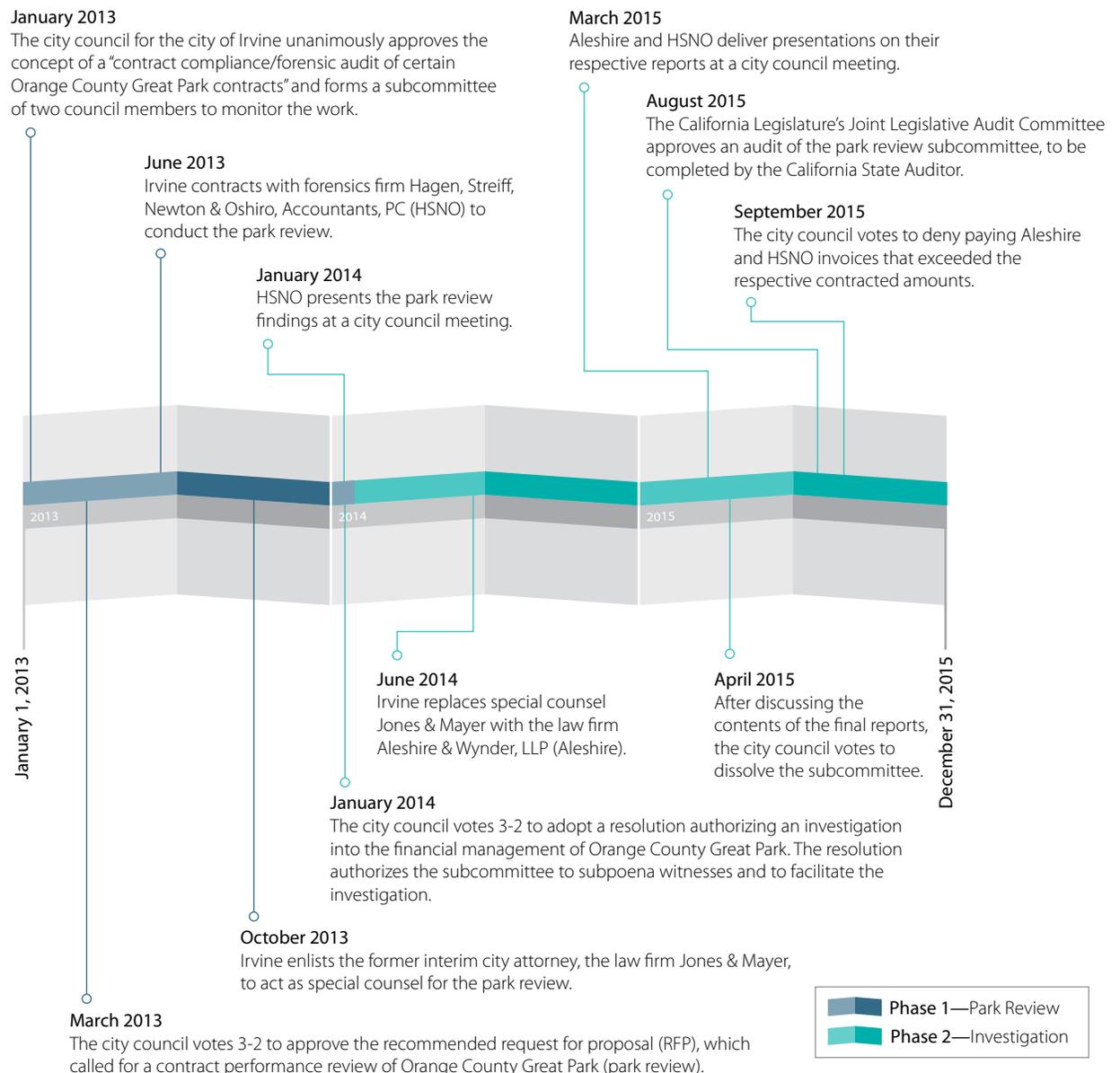
The city council approved the draft request for proposal (RFP) for a contract performance review of Great Park (park review) in a March 2013 meeting, and Irvine contracted with the forensics firm of Hagen, Streiff, Newton & Oshiro, Accountants, PC (HSNO) in June 2013 to conduct the park review. In January 2014, HSNO presented a report of its findings and recommendations in a city council meeting. This report included findings that contracts contained excessive uses of change orders and inaccurately defined project scopes and that Irvine improperly used sole-source contracts. The report also contained tables of revenues and expenses and reported that Irvine had spent more than \$210 million on Great Park as of the end of 2012. HSNO recommended that the city council compel the testimony of certain individuals whom HSNO deemed uncooperative. Further, HSNO made numerous recommendations that Irvine conduct additional reviews of Great Park.

Two weeks following the release of HSNO's report, the city council authorized the city manager to execute an agreement with HSNO to perform the second phase of the park review. The city council also adopted a resolution giving the subcommittee subpoena power to compel the testimony of certain Great Park contractors and city staff and requiring the city manager and staff to cooperate fully with the investigation. In June 2014, one subcommittee member announced that the law firm of Aleshire & Wynder, LLC (Aleshire) would replace the law firm of Jones & Mayer as the city's special counsel for the park review. Aleshire conducted most of the depositions for the park review, which Irvine subsequently published on its website.

Aleshire and HSNO each delivered final reports to the city council in March 2015. Aleshire's report included a discussion about the actions of a city council member—defeated in a bid for reelection in November 2014—stating that this member largely directed the management of the Great Park project and that he chose to describe the project as being far less costly than the estimated cost he had been quoted by the Great Park Design Studio. Aleshire's report also stated that Great Park contractors had undisclosed conflicts of interest. HSNO's report stated that it superseded HSNO's January 2014 report and included findings related to the lack of a

budget constraint for design and construction of Great Park, to the influence of the city council member defeated in November 2014, and to work a public relations consultant performed that was not consistent with the purpose of the funds used to pay that consultant. Figure 2 shows the timeline of key contracts and events related to the park review.

**Figure 2**  
**Summary of Key Contracts and Events Related to the Orange County Great Park Review**  
**January 2013 Through December 2015**



Sources: Irvine's city council meetings, minutes, and resolutions; contracts related to the park review; city correspondence; and minutes for a hearing held by the Joint Legislative Audit Committee.

Table 1 shows Irvine's decisions and appropriations, by consultant, related to the park review, between February 2013 and October 2015. Further, Table 1 indicates that as of December 2015, the city had spent roughly \$1.7 million on the park review and related activities. According to Irvine's records, the city paid for the park review and related activities from the Great Park Fund and from its general fund and did not use state funds. According to the city's financial statements, between fiscal years 2012–13 and 2014–15, revenue for the Great Park fund came primarily from developers and charges for services. Revenue for Irvine's general fund came largely from taxes, such as local property taxes.

**Table 1**  
**The City of Irvine's Decisions, Appropriations, and Expenditures Related to Consultants for the Orange County Great Park Review**

DECISIONS AND APPROPRIATIONS RELATED TO THE PERFORMANCE REVIEW OF THE ORANGE COUNTY GREAT PARK CONTRACTS (PARK REVIEW)			
MONTH AND YEAR	HAGAN, STREIFF, NEWTON & OSHIRO, ACCOUNTANTS, PC (HSNO)	ALESHIRE & WYNDER, LLP (ALESHIRE)	OTHER CONSULTANTS
February 2013			Irvine spends \$1,650 for consulting services to create the request for proposal (RFP), approved by the city council in March 2013.
June 2013	Irvine contracts with HSNO to complete the park review. HSNO receives \$240,000 of the money appropriated for the park review in January 2013.		
October 2013			Irvine enlists the services of its former interim city attorney Jones & Mayer to provide special counsel legal services for the park review.
January 2014	Irvine city council authorizes the appropriation of \$400,000 for phase 2 of the park review. HSNO receives the entirety of this appropriation.		
February 2014			The city requests the services of a private judge to aid in phase 2 of the park review.*
June 2014		At the request of the subcommittee, the city manager retains Aleshire's services to replace Jones & Mayer as special counsel to the park review. Irvine contracts with Aleshire for \$30,000 in services.	
July 2014	Irvine city council authorizes the appropriation of \$333,000 to finalize the park review. In consultation with Aleshire, city staff designate \$255,000 of this appropriation to Aleshire and \$78,000 to HSNO.		

DECISIONS AND APPROPRIATIONS RELATED TO THE PERFORMANCE REVIEW OF THE ORANGE COUNTY GREAT PARK CONTRACTS (PARK REVIEW)

MONTH AND YEAR	HAGAN, STREIFF, NEWTON & OSHIRO, ACCOUNTANTS, PC (HSNO)	ALESHIRE & WYNDER, LLP (ALESHIRE)	OTHER CONSULTANTS
December 2014	Irvine city council authorizes an additional \$60,000 for HSNO to complete the park review.	Irvine city council authorizes \$180,000 for Aleshire to complete the park review.	
April 2015		The city manager engages Aleshire under a separate \$10,000 contract to represent Irvine at hearings related to a state audit of the park review proposed to the Joint Legislative Audit Committee.	
May 2015		Irvine city council approves an amendment to Aleshire's June 2014 contract to include preparing legal documentation related to the park review. The city council authorizes up to \$80,000 for Aleshire to complete these services.	Under the city manager's authority, Irvine engages a separate law firm for a maximum amount of \$90,000 to, among other services, evaluate legal options related to results of the park review.
June 2015		Under the city manager's authority, Irvine increases Aleshire's April 2015 contract amount by \$15,000 for services related to a requested state audit of the park review. Irvine further amends Aleshire's April 2015 contract to include assisting with public records act requests and litigation efforts. Irvine appropriates \$60,000 for these new services.	Under the city manager's authority, Irvine engages special legal counsel for a maximum amount of \$50,000 to evaluate options for addressing legal malpractice identified in the park review.
July 2015			Under the city manager's authority, Irvine contracts with special legal counsel for a maximum amount of \$25,000 to analyze various litigation options and corresponding potential consequences of those options.
September 2015			Under the city manager's authority, Irvine contracts for legal advice on payment of invoices for the park review. The contract amount is not to exceed \$5,000.
October 2015		Pursuant to the city council's direction at its September 2015 meeting, Irvine amends Aleshire's June 2014 contract to compensate the firm for an additional \$56,174 in services.	
<b>Total Actual Expenditures for the Park Review as of December 2015, by Consultant</b>			
	\$778,000	\$671,700	\$229,600
<b>Total Actual Expenditures for the Park Review as of December 2015</b>			
	\$1,679,300		

Sources: The city of Irvine's city council's public meeting minutes and contracts, as well as invoices and payment records.

Note: Actual expenditures do not necessarily equal the total amounts appropriated or contracted. In some cases, consultants did not spend their entire authorized amounts.

\* At the request of city staff, Jones & Mayer and later Aleshire subcontracted with the private judge for services provided during the park review. According to invoices from Jones & Mayer and Aleshire, the firms paid about \$18,400 for these services.

## Public Scrutiny of the Park Review

The park review came under public scrutiny throughout the review's duration and after the publication of the reports. Notably, a Great Park contractor created a website and video that criticized the findings HSNO made in its January 2014 report. In April 2015, another Great Park contractor published a 28-page rebuttal to HSNO's and Aleshire's final March 2015 reports. Members of the public also attended multiple city council meetings to speak in support of or against the park review.

## Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to perform an audit of the performance of Irvine city council's subcommittee regarding the laws, regulations, and policies it followed and the actions it took during the consultant-led investigation and review of Great Park. Table 2 lists the objectives that the Audit Committee approved and the methods used to address those objectives.

**Table 2**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state laws and regulations.
2 Determine whether the forensics firm Hagan, Streiff, Newton & Oshiro Accountants, PC (HSNO) and the law firm of Aleshire & Wynder, LLP (Aleshire), conducted their reviews in accordance with applicable audit standards and industry best practices when developing the January 2014 report and subsequent reports. In addition, determine whether any transfer of audit responsibilities related to the review complied with these guidelines and standards.	<ul style="list-style-type: none"> <li>• Determined that our audit period for the purposes of requesting documentation would generally be from January 2013, when the city council for the city of Irvine (Irvine) first approved the concept of a performance review of the Orange County Great Park contracts (park review), through December 2015 in order to capture final payments to consultants related to the park review.</li> <li>• Interviewed relevant current and former city staff, members of the park review subcommittee, and representatives of HSNO and Aleshire.</li> <li>• Reviewed the completed reports and the contracts between Irvine and the consultants.</li> <li>• Identified the professional standards that Irvine's consultants used to develop their reports and, for purposes of comparison, identified alternate professional standards for audits.</li> <li>• Reviewed city council meetings, minutes, and communications to determine how the council represented its expectations concerning the park review.</li> </ul>
3 Determine whether the process for selecting the accountants, attorneys, and private judge involved with the investigation and audit complied with applicable laws, regulations, and policies.	<ul style="list-style-type: none"> <li>• Reviewed the request for proposal (RFP) and proposals received from bidders when Irvine used a competitive process for soliciting bids for the park review.</li> <li>• Assessed the extent to which Irvine adhered to its procurement policies and selection process for consultants.</li> <li>• Interviewed relevant current and former city staff regarding Irvine's contracting processes and its procedures related to contracts for the park review.</li> <li>• Reviewed city council decisions regarding issuing, amending, or augmenting contracts related to the park review.</li> </ul>

AUDIT OBJECTIVE	METHOD
4 Determine how the audit subcommittee publicly characterized the nature of the forensics firm's and the law firm's work.	Assessed the terminology used to describe the park review in Irvine's contracts with the consultants, at city council meetings, in communications with constituents, and in the media.
5 Determine whether the city council and the audit subcommittee conducted the review in a transparent and open manner. For example, determine whether open meeting laws were followed.	<ul style="list-style-type: none"> <li>• Determined whether the subcommittee adhered to state open meeting laws, including whether it met the definition of an advisory committee exempt from such laws.</li> <li>• Interviewed subcommittee members and relevant city staff regarding the subcommittee's activities. Because the subcommittee was established as an advisory committee not subject to open meeting laws, Irvine was not able to provide documentation of meetings or other activities of the subcommittee.</li> <li>• Obtained and reviewed emails among subcommittee members, city staff, and consultants to determine whether the subcommittee overstepped its authority as an advisory committee.</li> </ul>
6 Determine whether the audit subcommittee's and city council's use of government subpoena power complied with applicable laws, regulations, and policies.	<ul style="list-style-type: none"> <li>• Obtained and reviewed all subpoenas issued that were relevant to the park review.</li> <li>• Analyzed the subpoenas to determine whether they complied with relevant law.</li> <li>• Assessed the extent to which Irvine's handling of deposition transcripts complied with applicable law.</li> </ul>
7 Determine whether state funds were used for this review, and, if so, whether these funds were used appropriately.	<ul style="list-style-type: none"> <li>• Reviewed Irvine's audited financial statements for fiscal years 2012–13 through 2014–15.</li> <li>• Obtained invoices, purchase orders, and payment records to identify the total amount spent on the park review and to identify the funds used to pay for the review. To gain assurance that we had obtained all payment records, we compared the records we obtained to reports from Irvine's accounting system.</li> <li>• Interviewed relevant city staff and obtained documentation regarding the sources of funds in the city's Great Park Fund and in its general fund.</li> </ul>
8 To the extent possible, determine whether discussions took place between the audit subcommittee, attorneys, and auditors to time the public release of their reports and depositions to occur just prior to upcoming city or state elections.	<ul style="list-style-type: none"> <li>• Obtained emails from Irvine between city staff, subcommittee members, and consultants.</li> <li>• Reviewed the emails to ascertain whether the November 2014 election was a consideration in timing the release of reports or depositions.</li> <li>• Interviewed subcommittee members, relevant city staff, and representatives of HSNO and Aleshire regarding the timing of the reports and depositions.</li> </ul>
9 Determine whether individuals or companies who raised concerns about the accuracy of the January 2014 report or subsequent reports were afforded whistleblower protections, if applicable.	<ul style="list-style-type: none"> <li>• Reviewed state law and Irvine's ordinances and policies related to whistleblower protection, including Irvine's implementation of policies related to a ballot measure.</li> <li>• Reviewed records related to Irvine's whistleblower hotline to determine whether the city received complaints related to the park review.</li> <li>• Interviewed relevant city staff regarding how the city handles whistleblower complaints and whether it received any requests for whistleblower protection.</li> <li>• Identified individuals or organizations criticizing the park review and interviewed city staff and reviewed available documentation regarding whether the city has received requests for whistleblower protection or has any lawsuits pending related to complaints about the park review.</li> </ul>
10 Review and assess any other issues that are significant to the audit.	<ul style="list-style-type: none"> <li>• Reviewed the subcontracts between city attorneys and the retired judge to determine whether the city paid for work beyond the scope of the contract; we did not identify any concerns.</li> <li>• In the course of reviewing invoices for Objective 7, we identified issues surrounding consultants' performing work before receiving authorization to do so, and we discuss our findings in the Audit Results.</li> <li>• In addition to interviewing the two council members who comprised the subcommittee, we interviewed Irvine's mayor, the other current city council members, and one former council member regarding audit objectives 2 through 9.</li> </ul>

Sources: California State Auditor's analysis of the Joint Legislative Audit Committee's audit request number 2015-116 as well as information and documentation identified in the table column titled *Method*.

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## Audit Results

### **The City of Irvine Did Not Ensure That the Orange County Great Park Review Used Appropriate Industry Standards, and It Conducted a Flawed Selection Process of Firms to Perform the Review**

The city of Irvine did not ensure that consultants conducting the performance review of Orange County Great Park contracts (park review) applied the most appropriate audit standards for the goals of the review, and Irvine did not follow its established processes for awarding a key contract related to the park review. City council members stated that they wanted an independent audit; however, in developing its request for proposal (RFP) in 2013, Irvine determined that the park review would be conducted in accordance with *Statements on Standards for Consulting Services* (consulting standards) established by the American Institute of Certified Public Accountants (AICPA) even though these standards do not require the reviewer's independence and are less rigorous than other applicable AICPA and industry standards.<sup>1</sup> In our judgment, the use of less rigorous standards when members of the city council expressed a desire for an independent audit reduced the value of the park review to the city council and eroded confidence in the reviewer's work.

Further, in June 2013, Irvine completed a competitive process to select the firm—Hagan, Streiff, Newton & Oshiro, Accountants, PC (HSNO)—that would conduct the park review. In selecting this firm, Irvine increased its original scores for HSNO near the completion of the process, and they based a substantial portion of their evaluation on the bidders' interview performance, even though the RFP did not list interview performance as an evaluation criterion. Irvine also did not inform bidders that it would be considering interview performance or would be weighting it as heavily as it did in making its decision. Changing the selection criteria used to evaluate potential consultants without adequately informing bidders or the public about these changes unnecessarily cast doubt on the impartiality of the selection process and increased the risk that the city did not select the most appropriate vendor to meet its needs. Finally, Irvine's RFP anticipated the possibility of additional work. This all but guaranteed that the firm it selected for the park review would also receive a second, no-bid contract instead of Irvine conducting another competitive process to ensure that it obtained the best value for its contract.

<sup>1</sup> The AICPA is the national organization that promotes and maintains professional standards of practice for certified public accountants.

***The type of engagement—consulting services—for which Irvine ultimately contracted was not nearly as rigorous an assignment as the descriptions of the park review the city council conveyed publicly.***

***Irvine’s Request for Proposal Did Not Ask Consultants to Use Audit Standards Appropriate for Achieving the City’s Goals for the Park Review***

In seeking consultants to conduct the park review, Irvine did not specify in its RFP that these firms needed to follow standards and procedures that would result in the thorough, independent evaluation of Great Park contracts that the city council members had described to the public. In January 2013, the city council unanimously approved the development of an RFP for a comprehensive contract compliance and forensic audit; however, the RFP it approved in March 2013 called for a performance review of certain contracts associated with the development of Great Park. In that city council meeting, as well as in subsequent meetings and in the media, council members referred to the review using various terms, including *performance audit*, *contract compliance review*, *forensic audit*, and *audit*. The term *audit* appears frequently in meeting minutes and in media references to the park review even though the RFP did not ask for an audit. Indeed, the word *audit* appears only in the section of the RFP requesting information on bidding firms’ experience and qualifications and not in the title or scope of services. The type of engagement—consulting services—for which Irvine ultimately contracted was not nearly as rigorous an assignment as the descriptions of the park review members of the city council conveyed publicly.

Although the mayor and both subcommittee members stated that the purpose of the review was to determine how Irvine had spent the money for Great Park, Irvine chose to contract for the park review using standards that were not the most applicable for achieving its goals. The RFP the city council approved did not indicate which standards the city would require; however, in response to questions from potential bidders on the RFP, which an addendum to the RFP memorialized, city staff stated that consultants would use AICPA consulting standards to perform the park review. According to those consulting standards, such services include advisory, staff, and other support services, and they are separate from audit services. Thus, consulting standards are not rigorous enough for the type of contract review Irvine was seeking to procure.

The auditing industry has professional standards that outline practices designed to ensure that auditors perform their work to a certain level of independence and quality. For example, according to government auditing standards issued by the Comptroller General of the United States and published by the U.S. Government Accountability Office, government auditing is essential to providing accountability to legislators, oversight bodies, others charged with governance, and the public. These professional standards—commonly referred to as *generally accepted government auditing standards* (GAGAS)—state that audits provide an independent, objective, nonpartisan assessment of the stewardship, performance, or cost of government

policies, programs, or operations, according to the type and scope of the audit. Further, the AICPA promotes and maintains various professional standards for its members, depending on the type of engagement. State law also requires local government auditors to use either GAGAS or standards promulgated by the Institute of Internal Auditors, an industry member association, when conducting audit work. The California State Auditor's Office performs its work in accordance with GAGAS. Table 3 on the following page outlines levels of professional standards related to auditing and auditors and key requirements included in those standards. As the table shows, the standards Irvine required HSNO to follow in the park review are not nearly as robust as others, such as GAGAS.

When we inquired of the subcommittee members about the decision to have the park review conducted in accordance with AICPA consulting standards, one member stated that the subcommittee did not discuss the audit industry standards, and the other explained that she was not familiar with audit standards. Further, current city staff could not explain why Irvine chose to have the park review conducted under consulting standards. We find it puzzling that Irvine decided to use these standards given that the city had contracted for a review of Great Park, published in 2012, in which the firm used AICPA standards called *agreed-upon procedures* and given that the city's financial auditors reported that they conduct their annual audit according to GAGAS. A former city employee who worked with the subcommittee member who proposed the park review stated that he recommended the park review be done according to agreed-upon procedures, which, as Table 3 notes, is a higher standard.

Based on statements in city council meetings and the original council action requesting an audit, Irvine would have been better served had it directed consultants to conduct the park review using standards that require independence. During the January 2013 meeting in which the city council considered the request to approve the park review, four of the five council members explicitly stressed the importance of an independent audit. However, as Table 3 indicates, consulting standards do not require independence. According to the AICPA, independence means the absence of relationships that may appear to impair an auditor's obligation to be impartial, intellectually honest, and free of conflicts of interest. In fact, one firm that had worked with Irvine in the past sent a letter to city staff stating that it declined to bid on the park review because it believed that consulting standards would reduce its ability to operate as a neutral, independent analyst. That firm stated it would find it difficult, if not impossible, to render an objective opinion that would not favor certain stakeholders, leaving the resulting report subject to criticism. By selecting consulting standards rather than more rigorous standards, Irvine increased the risk that the park review would lack an appearance of independence.

***Irvine would have been better served had it directed consultants to conduct the park review using standards that require independence.***

**Table 3**  
Comparison of Selected Professional Standards With Those Chosen by the City of Irvine for the Orange County Great Park Review

SELECTED STANDARDS	AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (AICPA) STANDARDS FOR CONSULTING SERVICES IRVINE REQUIRED HAGAN, STREIFF, NEWTON & OSHIRO, ACCOUNTANTS, PC (HSNO) TO USE THESE STANDARDS FOR THE PERFORMANCE REVIEW OF ORANGE COUNTY GREAT PARK CONTRACTS IN 2013	AICPA STANDARDS FOR ATTESTATION—AGREED-UPON PROCEDURES ENGAGEMENTS IRVINE CONTRACTED IN 2011 FOR A REVIEW OF CERTAIN GREAT PARK CONTRACTS USING THESE STANDARDS	GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS (GAGAS)* STATE LAW REQUIRES AUDITS CONDUCTED BY PUBLIC AGENCY EMPLOYEES—OR ENTITIES THAT CONDUCT AUDIT ACTIVITIES OF PUBLIC AGENCIES—TO USE EITHER OF THESE STANDARDS	INTERNATIONAL STANDARDS FOR THE PROFESSIONAL PRACTICE OF INTERNAL AUDITING—ASSURANCE SERVICE†
Review requires objectivity, which is the obligation to be impartial, intellectually honest, and free of conflicts of interest	✓	✓	✓	✓
Review requires independence, which precludes relationships that may appear to impair objectivity		✓	✓	✓
The auditor is to withdraw from the engagement if the auditor encounters limitations on its scope or inquiry		✓ (or auditor may report limitations)	✓ (or auditor may report limitations)	✓
Guidelines exist for communicating and conducting the engagement with the person or group being audited and with management or those charged with governance, or the party that engaged the practitioner		✓	✓	✓
Practitioner is required to prepare and maintain audit documentation that supports the report		✓	✓	✓
Report must state standards used, including limitations on scope of work, reservations, and report's intended audience		✓	✓	✓
Subject to external assessment or peer review		✓	✓	✓
Auditor independently develops the audit procedures			✓	✓
Practitioner develops the procedures or services performed solely by agreement with client	‡	‡		

Sources: The standards listed on this table as well as the review by the California State Auditor (State Auditor) of certain contracts Irvine entered into with private firms to conduct reviews related to Orange County Great Park.

\* State law requires the State Auditor to conduct its performance audits in accordance with GAGAS.

† The International Standards for the Professional Practice of Internal Auditing is the standards framework issued by the Institute for Internal Auditors.

‡ Under these standards, the practitioner and the specified parties agree upon the procedures to be performed, and the practitioner does not render an opinion or overall assurance of level of risk but only makes conclusions based on the performance of procedures agreed upon with the client.

In addition, consulting standards do not require that firms receive peer reviews. According to GAGAS, peer reviews allow trained auditors from other audit organizations to examine a firm's quality control systems, which are designed to ensure high-quality work and the firm's compliance with applicable professional standards. Irvine's RFP asked bidders to submit information related to their most recent peer review. However, three of the five firms bidding on the project, including HSNO, which ultimately won the contract, had not undergone a peer review. According to HSNO's proposal, because the firm performs strictly forensic audits, it is not subject to peer reviews.<sup>2</sup> Having appropriate quality controls in place is critical to ensuring that a firm will produce work that will withstand scrutiny and uphold industry standards.

Furthermore, Irvine's decision to have the park review conducted using consulting standards also allowed for noncommunication and a lower assurance of accurate conclusions in at least one report. GAGAS requires performance auditors to obtain and report the views of responsible officials of the audited entity concerning the findings, conclusions, and recommendations in the audit report as well as any planned corrective actions. GAGAS also explains that providing a draft report with findings for review and comment by responsible officials helps the auditors develop a final report that is fair, complete, and objective; and it offers the auditors the opportunity to evaluate the comments or to modify the final report as necessary. Irvine staff stated that HSNO did not communicate any findings or recommendations to them before it delivered its first report to the city in January 2014. Further, we noted that HSNO was the only firm that did not explain in its proposal for the park review project how or whether it would communicate its findings and conclusions with Irvine's staff during the audit.

Operating under standards requiring this type of communication with city staff or the city council would have helped identify a faulty conclusion that caused a great deal of unnecessary publicity. In its January 2014 report, HSNO concluded that the vast majority of tax increment revenue, a key component of the expected Great Park financing, had not been remitted to the Great Park Fund. Specifically, HSNO stated that Great Park had not received \$38 million of these funds and that HSNO had attempted to determine how the funds were used, but reported that city staff told the firm that doing so was not within the scope of the park review contract. Nevertheless, HSNO reported on these funds in its January 2014 report. This finding led to numerous unnecessary

***Irvine's decision to have the park review conducted using consulting standards allowed for noncommunication and a lower assurance of accurate conclusions in at least one report.***

<sup>2</sup> According to the AICPA, *forensic accounting services* generally involve applying specialized knowledge and investigative skills; collecting, analyzing, and evaluating evidential matter; and interpreting and communicating findings in the courtroom or in other legal or administrative venues. However, there are no industry standards for forensic audits.

reports by the media and others regarding concerns about the use of the funds. Subsequently, city staff was able to demonstrate how the city accounted for the funds. Had Irvine required HSNO to follow standards requiring it to communicate its intention to report what it believed to be missing funds as a finding and to obtain feedback from Irvine before HSNO publicly issued its report, staff would have had the opportunity to provide the missing information, thus avoiding both damage to the credibility of the report and unnecessary criticism of Irvine and HSNO.

Finally, Irvine did not ensure that Aleshire & Wynder, LLP (Aleshire)—a law firm Irvine commissioned to assist with the park review—followed any particular standards. In its March 2015 report, HSNO stated that it followed consulting standards of the AICPA; however, Aleshire’s March 2015 report made no such claim. Nevertheless, Aleshire titled its report *Great Park Audit*, which refers to the review as an audit. Further, Aleshire stated that it and HSNO conducted the park review in accordance with a section of an agreement with the Great Park Design Studio—described in the Introduction—that referred to the city being able to conduct a “performance and financial audit” of that agreement.

***Had the park review been conducted according to GAGAS, an audit firm and not a law firm would have remained in the lead role.***

Had the park review been conducted according to GAGAS, an audit firm and not a law firm would have remained in the lead role. GAGAS allows auditors to seek the assistance of specialists, such as attorneys, when the need arises. In fact, according to its contract and to statements in its March 2015 report, Aleshire’s role was to provide legal services to facilitate HSNO’s work and to assist HSNO; however, as we discuss later in the report, Aleshire took the lead in the park review.

An internal auditor could have provided critical assistance and guidance during the park review, including guidance related to the use of appropriate audit standards. State law requires cities with aggregate spending of \$50 million or more to consider establishing an ongoing audit function, which may be accomplished by establishing an internal auditing office within city government. The Association of Local Government Auditors states that an internal auditor function provides many benefits, including enhancing accountability to taxpayers, building credibility with residents, helping ensure that public funds are spent only in the public interest, and providing an independent and objective perspective so that decisions to spend public funds involve balanced and extensive information. As a knowledgeable resource on audit standards and compliance, an internal auditor could have ensured that Irvine required HSNO to complete the park review using a more robust set of standards than consulting standards. Further, an internal audit function could have conducted the park review itself, or it could have ensured that audits performed by an external auditor

had an appropriate scope and that contracts were subject to rigorous monitoring. Such activities could have eliminated the expressed concerns of the city manager and one subcommittee member about the appearance of a conflict of interest that prevented staff from helping to manage the park review and simultaneously functioning as subjects of that same review. When we asked the city manager if Irvine had ever considered implementing an internal audit function, he stated that it had not done so during his more than 10 years as city manager.

Certain cities with characteristics similar to those of Irvine have internal audit functions. Of the top 10 fastest-growing cities—by numeric increase in population—in California in 2015, only Irvine and Bakersfield do not. Further, other cities with a similar population size as that of Irvine have internal audit functions, including Berkeley, Glendale, and Anaheim; Berkeley, like Irvine, also has a University of California campus and annual expenditures comparable to Irvine's annual expenditures. Moreover, the city of Riverside has an internal audit function, a population size similar to that of Irvine, and also is home to a University of California campus. As noted earlier, when conducting their work, internal auditors employed by cities must abide by GAGAS or standards issued by the Institute of Internal Auditors.

### ***Irvine's Selection Process Had Flaws and Lacked Transparency***

By not fully publishing and adhering to selection criteria for bidders of the park review, Irvine did a disservice to bidders, and in our judgment it compromised the impartiality and transparency of the selection process. Specifically, Irvine modified and finalized its selection and evaluation process after it had accepted and reviewed bidders' proposals and interviewed selected firms. In doing so, the city revised the scores it initially gave the proposal from one firm—HSNO—and chose to make interview performance a significant deciding factor in selecting the firm for the park review contract. By changing its selection criteria and the weight it gave to them without notifying potential bidders and after it had completed its evaluation of bidders, we believe Irvine cast significant doubt on the fairness and impartiality of its selection of HSNO as the park review consultant. Based on our analysis of the RFP's requirements and the city's selection process, Irvine also increased the risk that the city did not select the most qualified vendor to meet its needs.

For reasons it could not adequately explain, Irvine modified its selection and evaluation process after it had accepted bidders' proposals and interviewed potential consultants for the park review, and this adjustment strongly favored Irvine's selecting HSNO as the consultant to conduct the review. According to a city memo, the subcommittee worked with city staff to complete the RFP that the

***Irvine modified and finalized its selection and evaluation process after it had accepted and reviewed bidders' proposals and interviewed selected firms.***

city council approved in March 2013. The process for reviewing bidders' proposals for the park review consisted of two phases, the second of which was a modification that the RFP did not indicate would be part of the selection criteria. First, city staff reviewed and rated all five bidders' proposals that the city received in response to the RFP. In the second phase, an interview panel consisting of the two subcommittee members and the then-director of administrative services, conducted interviews with the top four firms. The city then combined the ratings from the interviews with the scores of the bidders' proposals and identified HSNO as the highest-rated firm. In a memorandum requesting approval to award the park review to HSNO, city staff also stated that they reviewed and compared HSNO's pricing with that of the other bidders and determined it was fair and reasonable. In June 2013, the city ultimately identified HSNO as the highest-rated firm and initiated a contract with HSNO. The firm would not have secured the highest score, however, if the city had not added the interviews of certain bidders to the selection process—a step in the process that the city's purchasing agent described as rare. However, she noted that the city has used interviews for projects and services such as city attorney services, a design-build project, information technology, and other professional services when there was a need to learn more about the bidders' project approach and to gain clarification related to their written proposals.

#### **Irvine's Contract Selection Guidelines for Evaluating Proposals Submitted for a Particular Contract**

- Compliance with the request for proposal
- References
- Understanding of the project
- Methodology and management approach
- Time allocated to various staff
- Availability of facilities and equipment
- Experience of firm
- Qualifications of project manager
- Proximity of base of operations
- Price
- Criteria specific to the scope of work for a particular project

Source: Irvine's Service Contracting Guideline Manual.

This addition to the city's selection process not only allowed the subcommittee members to participate in the selection of a firm for the park review, but it also yielded evaluation measures inconsistent with those listed in the RFP. As the text box shows, Irvine's Service Contracting Guideline Manual (contracting manual) sets forth criteria by which the city should evaluate firms bidding for requested services. That contracting manual further states that to score firms' proposals, a selection team should use a standardized rating sheet that corresponds to selection criteria outlined in the relevant RFP. The park review's RFP stated that Irvine would evaluate the proposals based upon the data presented in response to the RFP and that it would assess proposals based on qualifications, experience, references, methodology, and responsiveness to the RFP. Given these documents, we were surprised to find that the city later decided to base a significant portion of its evaluation of bidders on their performance in the interview, when the interview was not listed in the RFP as something on which bidders would be evaluated.

Although the RFP stated that the city “may” interview the highest-rated firms, it did not explicitly list interview performance as one of the selection criteria. Although the city is not bound by the *State Contracting Manual*, the manual’s requirements illustrate best practices in this area. According to the *State Contracting Manual*, RFPs should contain a description of the factors that agencies will use in proposal evaluation and contractor selection, and the manual specifies that agencies may not change or add to these factors after distributing the RFP without adequate notice to all potential bidders. However, Irvine did not provide such notice when it decided to include interview performance in its selection criteria. As a result, potential bidders—as well as the public—did not receive complete information in terms of the methodology Irvine would use to review bidders’ proposals. Neither city staff nor the subcommittee members who participated in reviewing the RFP, according to documentation we received, could explain why it did not specify interview performance as a selection criterion or why Irvine did not notify potential bidders of the change.

Irvine’s decision to add the bidder’s interview performance—a criterion for which HSNO earned perfect scores from all three members of the interview panel—also caused city staff to modify its evaluation methodology of bidders’ proposals. Irvine’s contracting manual states that the city should determine each criterion and assign it a weight *before* reviewing bidders’ proposals.<sup>3</sup> Although Irvine specified in the park review RFP the selection criteria that it would use to evaluate bidders’ proposals, it did not indicate the weight each criterion would carry in the city’s overall rating of those proposals. Irvine’s purchasing agent, who oversees the contracting of all equipment and services, stated that the city’s standard practice is to include in its RFPs the weights for each selection criterion. In fact, a draft version of the park review RFP included weights for each selection criterion, none of which was an interview. The purchasing agent recalled, however, that she was advised to remove the weights from the park review RFP. Because Irvine omitted the weights that the selection criteria would carry in the city’s evaluation of bidders’ proposals for the RFP, Irvine did not properly inform bidders and the public about the methodology it would use to evaluate the proposals. *After* it conducted the interviews of the top-rated firms, Irvine finalized its weighting methodology for the selection criteria, and the interview became the most significant component, representing one-third of the total evaluation score. The city’s purchasing agent, who was not involved in the selection process, could not explain why interview performance became the most heavily weighted selection criterion.

***Because Irvine omitted the weights that the selection criteria would carry in the city’s evaluation of bidders’ proposals for the RFP, Irvine did not properly inform bidders and the public about the methodology it would use to evaluate the proposals.***

<sup>3</sup> Irvine uses weights—percentages factored into numeric scores—to assign greater importance to certain criteria, such as the firm’s experience or references, when evaluating proposals.

Nonetheless, both subcommittee members indicated that HSNO presented a more comprehensive and experienced ability to complete the park review and the then-director of administrative services also stated that HSNO made a great presentation. This perspective—coupled with the fact that the city finalized its weighting of the selection criteria after it had conducted its interviews—casts doubt on the impartiality and transparency of the evaluation process.

In addition to the concerns raised about the park review's selection methodology, the interview process itself raised questions about whether Irvine evaluated bidders according to the needs expressed in the RFP. The RFP's scope of services stated that after receiving the findings in the consultant's final report, city staff or the subcommittee could determine whether the consultant needed to perform additional procedures, including those of a more forensic nature. However, in response to questions from potential bidders after the RFP's distribution, Irvine stated that the park review would not be forensic in nature. Nevertheless, the interview questions included one inquiring whether the bidder planned on using a forensic auditor during the park review and in what capacity. Further, according to our review of the questions the interview panel prepared for each bidder, the panel specifically asked one of the two firms whose proposals the city rated the highest to describe its forensic auditing experience. The interview panel rated this firm's interview performance notably lower than that of HSNO, a firm that specified in its proposal that it strictly performs forensic audits. Had Irvine chosen to make its desire for a forensic examination clear, firms such as the one questioned about its forensic auditing experience might have structured their proposals differently, and other firms might have chosen to bid on the RFP, potentially resulting in a different firm chosen to conduct the park review.

Irvine rated HSNO higher than other bidders in part because city staff substantially increased the firm's scores after the interview phase. During the first phase, the initial review of bidders' proposals, city staff rated HSNO's proposal as tying for third among the five bidders, with HSNO receiving about 80 percent of the points that the first- and second-place candidates received. However, after the modification adding the second phase interviews, the scores for HSNO's proposal notably increased—by about 12 percent—whereas the scores for the other proposals remained unchanged. When we asked Irvine's purchasing agent why the scores for HSNO increased, she recalled that city staff who conducted the review of the proposals initially thought that HSNO's proposed scope of work did not align with the scope of work specified in the RFP. She stated that after the interview phase, however, the raters probably increased their scores of HSNO's

*After the modification adding the second phase interviews, the scores for HSNO's proposal increased by about 12 percent, whereas the scores for the other proposals remained unchanged.*

proposal in certain areas because they had a better understanding of the firm's proposed work and believed it enhanced the RFP's scope of work.

Our review further found that HSNO did not provide references that met the standards the city's RFP required. The RFP stated that proposals must include three references for similar work that the bidder and its proposed team had done within the last three years. However, staff raised concerns that two references that HSNO initially listed in its proposal did not align with the requirements set forth in the RFP. Email correspondence between HSNO and city staff indicated that one of HSNO's three references related to work completed before the three-year time frame. This same correspondence further indicated that another of HSNO's references related to work completed primarily by firm members who would not be working on the park review team. When we asked the purchasing agent about HSNO's seemingly substandard references, she indicated that city staff accepted different references and that reference checking was performed at the end of the selection process to verify that HSNO provided good services to its clients. However, we question this explanation given that the selection criteria in the RFP stated that references would be one of the criteria upon which proposals would be scored. Further, based on email correspondence, it appears that Irvine only attempted to verify the adequacy of HSNO's references after it began discussing the nature of the park review with HSNO, which raises additional concerns about the impartiality and transparency of Irvine's selection of HSNO.

In changing its selection methodology, Irvine made HSNO the top rated-firm for the park review. By deciding to increase its initial scoring of the firm's proposal and include interview performance as one-third of its overall evaluation, Irvine ensured that HSNO received the highest score of all bidders. Had Irvine adhered to its original selection criteria described in the RFP, HSNO would not have been selected as the most qualified firm.

In September 2014, Irvine updated its policies for its proposal review and selection process, and the changes address some of the issues we raised. For example, the new policies require that one or more of the individuals reviewing bids contact references for the highest-rated firms. Further, the procedures outline how Irvine will use interviews—which remain an optional part of the process—to rate bidders. However, the new procedures for interviews assign a separate score for the interview but do not indicate whether scores from the first part of the process—the proposal document review—may change as a result of the interview. Without this clarification in its policies and without notifying bidders through

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*The RFP that Irvine developed for the park review appeared to encourage bidders to consider the possibility of work beyond the original scope of services.*

the published RFP about the complete process the city will use to evaluate bids, Irvine risks using a selection process that is less than fair and impartial.

***Irvine's Contract With HSNO All But Ensured That the Consultant Would Receive a Second, No-Bid Contract***

The RFP that Irvine developed for the park review appeared to encourage bidders to consider the possibility of work beyond the original scope of services. Ultimately this situation contributed to a second contract for HSNO from Irvine for additional work, without HSNO having to compete with other firms for that work. In January 2013, the city council authorized \$250,000 for the park review. In March 2013, the city council approved the park review RFP, which led to Irvine's eventual selection of HSNO to conduct the work. In January 2014, HSNO released a report in which most of the 29 recommendations it made proposed that additional work be performed, such as analyses or review. In a subsequent meeting in January 2014, the city council approved a \$400,000 contract for HSNO to address a notable portion of this additional work. The council's approved motion provided HSNO with a new contract and scope of services without requiring HSNO to bid competitively for this contract. When the contractor is already familiar with the work it will need to accomplish, an agency or government approving a no-bid contract may be more efficient and cost-effective than soliciting a competitively bid contract. Nevertheless, in this case, Irvine structured its RFP in a way that encouraged the consultant to suggest the additional work.

Specifically, the RFP contained language suggesting that the possibility for additional work existed. The scope of services stated that the consultant might need to perform procedures of a more forensic nature depending on the findings in the consultant's final report. Further, the RFP stated that the minimum qualifications that firms had to possess were the capability and resources to perform all services named in the RFP. Those services included prospective forensic services, even though the first addendum to the RFP stated that the park review was not to be forensic in nature. In addition, the RFP's cost summary required each bidder to provide detailed pricing information—separate from the bidder's proposed budget for the park review—sufficient to allow flexibility in the event that a more advanced forensic review was required. The first addendum to the RFP reinforced this idea, stating that the council approved \$250,000 for the completion of the park review's scope of services and that bidders should include their rate structures in case the need arose for any additional forensic work. This focus on

additional forensic work strongly suggested to potential bidders that Irvine was prepared to appropriate additional funding for more work after completion of the initial scope of work.

Because Irvine's RFP included language that specified the potential need for forensic capabilities, the requirements in the RFP limited potential bidders and made it more likely that the city would be able to justify a sole-source contract for additional work from the winning bidder. Irvine's contracting policies and procedures state that the city may issue a contract without competitive bidding under certain circumstances, including the contractor's possession of a particularly strong background, history, or experience working on a particular type of project. By structuring the RFP in a way that helped ensure that the winning bidder possessed this strong background and experience, Irvine all but guaranteed that if the city required additional work, it could justify awarding a sole-source contract to the same firm after that firm completed the initial scope of services.

Although Irvine's purchasing agent asserted that structuring the RFP in this manner prevented the winning firm from having a distinct advantage in a future competitive bidding process, we disagree. By structuring the RFP to anticipate future work, Irvine encouraged the winning bidder to develop opportunities for such work, thereby giving the winning bidder an advantage in the event of a future competitive process or increasing the likelihood of a sole-source contract. The purchasing agent also stated it would have been inefficient to stop the review midway through the process to open it up for competitive bidding. However, if the first review was not a forensic review and subsequent work required such ability, it is possible that two separate firms would have provided better services to Irvine, with the first focusing on the contract performance review and the second doing a more in-depth examination of findings from the first review. By soliciting the procurement in a manner that all but assured a future sole-source contract for the winning bidder, Irvine missed the opportunity to solicit competitive bids for these services and ensure that the city received the best value for its procurement. Further, Irvine risked the possibility that the winning bidder would structure its work so as to promote the need for additional work through a sole-source contract.

Although Irvine followed a flawed selection process when it chose HSNO to conduct the park review, we found the city's processes for selecting the law firms involved in the park review to be reasonable. According to the city manager, Irvine typically does not solicit competitive bids for legal services except when selecting its city attorney. Further, state law relevant to local government procurement does not require competitive

***By soliciting the procurement in a manner that all but assured a future sole-source contract for the winning bidder, Irvine missed the opportunity to solicit competitive bids for these services and ensure that the city received the best value for its procurement.***

bidding for legal services. Finally, state entities that follow the *State Contracting Manual* are not required to obtain legal services through competitive bidding. Thus, we did not expect Irvine to go through a competitive process when obtaining special legal services for the park review.

Irvine retained two legal firms to assist with the park review. In March 2013, Irvine hired the firm of Jones & Mayer as the interim city attorney. While this firm was replaced later in the same year by another firm, Irvine chose to maintain Jones & Mayer as special counsel for the park review because the new city attorney declared that he had a conflict of interest related to the park review. Later in June 2014, Irvine replaced Jones & Mayer with another law firm—Aleshire. According to one of the subcommittee members, the subcommittee requested that the city manager hire a new special counsel for the park review because HSNO had stated that it had difficulty coordinating with Jones & Mayer's representative and suggested to the subcommittee that it needed a different legal team to support its review efforts. The city manager explained that the subcommittee, along with the other city council members, had previously interviewed several law firms that applied to be city attorney during the recent solicitation for those services. He indicated that based on this experience, the subcommittee was quick to conclude that Aleshire would be well suited for the park review. Although the city could lawfully award a contract to Aleshire without competitive bidding, we raise questions in the next section about the approval and growth of the budget for that firm's contract.

*Although the city could lawfully award a contract to Aleshire without competitive bidding, we question the approval and growth of the budget for that firm's contract.*

Finally, city staff stated that Irvine asked the two firms that provided legal services for the park review to subcontract with a private judge, a process the Joint Legislative Audit Committee requested we review. The contracts with its attorneys allowed for subcontracts with written city approval. According to Aleshire's March 2015 report, the judge provided advice to special counsel on procedures used in the park review, took two depositions, and reviewed status reports and preliminary drafts. Table 1 in the Introduction shows that the retired judge received about \$18,400 in total from both firms for her services.

### **Disjointed Contract Management Decreased Transparency Related to the Park Review's Cost and Scope, and It Also Led to Cost Overruns**

During the course of the park review, several actions by subcommittee members and staff undercut controls on contracts in the city's procurement policies and procedures. Specifically, Irvine did not ensure that Aleshire adhered to its scope of work during the park review, which led to its duplicating the work of HSNO and

producing a report that its contract did not require. Further, Irvine originally contracted with Aleshire for \$30,000, an amount city staff had the authority to approve. However, when the value of Aleshire's contract exceeded \$100,000, city policies required that the city council approve the contract, but the contract did not come before the council for consideration. Also, in July 2014, city staff divided a \$333,000 increase for the park review between HSNO and Aleshire, even though the council had not specifically directed staff to do so. These actions lacked transparency because Irvine did not make the public aware of how the city intended to use the funds or why the additional funds were necessary. Finally, both Aleshire and HSNO billed for work they claimed to have performed in advance of receiving city authorization to do so. When Irvine does not actively and effectively manage its contracts, it risks the possibility that—without key stakeholders' knowledge—consultants will perform and receive payment for unnecessary work.

***Irvine Did Not Ensure That Its Legal Counsel for the Park Review's Second Phase Stayed Within Its Approved Scope of Work***

Although the contract specified that Aleshire would act in a supportive role to HSNO, Irvine allowed Aleshire to take a lead role in conducting the second phase of the park review, a decision that ultimately led to Aleshire's producing its own report that it was not contractually obligated to complete. In a city council meeting in July 2014, one member of the subcommittee stated that Aleshire would be taking the lead role in the second phase of the park review. In addition, the subcommittee members stated that they believed Aleshire was managing HSNO's work, and the city manager acknowledged in email correspondence that Aleshire would provide primary audit leadership. However, the city council resolution in January 2014 initiating the second phase of the park review directed HSNO to perform the investigation and noted that special counsel would assist HSNO in its work by preparing and issuing subpoenas. The resolution further directed special counsel to assist the subcommittee. Moreover, when Aleshire took over as special counsel in June 2014, its contract directed it to facilitate HSNO's work. Nevertheless, according to the assistant city manager, city staff directed Aleshire to review and approve HSNO's invoices. Aleshire also presented on behalf of HSNO in certain city council meetings and in requests for increases to both Aleshire's and HSNO's budgets. In addition to HSNO's presenting its final report in March 2015, Aleshire presented its own report even though its contract did not include a written report as a deliverable. By allowing Aleshire to operate beyond the stated scope of its contract, Irvine lost the ability to manage the work and it paid for unnecessary services.

***By allowing Aleshire to operate beyond the stated scope of its contract, Irvine lost the ability to manage the work and it paid for unnecessary services.***

Aleshire also duplicated HSNO's work in several instances. For example, in one section of its March 2015 report pertaining to contract formation and administration, Aleshire concluded that from the beginning of the Great Park project, appropriate city requirements concerning bidding and sole-source contracts were not followed consistently. This type of examination was a required element of HSNO's scope of work and therefore duplicative. In multiple cases, the two reports covered the same ground: Both reports criticized the Great Park project for having excessive change orders, both criticized Irvine's decision to hire the group of consultants charged with designing Great Park, and both criticized the lack of evidence for the amount of work a public relations firm performed. The two consultants also cited information about the inappropriate influences of one contractor and a former city council member on the project, and both criticized that same council member for underestimating the cost of Great Park.

Because Irvine did not ensure that Aleshire's contract reflected the full scope of the services that the city allowed the consultant to perform, it further increased the risk that the firm would conduct unnecessary or unwanted work that was unknown to the full city council or the public. Although Aleshire's contract did not mention producing a written report, it did allow Aleshire to draft documents, including subpoenas and opinions, as part of its work. However, the contract specifically included these allowances in the context of facilitating HSNO's work, and it did not direct Aleshire to manage HSNO or to assume any of HSNO's audit responsibilities under its scope of work. However as we mentioned previously, the members of the subcommittee stated that they believed the legal firm was managing HSNO. If Irvine had intended that Aleshire manage HSNO and that Aleshire would take the lead role and produce its own report on the park review, the city should have stated this intention explicitly in the contract with Aleshire.

***If Irvine had intended that Aleshire manage HSNO and that Aleshire would take the lead role and produce its own report on the park review, the city should have stated this explicitly in the contract with Aleshire.***

The ability of Aleshire to exceed its scope of services was also a result of the disjointed approach that Irvine took in managing the consultant's work. First, the city council did not reconcile the language in its resolution that directed the city manager and staff to cooperate with the subcommittee with provisions in the city charter and city ordinances that give the city manager a strong oversight role in all aspects of city administration. Because of that, the city council placed the city manager in a conflict; he had both a cooperative role, which implied taking direction from and heeding the direction of the subcommittee, and the stronger oversight role outlined in the city charter and ordinances. According to the city manager, he understood he was not to direct Aleshire and he did not recall making changes to Aleshire's scope of services. He explained that the city council resolution directed him and his staff to cooperate fully with the investigation as overseen by the

subcommittee, and this left no doubt as to who was leading the park review. In his view, the park review was exclusively the province of the subcommittee.

However, the two subcommittee members gave us conflicting answers when we asked them whether they were overseeing the park review. In particular, one member stated that the subcommittee's function was to oversee the park review, while the other explained that the overall direction and work of the park review was determined by HSNO and Aleshire because the two consultants reviewed documentation, conducted interviews, and wrote the reports. Furthermore, the city's contract with Aleshire specified that the city manager was the city representative responsible for Aleshire's contract and he was to provide prior written approval for any tasks or services Aleshire performed outside of the scope of services. If Irvine had not intended for the city manager to be the primary manager for Aleshire, it should have ensured that the contract had a representative other than the city manager who could perform that function. This designation would have allowed Irvine to better manage the relationship between the two firms, to ensure that the public was informed about each firm's role in the second phase of the park review, and to confirm that Aleshire's work did not exceed the contract's scope of services. Instead, the firms performed a substantial amount of overlapping work and came back to the city council several times for budget increases, ultimately leading to the city council's refusal to pay for some work, as we describe in the next section.

***Irvine Did Not Ensure That Consultants Performed Only Work That It Had Previously Authorized***

HSNO and Aleshire both billed Irvine for work they stated they performed before they received formal authorization to do so. Irvine's policies allow contractors to perform work only after the city issues a purchase order authorizing the expenditure of funds and only up to the purchase order's limit. Additionally, both HSNO's and Aleshire's contracts stated that no work would be performed before the receipt of a signed purchase order. However, in some instances beginning in June 2014, both consultants billed beyond their authorized limits. By not managing and enforcing the terms of the contracts, Irvine risked its consultants performing unnecessary work. Additionally, the consultants risked performing work for which they would not be compensated.

HSNO billed Irvine for work beyond its authorized limit in June 2014. Specifically, as we explained earlier, the city council approved a \$400,000 sole-source contract for HSNO in January 2014, which Irvine funded by issuing a purchase order in early February 2014.

***Both HSNO's and Aleshire's contracts stated that no work would be performed before the receipt of a signed purchase order from the city; however, both consultants billed beyond their authorized limits.***

According to its invoices, HSNO had performed \$400,000 in work by early June 2014, more than a month before staff allocated additional funds for HSNO in late July 2014. Irvine issued a warning to HSNO in June stating that the firm was not authorized to perform work that exceeded \$400,000 without city council approval, explaining that any work HSNO performed above its contract amount would be done at its own risk. Nevertheless, according to subsequent invoices, HSNO exceeded its \$400,000 budget by \$35,000 before receiving \$78,000 in additional funds in July 2014 as part of a \$333,000 appropriation that was split between HSNO and Aleshire. Irvine paid for the work that it had not previously authorized out of the new allocation.

Aleshire also billed Irvine for unauthorized services almost as soon as it began work on its contract for the park review. In mid-June 2014, Irvine contracted with Aleshire for \$30,000 to facilitate HSNO's work on the second phase of the park review. However, according to its invoices, Aleshire had already performed roughly \$30,000 in work by the date of the city's purchase order funding the contract. Aleshire's contract indicated that some work completed before execution of the contract would be considered within the scope of the contract, and according to the purchasing agent, Irvine needed Aleshire's services quickly and there was not enough time to perform the normal process of issuing the contract and purchase order in advance of commencing work. Even though, according to its invoices, it had expended its original \$30,000 contract amount, Aleshire continued working. Aleshire billed more than \$77,000 beyond its initial authorization by the time it received additional spending authority of \$255,000 at the end of July 2014 and had exceeded the July 2014 increase in spending authority by more than \$119,000 as of December 2014.

***Neither Aleshire nor HSNO adhered to the billing terms of their contracts, and Irvine did not enforce these terms, which contributed to the consultants' abilities to work beyond the authorized amounts of their respective contracts.***

Neither Aleshire nor HSNO adhered to the billing terms of their contracts, and Irvine did not enforce these terms, which contributed to the consultants' abilities to work beyond the authorized amounts of their respective contracts. Although their contracts required monthly invoices within 15 days of the end of each month in which services had been provided, both firms submitted some of their invoices late. For example, in 2014 HSNO did not submit its invoice for July until September and Aleshire did not submit its invoice for June until August. Aleshire also waited until the end of March 2015, after the firm had completed its park review report, to submit an invoice for its work in October and November 2014. In addition to violating the terms of the contract, late invoices prevented Irvine from adequately monitoring these consultants to ensure that they were performing work as expected.

Additionally, confusion occurred over who was managing the consultants. According to the city manager, staff would ordinarily be able to order a consultant to stop work if the consultant was not authorized to perform that work. However, he explained in email correspondence with the subcommittee members that the park review presented unique challenges. For example, he noted that staff were subjects of the park review and would not be in an ideal position to review and approve these two consultants' invoices, implying that there would be a conflict of interest for them to do so. To address this concern, Irvine staff created a process for the subcommittee members to review the consultants' invoices. Further, according to the assistant city manager, Aleshire reviewed HSNO's invoices before they were forwarded to the subcommittee for approval.

Although the subcommittee began receiving the consultants' invoices in July 2014, the subcommittee was not managing the consultants' budgets. According to city staff, the invoice approval process involving the subcommittee was intended to provide an extra level of review. However, the process did not require the subcommittee to approve the expenditures. Instead, staff informed the subcommittee that Irvine staff would go ahead and pay the invoices unless the subcommittee objected. According to the city manager, staff members chose to use this structure to ensure that they would still be able to pay the invoices in a timely fashion should the subcommittee members not promptly respond. However, the subcommittee was not able to review all of the invoices. Irvine did not receive some of the invoices for work performed during the existence of the subcommittee until after the city council had dissolved the subcommittee. Moreover, one of the two subcommittee members asserted that she did not review any of the invoices. Also, the assistant city manager told us that she did not recall ever receiving a response from the subcommittee regarding the invoices. Staff members were therefore able to pay the invoices without approval from the subcommittee, and this situation rendered the subcommittee's review, if it took place at all, irrelevant.

Moreover, management of HSNO's invoices was ineffective. Although Irvine tasked Aleshire with reviewing HSNO's invoices, HSNO nevertheless continued to submit invoices late and continued to perform work beyond its spending authority. The lack of a specific manager who reviewed and approved invoices from both HSNO and Aleshire increased the risk of confusion regarding the review and approval process and made it difficult to determine who was responsible for overseeing the consultants.

*The lack of a specific manager who reviewed and approved invoices from both HSNO and Aleshire increased the risk of confusion regarding the review and approval process and made it difficult to determine who was responsible for overseeing the consultants.*

*Irvine allowed its contractors to perform work in advance of contract execution or other authorization and did not enforce the terms of their contracts, thereby incurring expenses it would not have needed to incur.*

Both consultants continued to work beyond their authority to do so and ultimately performed work for which they were not compensated. By the end of June 2015, Aleshire had billed more than \$200,000 beyond its authority, and HSNO had billed \$67,000 beyond its authority. Subsequently, the city paid \$5,000 for a legal opinion from a separate law firm to advise it regarding payment of those invoices. In the end, city staff recommended—and the city council approved—payment only to Aleshire, and only for approximately \$56,000 for services that the city did not originally foresee or request. When Irvine allowed its contractors to perform work in advance of contract execution or other authorization and did not enforce the terms of their contracts, it incurred expenses it otherwise would not have needed to incur, such as the \$5,000 legal opinion.

#### ***Irvine Did Not Obtain City Council Approval When It Authorized a High-Value Contract for Special Counsel***

Irvine's city council did not review and approve a contract for Aleshire that exceeded the contracting authority of city staff. Irvine's contracting policies and procedures allow the city manager—without city council authorization—to approve contracts greater than \$30,000 and less than \$100,000 for which the city council has not already approved funding in the budget; the city council must approve contracts exceeding \$100,000. In June 2014, the city manager signed a contract with Aleshire to provide legal services related to the second phase of the park review. The contract did not specify a maximum amount; however, city staff authorized a purchase order for \$30,000 and according to the contract, purchase orders would authorize the not-to-exceed value for the contract. According to Irvine's purchasing agent, such contract language is not typical, and the preparation of the contract was rushed. She explained that the assistant city manager asked her to complete the contract and required contract issuance procedures within one day. The city manager stated that Irvine had an urgent need to hire special counsel for the park review because the city had terminated its agreement suddenly with its previous special counsel, Jones & Mayer. Nevertheless, we question why Irvine did not subsequently modify the scope of services or add a maximum budget in its contract with Aleshire. The omission of the maximum amount of the contract contributed to Irvine's failure to obtain the appropriate approvals for the contract.

A subsequent action by city staff caused the value of Aleshire's services to rise above the threshold requiring city council approval. In July 2014, Irvine staff allocated \$255,000 to Aleshire from funds the city council approved for the park review, even though the city council action did not specify an increase to Aleshire's funding

beyond \$100,000. Staff issued a revised purchase order increasing Aleshire's spending authority from \$30,000 to \$285,000. Because this amount increased the total value of Aleshire's contract to more than \$100,000, consistent with Irvine's contracting policies and procedures, Aleshire's contract should have come before the city council for approval, but it did not. The purchasing agent explained that because the contract did not specify a maximum amount and had no change to the scope of services or contract term, it did not require an amendment and the funding increase was authorized through a revised purchase order. However, we question this staff decision because Irvine's policies do not explicitly allow for or prohibit this exception, and the decision resulted in a contract with Aleshire worth \$285,000 at that time, a contract that had not been approved by the city council. Irvine's policies require only staff approval for purchase orders, whereas an amended contract requires approval by specified city staff or by the city council based on the dollar amount of the contract. In this case, to be consistent with the intent of its policies and procedures, we believe the city council should have reviewed and approved a contract amendment because the increased budget for the contract's value exceeded the threshold for city staff approval.

Further, Irvine did not adhere to an additional requirement for sole-source contracts. Irvine policy requires that the city council authorize sole-source contracts over \$100,000. Policies specifically note that when a revised purchase order requires a higher level of approval, city staff must seek that approval. The purchasing agent told us that a sole-source justification is ordinarily presented in a staff report accompanying the agenda item for city council action. However, according to the assistant city manager, the city council member who proposed the budget increase did not request that staff make such a report.

City staff was aware that they might need city council approval of the contract. Specifically, the city manager and assistant city manager stated that they presented two draft motions to the subcommittee member who requested the July 2014 budget increase. The first authorized the city manager to hire special counsel to assist the subcommittee, as well as specifying how much of a related budget increase would be allocated to the special counsel. The second only specified the recipients of the budget increase. According to the assistant city manager, the decision of city staff and the subcommittee member presenting the budget increase, which included consultation with counsel, was that neither of these explicit authorizations were necessary. The memo the subcommittee member submitted to propose the July 2014 budget increase did not include any documentation of Aleshire's contract and, according to the city clerk and our review of city council meetings, the contract did not appear in any materials

***The city council should have reviewed and approved a contract amendment for Aleshire because the increased budget for the contract's value exceeded the threshold for city staff approval.***

***Minimizing staff authority to engage in high-value contracts ensures that the city council will be able to review such contracts before the city commits its funds.***

presented to the city council in 2014. Nevertheless, not seeking council approval for a high-value contract is contrary to the spirit of Irvine's policy requiring such approval. Irvine's policy, if followed, ensures that the council is able to exercise its authority over the city's spending decisions and ensures that such decisions are made in an open and transparent manner.

Allowing the city to approve high-value contracts without public consideration by the city council limits transparency and suggests that staff and not the council made significant financial decisions without council or public scrutiny. Minimizing staff authority to engage in high-value contracts ensures that the city council, the body ultimately responsible for the city's finances, will be able to review such contracts before the city commits its funds. Although future increases in Aleshire's contract received council approval, the council never approved the contract itself. Ultimately, Aleshire's contract cost the city more than \$600,000. In fact, in a June 2014 city council meeting, a subcommittee member confirmed that the subcommittee had selected Aleshire, and in the subsequent July city council meeting, two council members were critical about the fact that they did not have information or input into hiring Aleshire. Although we do not question the legality of the contract, city council approval would have increased transparency by requiring consideration of the contract in a public forum and would have provided city council members with relevant information for certain funding decisions, as we describe in the next section.

***Irvine Increased the Budgets of the Two Consultants for the Park Review Without Adequate Explanation and Deprived the Public of Information About the Expenditure of Public Funds***

Irvine divided an increase in funding for the park review between the two consultants—HSNO and Aleshire—without specific direction from the city council. In July 2014, the city council approved a budget increase of \$333,000 to finalize the park review. Subsequently, in consultation with Aleshire and the subcommittee, city staff divided this appropriation, with Aleshire receiving \$255,000 and HSNO receiving \$78,000. However, neither the agenda nor the minutes from that city council meeting indicate that Irvine intended to split the appropriation. The submitted agenda item—a memo from one subcommittee member to the city manager—specifically requested a budget increase “to allow the Great Park auditor” to finalize the park review, and the memo specifically named HSNO as the auditing firm. Further, the official minutes of the meeting stated that the funds were for the Great Park auditor, and they specified HSNO. Thus, both the memo and the meeting minutes indicated that Irvine would provide the entire budget increase to HSNO. Based on our review of video of the

meeting, the actual motion as spoken by a subcommittee member did not specify who was to receive the money from the budget increase. However, we noted that one subcommittee member stated during discussion on the motion that the money would be going to finalize the park review, including to the legal team. Although that subcommittee member acknowledged that funds would be provided to legal counsel, discussion did not take place regarding the amount legal counsel or HSNO would receive.

Of further concern is that city staff deferred to Aleshire on how to divide the council's \$333,000 budget increase for the park review. As noted already, the agenda for the July 2014 meeting in which the city council considered the increase included a memo from a subcommittee member requesting the increase; however, that memo contained no indication of the amount, did not justify how much or why additional work was required, and did not describe how such work was beyond what was previously contemplated. Although Aleshire spoke of needing \$100,000 for design and construction experts to assist with the investigation, it did not justify to the city council the remainder of the budget increase for either itself or HSNO. Moreover, during a subsequent city council meeting, an attorney for Aleshire stated that the firm did not hire any outside experts; instead, it used the money for its own legal work such as taking depositions. After the council passed the budget increase, city staff stated in a memo to the subcommittee that Aleshire had asked them to allocate \$78,000 to HSNO and \$255,000 to Aleshire. The assistant city manager stated that because staff was not managing Aleshire's work, staff did not know Aleshire's work progress or how much funding it needed to complete its scope of work. The memo went on to state that staff would increase the consultants' budgets as Aleshire had requested, resulting in Aleshire's receipt of three-quarters of the total increase in funding.

Irvine's actions effectively meant that the city made a decision to increase the funding for these two consultants partially outside of the public eye. The lack of clarity in the city council's agenda, minutes, and discussion during the council meeting prevented the public from fully knowing how the council intended to spend these public funds. Finally, by allowing one of its consultants to decide on both the amount of a budget increase and how that increase would be distributed without also providing clear justification for the expenses and the distribution, the council deprived the public of information regarding the extent of the work on the park review and cannot demonstrate that it paid only for necessary work that it had requested.

*City staff deferred to Aleshire on how to divide the council's \$333,000 budget increase for the park review, resulting in \$255,000 to Aleshire and \$78,000 to HSNO.*

### **Creating an Unnecessary Park Review Subcommittee That Was Exempt From State Open Meeting Laws Compromised the Park Review's Integrity**

As already noted, the city council elected to form a two-member advisory subcommittee that it tasked with overseeing the park review; however, the city council did not adequately ensure that the subcommittee undertook its assigned activities. In fact, although we did not identify any evidence that the subcommittee acted beyond the bounds of an advisory committee, we found little evidence that it added any value to the park review. We believe Irvine would have been better served had the city council chosen instead to conduct its deliberations and decisions regarding the park review at hearings of a standing committee or at the full city council level in open meetings. Because it chose not to do so and because information about the subcommittee's activities is lacking, there is a lack of transparency regarding the park review.

Open meeting laws apply to a city council and its standing committees. State law authorizes a legislative body, such as a city council, to form from time to time temporary advisory committees that are exempt from open meeting laws. These committees must contain less than a quorum of members of the body and be advisory in nature. Advisory committees can be formed through charters, ordinances, resolutions, or other formal actions of a legislative body. Irvine used a formal motion when its city council formed the two-member subcommittee in January 2013 to work, along with city staff, with the selected park review consultant to receive periodic updates on findings and to bring information to the city council. The city council then amended the subcommittee's responsibilities through a January 2014 resolution to oversee the second phase of the park review. The city council also delegated subpoena power to the subcommittee.

*Because the subcommittee did not maintain any public documents regarding its activities and discussions, Irvine cannot demonstrate to the public the extent to which the subcommittee adequately carried out its assigned tasks.*

Because the subcommittee did not maintain any public documents regarding its activities and discussions, such as agendas or meeting minutes, Irvine cannot demonstrate to the public the extent to which the subcommittee adequately carried out its assigned tasks. State law exempts advisory committees, such as the subcommittee, from open meeting requirements, including the publishing of meeting dates and times and posting meeting agendas in advance. Both members of the subcommittee, as well as city staff, confirmed that they did not create agendas nor maintain official minutes of the subcommittee's meetings. According to a memorandum from the then-acting director of administrative services to a council member, the subcommittee met eight times before the issuance of HSNO's January 2014 report. According to one of the subcommittee members, the subcommittee only met once between the hiring of Aleshire in June 2014 and the issuing of the second

phase reports in March 2015. Irvine does not have documentation of the types of decisions, if any, the subcommittee made or the discussions that occurred. According to interviews we conducted of the subcommittee members and of selected city staff members as well as our review of minutes of city council meetings, we found no evidence that the subcommittee acted beyond its authority as an advisory committee, but equally important, we found little evidence that the subcommittee added value to the process.

Further, although the city council charged the subcommittee with overseeing the park review, Irvine contracted with outside law firms who, particularly during the second phase of the park review, undertook many of the oversight activities that the subcommittee should have performed. During the first phase of the park review, the subcommittee was to receive findings from HSNO and provide information to the city council. However, minutes of city council meetings indicate that the subcommittee did not report to the council during the first phase of the park review. During the second phase of the park review, the city council required the subcommittee to oversee the park review and ultimately to report to the full city council the results of the investigation. However, one subcommittee member stated that she understood Aleshire was the project manager over the park review because the contract indicated it was the project manager. Further, both subcommittee members stated that Aleshire was managing the work of HSNO. Nevertheless, as described previously, Irvine's contract with Aleshire specified that it was to facilitate the work of HSNO, not manage the firm's work.

We also found little evidence that the subcommittee advised the council. The role of an advisory body, in the context of open meeting laws, is generally described as counseling, suggesting, or advising. We expected to find evidence that the subcommittee, in accordance with its assigned responsibilities, had recommended to the city council that it consider taking certain actions regarding the park review, such as whom to subpoena, how much funding to provide to Aleshire and HSNO, and what objectives HSNO should be directed to investigate further. Although a memo from city staff to the city council indicates that the subcommittee participated in developing the initial RFP for the park review, there is no evidence in city council minutes that the subcommittee provided any advice to the council in 2013. In January 2014, the subcommittee did recommend to the city council that it authorize the second phase of the park review. However, subsequent to that meeting, proposals related to the second phase of the park review were not presented as recommendations by the subcommittee but as recommendations by either an individual city council member or Irvine's special counsel for the park review.

***We found no evidence that the subcommittee acted beyond its authority as an advisory committee, but equally important, we found little evidence that the subcommittee added value to the process.***

According to available information, the subcommittee's actions did not exceed the authority of an advisory committee; however, we believe the subcommittee was unnecessary and compromised the integrity of the park review process. The subcommittee members provided varied responses when we asked them why Irvine needed to conduct the park review using an advisory committee. One of the subcommittee members stated that the subcommittee's purpose was to add authority to, and oversee, the park review. This member also stated that although city staff would normally take a lead role in a subcommittee, in this case they did not because city staff was among the subjects of the park review and would not be able to give dispassionate and unbiased guidance to the subcommittee about the park review. Nevertheless, Irvine contracted for two other reviews of Great Park that were published in 2009 and in 2012, as we discuss in the Introduction, without creating an advisory committee to oversee the reviews. Although these reviews were smaller in scope and cost compared to the park review, these previous reviews were similar in that they also required the input of Irvine's staff. Further, the other subcommittee member explained that the subcommittee was able to provide historical perspective to the firms conducting the park review. However, we believe an advisory committee was not necessary to provide this perspective. Specifically, members of the city council could have provided such perspective either through formal city council meetings or in individual meetings with the firms. Finally, we found scant evidence that the subcommittee acted to oversee the park review.

Because the subcommittee did not have to operate openly, the city council created an appearance of a lack of transparency. For example, as we described previously, Irvine hired Aleshire without the city council's approval. A subcommittee member announced Aleshire's participation in the park review at a city council meeting, and later another two city council members questioned why the council was not consulted on the selection of the firm, stating that it was not an open process. Further, throughout the process, the city council took public testimony both in support of and in opposition to the park review. Some of those opposed called into question why the subcommittee was operating outside the public eye. This public perception of a lack of transparency, compounded by Irvine's disjointed approach to managing the park review, raises concern regarding the independence of the park review and its credibility with the public. Irvine could have avoided some criticism of the park review had it chosen not to create a subcommittee and had instead conducted its deliberations and made its decisions about the park review at hearings of a standing committee or at the city council level, either of which is subject to state open meeting laws.

*Irvine could have avoided some criticism of the park review had it chosen not to create a subcommittee and had instead conducted its deliberations and made decisions at hearings of a standing committee or at the city council level, either of which is subject to state open meeting laws.*

### **Irvine Could Have Better Handled Depositions, and It Released Preliminary Park Review Results Before a Key Election**

During the second phase of the park review, Irvine issued subpoenas for both records and testimony from individuals involved with Great Park. However, Irvine could have established and followed better methods for handling and publishing documents resulting from those subpoenas. State law allows city councils to issue subpoenas requiring attendance of witnesses or production of documents for evidence or testimony in any action or proceeding pending before it. The law requires that subpoenas be signed by the mayor and attested to by the city clerk. Further, in January 2014, Irvine's city council authorized the subcommittee to issue subpoenas in cooperation with the city's attorney for the park review. We reviewed the 23 subpoenas the city issued related to the park review and noted they were appropriately executed.

Although Irvine issued subpoenas appropriately, it could have better handled the deposition transcripts that resulted from the subpoenas. The deposition officer who transcribes the deposition follows a procedure prescribed in law to prepare the transcript and certify that the individual summoned to give the deposition—the *deponent*—was duly sworn and that the transcription is a true record of the testimony given. Unless otherwise agreed to by the parties, state law establishes a 30-day period that deponents have to review and make changes to the deposition transcript. In response to requests made under the California Public Records Act, between April 2014 and May 2015, Irvine posted to its website deposition transcripts or changes to 24 deposition transcripts from 23 individuals. We attempted to determine whether Irvine had provided the deponents with adequate time to review the transcripts and make changes before posting the transcripts publicly. Unfortunately, according to Irvine's director of public affairs, Irvine did not maintain a consistent methodology for dating information on the website; sometimes the city used the date of the deposition and other times the city used the date it posted the transcript. As a result, we could not accurately determine how much time on average the city provided all deponents to review their statements before publication on the city's website. However, for the 13 depositions for which it appears posting dates are available, Irvine averaged 24 days between the deposition date and the posting of the transcript. In four of the 13 instances, more than 30 days had elapsed.

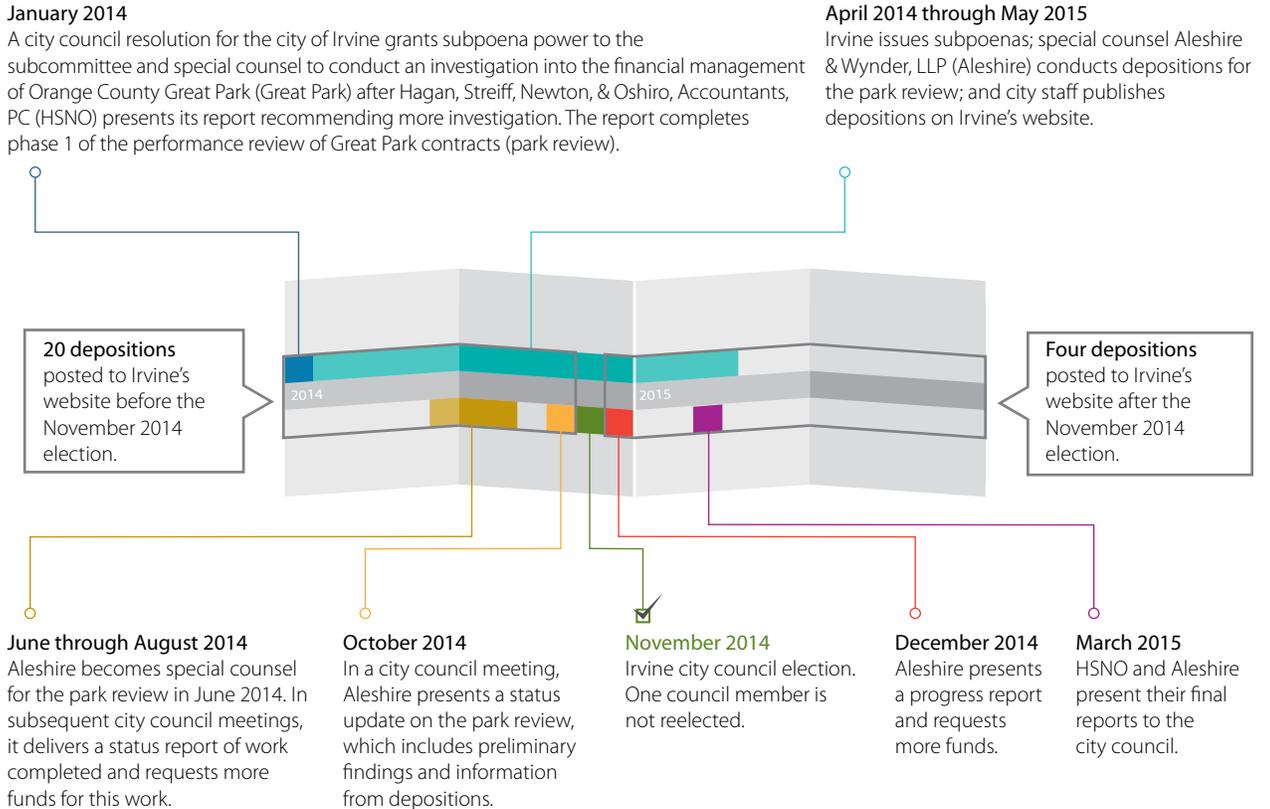
Further, although the deposition transcripts may not have been intended for use in court, we believe that following the procedural requirements outlined in state law is a best practice. In addition to requiring the deposition officer to certify the transcript, the

deponent must have the opportunity to review and correct it. However, we observed that only one of the original transcripts posted to the website was signed by the deponent and only one original transcript was signed by the deposition officer taking the deposition. In nine cases, the deponents requested changes to the transcripts. In six of the nine cases, the city posted memos signed by the deponents requesting changes. Although Irvine does not have complete records indicating when it posted the depositions, the fact that there are unsigned transcripts followed by signed change memos suggests that the city posted at least some of the transcripts online before the deponents had a chance to review and correct them. Even though these deposition transcripts may or may not have been intended for use in court proceedings, waiting to publish signed and dated deposition transcripts would have demonstrated that Irvine and its representatives followed established procedures for ensuring the accuracy of the transcripts by giving the deponents adequate time to review and make any needed changes to the transcripts.

***In November 2014, Irvine voters voted on a measure to increase the transparency of Great Park's development, to select a mayor, and to select two city council members.***

Finally, in fulfilling the Joint Legislative Audit Committee's audit request, we reviewed whether discussions took place between the subcommittee and the park review consultants to time the public release of depositions or the park review reports to occur before the then-upcoming November 2014 elections. In November 2014, Irvine voters voted on a measure to increase the transparency of Great Park's development, to select a mayor, and to select two city council members. One of the incumbent council members on the ballot was a long-time council member and a key player in the development of Great Park. Aleshire took—and Irvine posted publicly on its website—most of the depositions before the November election. However, four depositions occurred after the election, one of which—the deposition of the aforementioned incumbent city council member who was seeking reelection in November 2014—did not occur until March 2015. In addition, although the second phase of the park review was originally scheduled to end in August 2014 before the election, HSNO and Aleshire did not release their reports on the park review until March 2015. Both members of the subcommittee denied that there was any discussion related to timing the release of the reports or depositions. Further, we reviewed email and written correspondence and found no evidence of discussion of timing the release of reports or depositions to the election. Figure 3 is a timeline of the release of depositions and the reports related to the park review.

**Figure 3**  
**Timeline of the City of Irvine’s Depositions Related to the Orange County Great Park Review and to Irvine City Council Elections**



Sources: The city of Irvine’s public records and the Orange County Registrar of Voters’ records.

Although we did not identify any evidence that discussions took place about timing the release of the depositions or reports with the election, we question whether the public release of some information was warranted. In a July 2014 city council meeting, a representative of Aleshire stated that it did not want to release findings until they were fully vetted. Regardless, in an October 2014 city council meeting, Aleshire reported on findings of its investigation while the investigation was still in progress. In that report, Aleshire alleged that a Great Park contractor modified some of its invoices to make it appear as though the contractor had provided more work than it had accomplished. Although Aleshire and HSNO both raised concerns regarding that contractor in their March 2015 reports, neither concluded whether the contractor modified any invoices. Aleshire noted in its March 2015 report that it had discussed preliminary findings with the city council in public meetings but stated that where the investigation was inconclusive, Aleshire withdrew its preliminary findings. Nevertheless, by

*By permitting Aleshire to publicly disclose preliminary findings so close to the November 2014 election, the city council created an opportunity to influence public opinion in advance of an election.*

allowing a public presentation of preliminary findings, the city council allowed Aleshire to discuss findings later found to be untrue or unsubstantiated. Further, by permitting Aleshire to publicly disclose these preliminary findings so close to the November 2014 election, the council created an opportunity to influence public opinion in advance of an election. In fact, in its March 2015 report, Aleshire suggested that the park review deserves some of the credit for passage of a ballot measure, mentioned earlier in this section, that increased transparency related to Great Park in November 2014.

### **Whistleblower Protections Exist for Those Who Report Improper Governmental Activities, and Irvine Recently Improved Its Processes for Receiving Complaints**

Whistleblower laws at the state level and in Irvine protect individuals from retaliation by governmental agencies or employees when those individuals bring to light improper governmental activities. These protections extend to any employees, contractors, or members of the public who feel they have been retaliated against by Irvine for raising concerns about the park review. At the time of our review, we identified room for improvement within Irvine's processes for receiving and investigating complaints about improper governmental activities. For instance, Irvine has established a hotline for suppliers, contractors, and consultants to report complaints, but it had not advertised the availability of this hotline to other key stakeholders, such as the residents of Irvine. Further, Irvine's contract with the hotline provider had expired. After we brought these concerns to Irvine's attention, it improved the way it publicized the hotline and updated its contract with the hotline provider.

State law encourages state employees and other persons to disclose any improper governmental activity by a governmental agency or employee that violates any state or federal law or regulations; that is wasteful; or that involves gross misconduct, incompetency, or inefficiency. State law also prohibits a governmental agency or employee from retaliating against those who disclose any improper governmental activity to a committee of the Legislature when the agency's or employee's response is to prevent or punish the disclosure. In its code of ordinances, Irvine maintains whistleblower protections similar to those in state law and extends these protections to any persons, including city officials or employees, who report inappropriate governmental activities, such as gross waste of city funds or abuse of authority. As part of a larger fiscal transparency and reform measure related to Great Park, Irvine voters approved in November 2014 a local proposition that specifically extended whistleblower protections

to anyone, including a vendor or contractor, who reports an improper governmental activity related to Great Park. Thus, Irvine ordinances afford all whistleblowers protections against retaliation from the city, Great Park officials, and other city employees. These protections extend to those who raise concerns about the accuracy of the park review reports.

Additionally, individuals who feel they have been retaliated against by Irvine for reporting improper governmental activities can seek relief or redress from the city through the legal system. Several stakeholders publicly opposed or raised concerns about the process or results of the park review. To the extent any of these stakeholders believe that the park review constituted an improper governmental activity, such as a gross abuse of authority, and believe Irvine retaliated against them for raising such concerns, Irvine ordinances provide them with an opportunity to address retaliation through those ordinances. However, as of mid-June 2016, the city manager stated that no one had taken legal action against Irvine related to retaliation.

An additional option for contractors to report improper governmental activities is through Irvine's hotline. Specifically, this hotline, referred to as the *integrity line*, is publicized through Irvine's guide for suppliers, contractors, and consultants doing business with the city. According to Irvine's manager of human resources, the city processes whistleblower complaints related to Great Park in accordance with its Personnel Rules and Procedures and these procedures apply to complaints from both city staff and contractors. These procedures state that upon receiving a complaint, Irvine's personnel officer will assign the appropriate individuals to conduct the investigation and, if necessary, to recommend any disciplinary action to the city manager, who makes the final determination regarding discipline. The manager of human resources stated that in the event of a complaint, the personnel officer may choose to contract the supervision of the investigation to an independent party. The city's procedures also state that the identity of the individual filing the complaint will remain confidential to the fullest extent possible. However, when we reviewed the integrity line's activity report for the 2015 calendar year, which is the only report Irvine could provide, it showed no activity or calls to the hotline for that period at all. In June 2016, Irvine's manager of human resources confirmed that to her knowledge, the city had not received or investigated any whistleblower complaints or complaints of retaliation since HSNO released its first report in January 2014.

Given the scrutiny and attention both Great Park and the park review have received, we were surprised that Irvine had not received any complaints and, after further review, identified

*Given the scrutiny and attention both Great Park and the park review have received, we were surprised that Irvine had not received any whistleblower complaints.*

areas in which the city could improve certain of its complaint processes. Specifically, rather than limiting its advertisement of the integrity line to its guide for suppliers, contractors, or consultants doing business with Irvine, we noted that the city has the ability to extend the hotline to its employees and the public at large. Because Irvine ordinances extend whistleblower protections to all persons who report improper governmental activities, we would have expected Irvine to at least publicize its integrity line to the residents of Irvine and the public at-large through its website, as Orange County does with its fraud hotline. When we asked Irvine's manager of human resources about this issue, she explained that to her knowledge, the city had never publicized the availability of the hotline to the general public. As a result, it is very likely that members of the public who have concerns about improper governmental activities have been unaware of how to report these concerns. In addition, we noted that although the contractor that manages the integrity line has continued to provide these services to Irvine, the city's contract with this vendor expired in 2007. The human resources manager stated that the human resources division was unaware that the service contract had expired because Irvine continued to receive monthly reports related to the hotline's operation. After discussing these issues with city staff, in June 2016 Irvine created a web page on its website advertising the ability of any person to confidentially report improper governmental activities through its integrity line. In this same month, Irvine also entered into a new contract with its vendor handling potential calls to the integrity line.

### **Recommendations**

To ensure that local government audits are conducted with independence and rigor, beginning immediately Irvine should incorporate into its RFPs and contracts the requirement that consultants follow appropriate, sufficient audit standards when performing audit services.

To improve fiscal accountability and to ensure that audits are performed to appropriate standards, Irvine should adopt an internal audit function by December 2017.

To make certain that it conducts its competitive bidding process in a more transparent and fair manner, Irvine should do the following by December 2016:

- Require city staff to include in every RFP the specified methodology for selecting contractors and not to deviate from it without adequate notice to potential bidders. Further, Irvine should include this requirement in its contracting manual.

- Examine and update its preferred selection criteria listed in its contracting manual and abide by these criteria when creating RFPs and evaluating bidders.
- Further clarify the manner in which an interview may factor into the decision regarding awarding a contract. Specifically, Irvine should include in its procedures whether an interview may change scores from an earlier phase of the proposal review process. Additionally, Irvine should include in the published RFP the details of how it will use interviews in its review process.

To make certain that Irvine complies with the intent of competitive bidding for professional services, beginning immediately it should not include provisions in its RFPs for potential future services that are above and beyond the desired scope of work.

To prevent contractors from exceeding their scope of work, Irvine should periodically review ongoing contract invoices and compare billed activities to the contractor's scope of work to be certain that these invoices reflect the work Irvine expects the contractor to perform. Irvine should also ensure that it assigns a staff project manager to projects who can sufficiently and appropriately monitor the contractor's work. In the future, if the council decides to limit or modify the existing authority of city officials relating to contract oversight, it should ensure that its resolutions explicitly delineate the limits or modifications to that authority.

To ensure that it receives the services for which it has contracted and to avoid conflicts with its contractors, Irvine should monitor and enforce its contract provisions requiring that work not be performed in advance of the city issuing a signed contract and approved purchase order.

To maintain appropriate, transparent fiscal accountability, Irvine should amend city contracting and purchasing policies by December 2016 to make certain that all of its contracts and contract amendments with a proposed cost exceeding the threshold requiring city council or other approval receive the appropriate approvals, including approval for sole-source contracts. Further, city policies should require appropriate approvals when increases in spending authority are accomplished through a purchase order or other means.

To provide the public with adequate information regarding the city council's spending decisions, Irvine's city council should, by December 2016, include in its policies a requirement that motions by the council to appropriate revenue to fund a specific contract should name the recipients and proposed use of the funds.

To foster public confidence in its processes and findings, Irvine should conduct self-initiated investigations, reviews, or audits in an open and transparent manner that ensures independence. Specifically, Irvine should not establish advisory bodies exempt from open meeting laws to oversee these investigations, reviews, or audits. Instead, any required reports from contractors conducting such investigations, reviews, or audits should go to the city council or a standing committee of the city council to be discussed in either open or closed session, as appropriate.

To ensure that Irvine follows best practices related to depositions as outlined in state law, the city council should adopt a policy requiring that Irvine post deposition transcripts for the public after the deponents have had adequate opportunity to correct and sign their depositions.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to 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 specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: August 9, 2016

Staff: Laura G. Kearney, Audit Principal  
John Lewis, MPA  
Kurtis Nakamura, MPIA  
Ray Sophie, MPA

Legal Counsel: Richard B. Weisberg, Sr. Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.



Steven S. Choi, Ph.D., Mayor

cityofirvine.org

City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575

949-724-6233

June 28, 2016

Ms. Elaine M. Howle\*  
California State Auditor  
621 Capital Mall, Ste. 1200  
Sacramento, CA 95814

Re: **California State Auditor Report re: Great Park Review**

Dear Ms. Howle:

On behalf of four of the five members of the Irvine City Council (Councilmember Krom dissenting), this letter constitutes the City of Irvine's ("Irvine" or the "city") response to the June 24, 2016 draft of the California State Auditor's ("CSA") Report titled "City of Irvine: Poor Governance of the \$1.7 Million Review of the Orange County Great Park Needlessly Compromised the Review's Credibility" (the "Report").

It is important that the city provide context that is not adequately conveyed in the Report. While the Report acknowledges that more than \$200 million was spent planning and developing the Orange County Great Park over the last decade, the Report does not sufficiently convey the magnitude of constituents' concerns about those expenditures. Irvine's constituents have repeatedly and forcefully called on the city to explain and justify the extraordinary cost. The public's interest in those questions was particularly acute during the 2012 election cycle. Therefore, the newly-constituted City Council of the City of Irvine ("City Council") responded to the public's concerns by unanimously approving a review and analysis of Great Park expenditures (the "Great Park Review") at the first substantive City Council meeting after the November 6, 2012 election. As it has done on many prior occasions, the City Council also unanimously voted to form a subcommittee to oversee the review. ①

These circumstances and the Great Park Review were extraordinary and unique. The city retained the accounting firm Hagan, Streiff, Newton & Oshiro Accountants, PC ("HSNO") and special counsel Aleshire & Wynder, LLP ("Aleshire") to conduct the Great Park Review. They were asked to review more than \$200 million in expenditures, the performance and cost of third party contractors, and the performance of city staff and officials who worked on the Great Park. HSNO & Aleshire reviewed tens of thousands of pages of documents, analyzed scores of contracts, and conducted hundreds of hours of interviews and depositions over approximately two years. The assignment was

\* California State Auditor's comments begin on page 63.

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- ② enormous. Using a comparison to illustrate the point, the CSA has spent six months and thousands of hours fulfilling its audit objectives—which focus on three contracts performed over two years—and preparing its Report.

Another undertaking like the Great Park Review is highly unlikely. Consequently, the Great Park Review is a poor case study upon which to recommend sweeping changes to the city's policies, procedures, and practices. The city's responses to the CSA's recommendations reflect this reality.

Next, the city has considered the Report's findings and recommendations in the context of the CSA's audit objectives. As indicated in Table 2 of the Report, the Joint Legislative Audit Committee directed the CSA to study nine discreet "audit objectives," and one "catch all" objective that the CSA used to analyze two more issues. Out of eleven issues, the CSA has made ten recommendations that primarily pertain to two general topics: (1) issues related to whether the services of HSNO and Aleshire conformed to appropriate audit standards; and (2) issues related to the city's procurement and oversight of the contractors.

- ③ But the Report also includes important facts that validate the city's governance:
- The CSA did not find any violation of relevant state laws and regulations;
  - The CSA did not identify any violations of law pertaining to the selection of accountants, attorneys, and the private judge who assisted the city with the Great Park Review;
  - The CSA did not find that the audit subcommittee unfairly characterized the nature of work performed by HSNO and Aleshire;
  - The CSA did not find that the city violated any open meeting laws;
  - The CSA did not find that the city used its subpoena power in a manner that violated applicable laws, regulations, and policies;
  - The CSA did not find that the city misused state funds in connection with the Great Park Review;
  - The CSA did not find any evidence that the city released the results of the Great Park review and related deposition transcripts to influence the 2014 election;
  - The CSA did not find any violations of whistle-blower laws;
  - The CSA did not find any evidence that the City paid for work of a retired judge that was outside the scope of her contract; and
  - Nothing in the Report challenges, questions, or undermines the accuracy of the conclusions reached by HSNO and Aleshire in their March 2015 reports.

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In light of these important findings, the Report's title—"City of Irvine: Poor Governance of the \$1.7 Million Review of the Orange County Great Park Needlessly Compromised the Review's Credibility"—does not reflect the totality of the Report and is unnecessarily incendiary. ④

The CSA also concludes in the Report that various aspects of the city's procurement of HSNO and Aleshire, including the standards to which they were directed to adhere, undermined public confidence in the audit process by decreasing transparency. These conclusions are outside the scope of the CSA's prescribed audit objectives. Nothing in the audit objectives calls upon the CSA to measure or opine on public confidence in the Great Park Review. ⑤

The conclusions regarding public confidence are also unsubstantiated. The Report does not include any data demonstrating either (1) an actual erosion of public confidence in the Great Park Review; or (2) a causal link between the circumstances addressed in the Report and public confidence. As an example, the CSA has not identified any data or facts demonstrating that HSNO's adherence to the American Institute of Certified Public Accountants ("AICPA") standards either diminished public confidence or compromised HSNO's objectivity. ⑤

Moreover, the Great Park Review was highly transparent. The City Council conducted several public meetings to address preliminary reports of HSNO and Aleshire that were broadcast on television. In response to Public Records Act requests, the city produced thousands of pages of documents related to the Great Park Review. Witness testimony was made available on the city's website on a rolling basis. During the review, no one raised concerns about the transparency of city's procurement of HSNO or Aleshire. Finally, the CSA itself did not find any instance in which the city violated open meeting laws and regulations. ⑥ ⑦

Hence, although it may be the CSA's opinion that adopting the recommendations in the Report *might* enhance transparency or public confidence, Irvine does not accept the CSA's over-arching theme that the city's actions compromised the integrity of, or diminished public confidence in, the Great Park Review. ④ ⑥

Similarly, many of the recommendations in the Report are presented as "best practices." It is unclear what sources the CSA has used to identify purported "best practices," and the Report often does not include supporting data or authorities on these points. Indeed, the Report is want of references to treatises, journal articles, or theses on city governance, and it provides only a few specific examples of practices used in other cities. It is also not clear that any members of the audit team have acquired practical experience managing the day-to-day operations or serving on the governing body of a city comparable to Irvine. ⑧ ⑨

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⑩ Finally, the Report states twice that the members of the subcommittee failed to “add value” to the Great Park Review. These statements are both outside the scope of the CSA’s audit objectives and too vague to constitute a credible finding or conclusion under Generally Accepted Auditing Standards (“GAGAS”).<sup>1</sup> The audit objectives do not contemplate a subjective “value-added” assessment of the subcommittee’s performance. The Report does not indicate what other “value” the subcommittee could and should have contributed to the review, what methodology the CSA used to objectively assess the subcommittee’s “value,” or the CSA’s qualifications to subjectively evaluate the subcommittee members’ contributions to the Great Park Review. Moreover, the city disagrees with the CSA. The subcommittee fulfilled its responsibility to oversee HSNO & Aleshire during the Great Park Review.

### **The City of Irvine’s Initial Responses To The CSA’s Recommendations**

**Recommendation No. 1:** *To ensure that local government audits are conducted with independence and rigor, beginning immediately Irvine should incorporate into its RFPs and contracts the requirement that consultants follow appropriate, sufficient audit standards when performing audit services.*

Irvine will implement Recommendation No. 1 by ensuring that, when applicable, future requests for proposals (“RFPs”) for auditing and consulting services expressly identify the specific standard that Irvine intends for the contractor to apply. In so doing, Irvine will require contractors to perform work in accordance with GAGAS when appropriate.

⑪ To be clear, however, Irvine’s decision to conduct the Great Park Review pursuant to AICPA standards did not violate any state laws and was reasonable under the circumstances. Although several state laws provide that certain audit activities must be conducted under either GAGAS or standards prescribed by the Institute of Internal Auditors, none of those laws governed the Great Park Review conducted by HSNO and Aleshire (see, e.g., Gov’t. Code §§ 1236 (audits conducted by city employees); 15286 (school bond monies); 53130 (federally-mandated block grant funds); § 12410.5 (audits prepared for transmission to the State Controller)). Furthermore, as noted in the Report, Irvine contracted for “consulting services,” as opposed to auditing services.

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<sup>1</sup> Section 7.14 of GAGAS provides that “auditors should present sufficient, appropriate evidence to support the findings and conclusions in relation to the audit objectives.” Moreover, GAGAS requires that the elements of a finding—criteria, condition, effect, and cause—must be sufficiently developed to address audit objectives. (See GAGAS §§ 6.73-6.77.) Section 7.27 of GAGAS provides that “The strength of the auditors’ conclusions depends on the sufficiency and appropriateness of the evidence supporting the findings and the soundness of the logic used to formulate the conclusions.”

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Moreover, the CSA did not find that HSNO failed to operate as a neutral, independent analyst, when adhering to the AICPA standards. As noted in Table 3 of the Report, the AICPA standards “require objectivity, which is the obligation to be impartial, intellectually honest, and free of conflicts of interest.” In addition, HSNO has a legal obligation to comply with applicable professional standards and to be truthful regardless of whether it is conducting an audit or a review. To Irvine’s knowledge, HSNO complied with all of these obligations. ⑫

**Recommendation No. 2:** *To improve fiscal accountability and to ensure that audits are performed to appropriate standards, Irvine should adopt an internal audit function by December 2017.*

The Report concludes that an internal audit function would have improved the Great Park Review. The Great Park Review, however, was itself an endeavor to improve fiscal accountability. It was conducted by a public accounting firm and law firm, in accordance with agreed-upon standards and procedures developed with the guidance and advice of external public accountants and auditors. After the city received this outside input, the City Council approved the RFP through which HSNO was retained and then HSNO’s contract. Because the city adhered to this process, it is not apparent that an internal auditor would have performed unfilled functions or added demonstrable value.

Furthermore, as noted above, the Great Park Review was unique and the city is unlikely to undertake similar endeavors. Thus, Irvine does not agree that its experiences in this instance are a sufficient basis to expend public resources establishing and maintaining an internal audit function. ⑬

**Recommendation No. 3:** *To make certain that it conducts its competitive bidding process in a more transparent and fair manner, Irvine should do the following by December 2016:*

- a) *Require city staff to include in every RFP the specified methodology for selecting contractors, and not to deviate from it without adequate notice to potential bidders. Further, Irvine should include this requirement in its contracting manual.*
- b) *Examine and update its preferred selection criteria listed in its contracting manual and abide by this criteria when creating RFPs and evaluating bidders.*
- c) *Irvine should further clarify the manner in which an interview may factor into the decision regarding how it will award a contract. Specifically, Irvine should include in its procedures whether an interview may change scores from an earlier phase of the proposal review process.*

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*Further, Irvine should include the details of how it will use interviews in its review process in the published RFP.*

Irvine has already, and will continue to, implement Recommendation No. 3.

- ⑭ Although the city had procedures in place during the relevant timeframe, the city has since reviewed and enhanced its procurement procedures and supporting documents. Through these efforts, the city has already implemented the steps noted in subsections (a) and (b) of Recommendation No. 3. In September 2014, the city added detailed instructions regarding RFP selection criteria to the city's RFP checklist. These enhancements include providing the recommended weight to be given to preferred selection criteria. To ensure that the city's methodology and criteria are followed, staff members responsible for city purchasing now collaborate with project managers during the preparation of each and every RFP, by providing training and guidance and overseeing the procurement process.

To further implement Recommendation No. 3, the city will clarify its uniform procedures for addressing interviews in RFPs so that bidders will understand that an interview may affect the evaluation of their bids. This recommendation will be implemented by December 2016.

Recommendation No. 4: *To make certain that Irvine complies with the intent of competitive bidding for professional services, beginning immediately it should not include provisions in its RFPs for potential future services that are above and beyond the desired scopes of work.*

At the outset of the Great Park Review process, the City Council and staff members knew that the city would need additional reviews after the initial survey of contracts was completed. Therefore, even if the city had adhered to Recommendation No. 4, the city still would have retained HSNO to perform additional work on the Great Park Review.

- ⑮ The city disagrees with the CSA's conclusion that the RFP impacted the likelihood that HSNO would be selected for the additional work. The decision to award additional work to HSNO was the direct result of three factors—(1) HSNO's successful response to the initial RFP; (2) the City Council's assessment of HSNO's performance of the initial work; and (3) the reality that HSNO acquired unique knowledge in the course of performing the initial work, which made HSNO an attractive candidate capable of efficiently performing subsequent projects. The RFP did not preclude the city from contracting with another entity if the City Council was dissatisfied with HSNO's performance. The City Council's assessment of HSNO's performance was transparent. Before it allowed HSNO to perform additional services, the City Council reviewed HSNO's work product and awarded HSNO additional work during a televised public meetings.

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The city's RFP also possessed advantages that would not exist in an RFP based on Recommendation No. 4. First, the city's RFP allowed the city to set rates when bidders were competing for the initial work and had an incentive to provide competitive pricing. Second, the city mitigated risk by preventing HSNO from raising its rates and diminishing efficiencies created by HSNO's knowledge of the underlying facts. In other words, in some instances, adherence to Recommendation No. 4 could eliminate efficiencies by giving leverage to a repeat bidder. Third, the RFP allowed the city to avoid the time and expenses associated with needlessly changing contractors. (15)

In light of the foregoing, Irvine is not inclined to adopt Recommendation No. 4 as a policy. The city will, however, continue evaluating whether future service provisions should be included in RFPs on a case-by-case basis. (15)

**Recommendation No. 5:** *To prevent contractors from exceeding their scope of service, Irvine should periodically review ongoing contract invoices and compare billed activities to the contractor's scope of work to be certain that they reflect the work Irvine expects the contractors to perform. Irvine should also ensure that it assigns to projects a staff project manager who can sufficiently and appropriately monitor contractors' work. In the future, if the council decides to limit or modify the existing authority of city officials relating to contract oversight, it should ensure that its resolutions explicitly delineate the limits or modifications to that authority.*

Irvine has, and will continue to, review contract invoices and compare billed activities to the contractors' scope of work. When doing so, Irvine will continue to utilize employees who can appropriately monitor contractors' work.

The staff took reasonable and appropriate steps to monitor contract performance during the Great Park Review. As acknowledged in the Report, the city monitored contract invoices and warned HSNO in June 2014 that the firm was not authorized to perform work in excess of \$400,000 without the City Council's approval. In so doing, the city explained to HSNO that it would risk not being paid if it performed unauthorized work. The city manager also prepared a specific form for monitoring HSNO's and Aleshire's work. The city manager intended for the form to allow staff to assist the subcommittee with budget management without interfering with the Great Park Review.<sup>2</sup> When the contractors' nevertheless performed unauthorized work, the city refused to pay for the unauthorized work. (16)

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<sup>2</sup> Aleshire advised the subcommittee it would use the form, although the city does not have any specific knowledge regarding whether this occurred.

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In the unlikely event that the City Council again limits or modifies the staff's authority to oversee contracts, the City Council will clarify the modified roles of all involved so that the city can continue to manage its contractors effectively.

**Recommendation No. 6:** *To ensure that it receives the services for which it has contracted and to avoid conflicts with its contractors, Irvine should monitor and enforce its contract provisions requiring that work not be performed in advance of issuing a signed contract and approved purchase order.*

Irvine has, at all relevant times, monitored and enforced its contract provisions requiring that work not be performed in advance of issuing a signed contract and approved purchase order. Irvine will continue to monitor and enforce these provisions.

- ⑰ To be clear, the city did not allow the contractors to breach any provision of their service agreements during the Great Park Review. The Report does not include facts that suggest otherwise. As noted above, the Report specifically acknowledges that Irvine warned HSNO not to perform work outside the scope of services in June 2014. The Report also acknowledges that Irvine enforced the contracts by denying requests for payments of \$67,257.09 from HSNO and \$114,672 from Aleshire. By doing so, the city adequately protected its interests.

**Recommendation No. 7:** *To maintain appropriate, transparent fiscal accountability, Irvine should amend city contracting and purchasing policies by December 2016 to make certain that all of its contracts and contract amendments with a proposed cost exceeding the threshold requiring city council or other approval receive the appropriate approvals, including approval for sole-source contracts. Further, city policies should require appropriate approvals when increases in spending authority are accomplished through a purchase order or other means.*

Irvine agrees that all city contracts and contract amendments should be approved by the appropriate persons or governing bodies. Irvine also agrees that appropriate approvals should be obtained when increases in spending authority are provided through a purchase order or other means. Currently, the city's contract management system blocks the issuance of a purchase order where prior approval was not obtained.

- ⑱ Irvine, however, disagrees that the city's contracting or purchasing policies need to be amended to ensure that the requisite approval is acquired. The CSA's audit findings do not indicate any reason to amend the city's contracting or purchasing policies. The Report instead indicates that the city's processes for selecting the law firms involved in the park review was reasonable:

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“According to the city manager, Irvine typically does not solicit competitive bids for legal services except when selecting its city attorney. Further, state law relevant to local government procurement does not require competitive bidding for legal services. Finally, state entities that follow the State Contracting Manual are not required to obtain legal services through competitive bidding. Thus, we did not expect Irvine to go through a competitive process when obtaining special legal services for the park review.”

The report further admits that Irvine acted within its authority when it originally issued the contract and \$30,000 purchase order to Aleshire. The CSA’s claim that City Council approval was necessary to authorize Aleshire to perform more than \$100,000 of work on the Great Park Review is incorrect. The budget authorization to exceed \$100,000 had been approved by the City Council during a public meeting and the terms of the contract were not otherwise changed. Having secured the budget authorization, the city manager was authorized to approve the contract, pursuant to City Council Resolution No. 95-145 and Irvine’s Financial Policies & Procedures.

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**Recommendation No. 8:** *To provide the public with adequate information regarding the city council's spending decisions, Irvine's city council should, by December 2016, include in its policies a requirement that motions by the council to appropriate revenues to fund a specific contract should name the recipients and proposed use of the funds.*

The Report does not identify a violation of law or city policy. Rather, Recommendation No. 8 is based on the CSA’s unsubstantiated opinion regarding best practices and fails to address or anticipate the myriad circumstances when the City Council could better serve the community by providing broader authority and wider discretion. As the elected governing body of Irvine, the City Council is best equipped to exercise its discretion when it makes funding allocations, and it is held accountable by its constituents. The City Council sees no reason why it should limit that discretion as a result of the Report.

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For example, the City Council recently voted to appropriate \$100,000 to assist city’s efforts to have a Veterans Cemetery developed at the Great Park. In making that appropriation, the City Council purposefully declined to provide a specific funding allocation because it was not yet apparent how to best deploy those funds to further the City Council’s intended objectives. The CSA’s Recommendation No. 8 will unnecessarily constrain the City Council’s ability to govern in similar circumstances.

**Recommendation No. 9:** *To foster public confidence in its processes and findings, Irvine should conduct self-initiated investigations, reviews, or audits in an open and transparent manner that ensures independence. Specifically, Irvine should not establish*

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*advisory bodies exempt from open meeting laws to oversee these investigations, reviews, or audits. Instead, any required reports from contractors conducting such investigations, reviews, or audits should go to the city council or a standing committee of the city council to be discussed in either open or closed session, as appropriate.*

Under the Brown Act, this City Council retains the right to judiciously appoint *ad hoc* subcommittees of its membership to give focused attention to a particular matter for a temporary period. The City Council has historically formed subcommittees to allow two councilmembers (whom have been appointed by a majority of their colleagues at a public meeting) to examine specific subject matters in detail. Subcommittees have been appointed to address issues ranging from the obviously important to the seemingly mundane. In some instances, the subcommittee provides interim reports; in other instances, only a final report is issued. When the subcommittee's assignment is concluded, it is dissolved.

In this instance, the City Council unanimously determined that the unique nature of this matter necessitated the appointment of a subcommittee. The circumstances surrounding the Great Park required an extraordinary commitment of time and effort by the subcommittee and its agents. The City Council formed the subcommittee in a lawful manner.

- ⑳ The CSA has not identified—and cannot identify—any instance where the subcommittee either acted unlawfully when exercising its responsibilities during the Great Park Review, or needlessly interfered with transparency. In fact, the City Council, including the subcommittee, handled the Great Park Review similarly to the CSA's review of Irvine. In both cases, the initial investigatory stages of the audit were conducted in confidence. The CSA has not had any public meetings or made any public status reports during any phase of the CSA's audit. Indeed, California law requires that the CSA's activities remain confidential until the report is completed. (See, e.g., Gov't. Code § 8545.1). Rather, the Report will not be made public until it is completed to the CSA's satisfaction.

The reports by HSNO and Aleshire were ultimately revealed, discussed at length by the full City Council in public, and subjected to public scrutiny. The city sees no basis for the criticism of the city's handling of the Great Park Review when the CSA handles audits similarly while adhering to GAGAS.

- ㉑ Finally, implementation of the "one size fits all" recommendation that Irvine refrain from forming advisory bodies that fall within the Brown Act's exemptions to open meeting requirements would be poor policy. Investigations, reviews, and audits are performed for a variety of reasons under a variety of circumstances. They may relate to sensitive personnel issues; they may touch on issues that expose the city to potential litigation, or

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they may (as was the case here) involve complex factual, contractual, policy, and legal issues that require private analysis before public disclosure. Irvine sees no reason to force those discussions to occur in public when neither the Brown Act nor sound public policy interests would be advanced by doing so.

Recommendation No. 10:      *To ensure that Irvine follows best practices related to depositions as outlined in state law, the city council should adopt a policy requiring that Irvine post deposition transcripts for the public after the deponents have had adequate opportunity to correct and sign their depositions.*

Irvine will implement the CSA's recommendation and adopt a policy not to publicly post deposition transcripts until the deponent has either signed, or failed to sign, the deposition transcript in a manner consistent with California Code of Civil Procedure section 2025.520.

Irvine appreciates the opportunity to provide this response, and hopes that this letter is helpful to the CSA's completion of the Report. This response is not an exhaustive discussion of the city's concerns, and the city's decision not to expressly address something herein does not constitute, and should not be construed as, either an admission of fact or agreement with the CSA's findings, conclusions, or recommendations.

Sincerely,



Steven S. Choi, Ph.D.  
Mayor

cc: Irvine City Council

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## Comments

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CITY OF IRVINE

To provide clarity and perspective, we are commenting on the city of Irvine's response to our audit. The numbers below correspond to the numbers we placed in the margin of Irvine's response.

The city is incorrect in indicating that we did not provide adequate context. We explain the magnitude of the Orange County Great Park (Great Park) project in the Introduction on pages 7 and 8. We further include a statement by city officials on page 18 that the reason for the performance review of Great Park contracts (park review) was to determine how Irvine had spent the money for Great Park. Finally, we note on that same page that the standards used to conduct the park review were not rigorous enough for the type of review Irvine was seeking to procure.

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Irvine is disingenuous in its characterization of our scope. We performed the audit according to the audit objectives approved by the Joint Legislative Audit Committee and outlined in Table 2 beginning on page 14. In addition to contracting, the objectives required that we conduct audit work on the areas relating to audit standards, sources of funds used for the park review, subpoena power, and other areas beyond the three contracts Irvine references in its response. Further, we find it somewhat ironic that Irvine would imply that our audit was narrowly focused when, in its response on page 52, it lists ten areas we reviewed, clearly reflecting the breadth and depth of our audit. Finally, we disagree that the recommendations we have made constitute sweeping changes to Irvine's policies. Specifically, in conducting our work we identified inadequacies and weaknesses in Irvine's processes and policies that are highlighted throughout the Audit Results, which begins on page 17. To address these issues, we have made specific recommendations beginning on page 48 that, if implemented, have application far beyond the park review and will improve Irvine's operations and increase transparency.

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The city is generally correct in identifying what we did not find; however, some of the bullet points warrant clarification. First, although we did not question the legality of the process by which Irvine selected its consultants, we note beginning on page 23 that the process for choosing Hagan, Streiff, Newton & Oshiro, Accountants PC (HSNO) was flawed. Further, although we did not find that Irvine violated any open meeting laws in handling the park review, we did identify areas where Irvine could have been more transparent. For example, on page 36 we conclude that Irvine did not obtain city council approval through an open meeting when

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it authorized a high-value contract for special counsel, and on page 40 we note that Irvine created an unnecessary two-member advisory committee that was not subject to state open meeting laws. Moreover, we agree that the city exercised its subpoena power according to state law; however, on page 43 we state that, although the deposition transcripts resulting from the subpoenas may not have been intended for use in court, we believe that following procedural requirements outlined in state law constitutes a best practice. Specifically, Irvine should have published, signed, and dated deposition transcripts to demonstrate that it followed established procedures for ensuring the accuracy of the transcripts by giving the person deposed adequate time to review and make any needed changes to the transcripts. Further, we state on page 45 that, although we did not identify any evidence that discussions took place about timing the release of depositions or reports with the election, we question whether the public release of findings related to the park review that was still ongoing in October 2014 was warranted. Specifically, as we describe on page 46, by permitting Aleshire & Wynder, LLC (Aleshire) to publicly disclose preliminary findings so close to the November 2014 election, the city council created an opportunity to influence public opinion in advance of an election. Finally, Irvine's last bullet point states that our report did not question the accuracy of the conclusions of Irvine's consultants. Our office is charged under the California Government Code with auditing publicly created entities such as Irvine. As such, our focus in this report was not on the actions of the park review consultants; rather, our focus was on the activities of Irvine, including how it did or did not respond to the actions of its consultants.

- ④ We follow generally accepted government auditing standards (GAGAS) in conducting our work. These standards do not permit us to base conclusions on suppositions, but rather on facts. Facts led to our conclusion that Irvine's poor governance of the park review needlessly compromised the review's credibility. Thus, we stand by our report's title, which is based on clear and convincing evidence. For example, as we describe on page 18, Irvine did not ensure that the consultant it selected to conduct the park review would follow standards and procedures that would result in the thorough, independent evaluation of Great Park contracts that the city council members had described to the public. Additionally, on page 23 we conclude that Irvine's selection process for the consultant to conduct the park review was flawed and lacked transparency; for reasons it could not adequately explain, Irvine modified its selection process after it had accepted and reviewed bidders' proposals and interviewed potential consultants, casting significant doubt on the fairness and impartiality of the selection process. Further, on page 40 we conclude that the city council elected to form a two-member advisory subcommittee

that it tasked with overseeing the park review; however, this subcommittee did not meet openly and the city council did not adequately ensure the subcommittee undertook the activities it was tasked with performing. We believe Irvine would have been better served had the city council chosen not to establish a subcommittee for this high-profile review and instead chosen to conduct its deliberations and decisions regarding the park review through a standing committee or at the full city council level, meeting openly and increasing transparency. When these types of decisions are viewed together, they demonstrate Irvine's poor governance of the park review, which reduced its credibility.

Irvine is incorrect in indicating that our conclusions related to public confidence and transparency are outside the scope of our audit and are unsubstantiated. As noted in Table 2 beginning on page 14, Objective 5 requires that we determine whether the audit subcommittee conducted the park review in a transparent and open manner. Public confidence is affected by transparency. Our statements regarding public confidence are predicated on comments made in the media and in public meetings both in support of and in opposition to the park review, as well as our professional judgment.

We disagree. We identified several actions by Irvine that decreased the transparency of the park review. For instance, on page 23 we describe that Irvine modified and finalized its selection process of consultants to conduct the park review after it had accepted and reviewed bidders' proposals and interviewed selected firms. On that same page we state that Irvine changed its selection criteria and the weight it gave to them without notifying bidders and after evaluating their proposals. We believe these actions cast significant doubt on the fairness and impartiality of Irvine's selection of the park review consultant. As another example, we note on page 40 that the subcommittee tasked with overseeing the park review was not bound by state open meeting laws. Thus, management of the park review was not as transparent as it could have been.

Irvine is incorrect when it states that no one raised concerns about the transparency of Irvine's procurement of Aleshire during the park review. On the contrary, as we note on page 38, in a July 2014 city council meeting two council members were critical about the fact that they did not have information or input into hiring Aleshire.

Irvine's response is overly general and ignores evidence we present in the report. The response states that "many" of the recommendations in our report are presented as "best practices" and that our sources are unclear. However, throughout its response Irvine only makes reference to Recommendation 8 on page 59 as related to best practices. Further, in contrast to Irvine's assertion, we do provide

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support for those recommendations that could be construed as best practices. For example, we note other cities with characteristics similar to Irvine that have internal audit functions on page 23. We identify best practices related to requests for proposals (RFP) in the *State Contracting Manual* on page 25. Finally, in the last recommendation on page 50, we identify a best practice related to handling depositions. We base our recommendation on a process outlined in state law that we describe on page 43.

- ⑨ Irvine's comments about our audit staff are inappropriate. Our office follows GAGAS requirements, which specify that the staff assigned to conduct an audit in accordance with those standards collectively possess the technical knowledge, skills, and experience necessary to be competent for the type of work being performed. We fully met those standards.
- ⑩ Irvine is incorrect that our statements regarding the value of the subcommittee are outside the scope of our audit objectives and vague. As noted in Table 2 on beginning on page 14, Objective 5 requires that we determine whether the city council and the audit subcommittee conducted the park review in a transparent and open manner. Given that the city council chose to create an advisory subcommittee that was tasked with overseeing the park review and not bound by state open meeting laws, as described on pages 40 through 42, it is absolutely within our scope to assess the relevance and utility of such a structure. Also, although Irvine states that the subcommittee fulfilled its responsibility to oversee the firms performing the review, we describe on page 41 that the firms undertook many of the oversight activities that the subcommittee should have performed.
- ⑪ Irvine is attempting to obfuscate our point. As we state on page 18, the type of engagement—consulting services—for which Irvine ultimately contracted was not nearly as rigorous an assignment as the descriptions of the park review that members of the city council conveyed publicly. As we indicate on page 19, Irvine would have been better served had it directed consultants to conduct the park review using more robust standards that require independence. We note on that same page that when the city council considered the request to approve the park review, four of the five council members explicitly stressed the importance of an independent audit. Nevertheless, Irvine did not ultimately require or contract for an audit; in fact, we refer to the project throughout the report as the “park review.”
- ⑫ As we state earlier in comment number 3, our focus in this report was not on the actions of the park review consultants; rather, our focus was on the activities of Irvine, including how it did or did not respond to the actions of its consultants.

We are disappointed that Irvine is choosing not to implement this recommendation. As we state on pages 22 and 23, an internal audit function could have conducted the park review itself, or it could have ensured that audits performed by an external auditor had an appropriate scope and that contracts were subject to rigorous monitoring. Such activities could have eliminated the expressed concerns of the city manager and one subcommittee member about the appearance of a conflict of interest that prevented staff from helping to manage the park review and simultaneously functioning as subjects of that same review.

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As we describe in the section beginning on page 23, although Irvine had procedures in place at the time of our review for selecting the most qualified bidder for a given proposal, its selection process for the park review consultant contradicted some of those practices. For example, on page 25 we note that Irvine did not follow its contracting manual that states the city should determine each selection criterion and assign it a weight *before* reviewing bidders' proposals. We also acknowledge on page 27 that Irvine updated its policies in September 2014 for its proposal review and selection process, but commented that more needs to be done to clarify how proposals are scored. We are therefore pleased that Irvine acknowledges in its response the need to ensure staff has the training and guidance necessary to oversee the procurement process and that it will include the details of how it will use interviews in its review process in published RFPs.

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We stand by our recommendation and remain concerned that the park review RFP was structured in such a way as to encourage the winning bidder to develop opportunities for future work, as we describe on pages 28 and 29. Irvine argues in its response on page 57 that structuring its RFP in the way it did created various advantages for the city. We acknowledge on page 28 that when a contractor is already familiar with the work it will need to accomplish, a no-bid contract may be more efficient. Nevertheless, we note that most of HSNO's 29 recommendations in its January 2014 report were recommendations for additional work. The structure of Irvine's RFP encouraged such a result by stating that the consultant might need to perform procedures of a more forensic nature depending on the findings in the consultant's final report.

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Irvine's response ignores the fact that there was a lack of clarity regarding who was managing the park review. As stated on pages 32 and 33, the city manager understood he was not to direct Aleshire and that the park review was exclusively the province of the subcommittee. However, on page 33 the subcommittee members gave us conflicting answers when we asked them whether they were overseeing the park review. One member stated that the subcommittee's function was to oversee the park review while the other explained that the

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overall direction and work of the park review was determined by the two consultants hired to conduct the review. Irvine does not address the need to ensure that it assigns to projects a staff project manager who can sufficiently and appropriately monitor contractors' work as we recommend.

- ⑰ We disagree. As we note on pages 33 and 34 both HSNO and Aleshire performed work in advance of authorization to do so in 2014. Both received payment for this advance work from appropriations after the fact. We also note on page 34 that in July 2014 Aleshire received additional spending authority of \$255,000 and had exceeded that authority by \$119,000 as of December 2014. We acknowledge on page 36 that Irvine finally did refuse to pay for some work performed.
- ⑱ We stand by our recommendation that Irvine needs to amend its policies. As we note on page 37, Irvine's policies do not explicitly allow for or prohibit using a purchase order to avoid the need for an amendment. In our judgment this creates an opportunity to circumvent city council approval. Further, as explained on that same page, we believe the budget increase relating to Aleshire's contract should have been approved by the city council because it both exceeded the budgetary authority of city staff and exceeded the threshold requiring city council review and approval of sole-source contracts. We also question whether the budget authorization to exceed \$100,000—specifically the city council's action to increase the budget of the park review by \$333,000—provided the level of clarity necessary to further fund Aleshire's contract. As we note on pages 38 and 39, the motion to appropriate the funds did not specify who was to receive the money from the budget increase. It was not at all clear in the July 2014 meeting that three-quarters of the appropriation was to go to Aleshire. This lack of specificity, although not expressly a violation of Irvine's policies, reduces the transparency of the city's and the city council's decision making. As we conclude on page 39, Irvine's actions effectively meant that the city made a decision to increase the funding for the two park review consultants partially outside of the public eye.
- ⑲ Irvine misses the point. Our recommendation is specific to instances where the council appropriates revenue to *fund a specific contract*. In those instances, ensuring that the public is aware of who is to receive funding and how much they are to receive is reasonable and prudent. The example Irvine cites related to a vote to appropriate funds for a veterans cemetery, where Irvine states it was "not yet apparent how to best deploy those funds to further the city council's intended objectives," is not relevant to the recommendation.

The city confuses the need for transparency in managing the park review with the need for confidentiality regarding the content of the park review while it was in progress. We would expect decisions regarding the management of the park review, such as establishment of the scope, budget, and general reports on progress to be handled in an open and transparent manner, and acknowledge that some such discussions took place before the full city council. For example, on pages 38 and 39 we discuss the council's consideration of a budget increase for the park review. Further, as we state on page 42, according to available information, the subcommittee's actions did not exceed the authority of an advisory committee. Nevertheless, the presence of a two-member subcommittee, not subject to state open meeting laws, creates the appearance that representatives of Irvine may have been able to influence the scope or direction of the review. Furthermore, the fact that the subcommittee did not maintain any public documents regarding its activities and discussions, such as agendas or meeting minutes, prevents Irvine from demonstrating to the public the extent to which the subcommittee adequately carried out its assigned tasks. Finally, it undermines the credibility of the process by making it less transparent.

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On the other hand, while the park review was still in progress, we would expect that findings and recommendations related to the review would remain confidential, but that did not happen. As we note on pages 45 and 46, Aleshire reported on findings of its investigation while the work was still under way in October 2014—the report would not be released until March 2015. In contrast, our office conducts its work according to the law as cited by Irvine. Those laws ensure the confidentiality of an audit while it is under way.

Irvine's response ignores a portion of the recommendation. In its response, Irvine suggests that there may be investigations, reviews, or audits that relate to sensitive issues related to personnel matters, litigation, or other complex issues. It is precisely for that reason that our recommendation on page 50 states that such investigations, reviews, or audits should go to the city council or a standing committee of the city council to be discussed in either open or closed session, as appropriate.

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