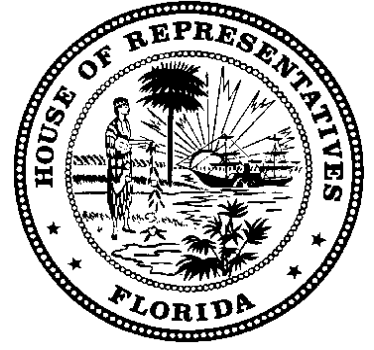


**WILTON SIMPSON**  
President of the Senate



**CHRIS SPROWLS**  
Speaker of the House



# **Joint Legislative Auditing Committee**

**Senator Dennis Baxley, Chair**  
**Representative Ardian Zika, Vice Chair**

**Meeting Packet**  
**Thursday, February 18, 2021**  
**3:00 p.m. to 4:30 p.m.**  
**412 Knott Building**

The Florida Legislature  
**COMMITTEE MEETING AGENDA**  
JOINT LEGISLATIVE AUDITING COMMITTEE

**Senator Dennis Baxley, Chair**  
**Representative Ardian Zika, Vice Chair**

**MEETING DATE:** Thursday, February 18, 2021

**TIME:** 3:00 p.m. to 4:30 p.m.

**PLACE:** Room 412, Knott Building

**MEMBERS:**

**Senator Jim Boyd**

**Senator Jennifer Bradley**

**Senator Janet Cruz**

**Senator Victor M. Torres, Jr.**

**Representative Yvonne Hayes Hinson**

**Representative Andrew Learned**

**Representative Jenna Persons-Mulicka**

**Representative Keith L. Truenow**

**Representative Kaylee Tuck**

- 
1. Presentation of the Auditor General's operational audit of the City of Gulf Breeze and response from the City
  2. Consideration of a request for an Auditor General operational audit of the Palm Beach County Clerk and Comptroller's Office submitted by Senator Cruz

**1 Auditor General Report  
on the City of Gulf Breeze**

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# CITY OF GULF BREEZE

## OPERATIONAL AUDIT

REPORT No. 2021-030

LEGISLATIVE AUDITING COMMITTEE  
FEBRUARY 18, 2021



## BACKGROUND

- ❖ This Committee directed the Auditor General to conduct an operational audit of the City of Gulf Breeze.
- ❖ Our audit focused on the City's acquisition and management of the Tiger Point Golf Club and other selected City processes and administrative activities during the period October 2016 through March 2018.
- ❖ In September 2020, we issued our operational audit report No. 2021-030 with 45 audit findings.

# AUDIT FINDINGS

## Tiger Point Golf Club (TPGC)

1. TPGC Purchase.
2. Conditional Use Permit.
3. TPGC Operating Losses.
4. City Oversight of TPCG Operations.
5. Event Fees.
6. Competitive Selection of TPGC Goods and Services.
7. TPGC Land Sale.

# AUDIT FINDINGS

## Related Organizations – Financing Programs

8. Administration of Financing Programs.
9. Control Over Capital Trust Agency, Inc. (CTA) Activities.
10. Gulf Breeze Financial Services, Inc. (GBFS) and CTA Policies and Procedures.
11. Transparency of GBFS and CTA Transactions and Activities.
12. GBFS and CTA Transfers to the City.

# AUDIT FINDINGS

- I 3. Gulf Breeze Financial Services, Inc. (GBFS), Capital Trust Agency, Inc. (CTA), and CTA-Community Development Entity Executive Director.
- I 4. Allocation of City Costs Incurred on Behalf of GBFS and CTA.
- I 5. GBFS Loans to and from the City.
- I 6. Local Government Loan Program Investments.



# AUDIT FINDINGS

## Utility Services

- 17. Overall Utility Rates and Utility Fund Costs.
- 18. South Santa Rosa Utility System Utility Rates.
- 19. Water and Sewer Customer Account Adjustments.

# AUDIT FINDINGS

## Payroll and Personnel Administration

- 20. Group Insurance Plan Eligibility.
- 21. Accumulated Leave Payments.
- 22. Severance Pay.
- 23. Extra Compensation.
- 24. Special Advisor Compensation.
- 25. Automobile and Toll Allowances.

# AUDIT FINDINGS

## Motor Vehicles and Travel

- 26. Motor Vehicle Assignment and Use.
- 27. Motor Vehicle Taxable Fringe Benefits.
- 28. Motor Vehicle Fuel Inventory.
- 29. Motor Vehicle Maintenance.
- 30. Travel.

# AUDIT FINDINGS

## Procurement and Use of Public Funds

31. City Procurement Controls.
32. Competitive Procurement of Goods and Services.
33. Contract Documents.
34. Conflicts of Interest.
35. Auditor Selection.
36. Beach Access Lawsuits.
37. Purchasing Card Expenditures.

# AUDIT FINDINGS

## Tourist Development Tax (TDT) Funds

38. Accounting and Reporting of TDT Funds.

39. Competitive Selection of Goods and Services – TDT Funded Projects.

# AUDIT FINDINGS

## Capital Assets

### 40. Tangible Personal Property.

# AUDIT FINDINGS

## Administration and Management

41. Internal Audit Function.
42. City Council Parliamentary Procedures.
43. Budget Preparation.
44. Budgetary Recording, Reporting, and Monitoring.
45. Public Records Retention.

# CONTACT INFORMATION



## AUDITOR GENERAL

Michael J. Gomez, CPA  
Audit Manager

Claude Pepper Building, Suite 401  
111 West Madison Street  
Tallahassee, FL 32399-1450

(850) 412-2895

[mikegomez@aud.state.fl.us](mailto:mikegomez@aud.state.fl.us)

[FLAuditor.gov](http://FLAuditor.gov)



Report No. 2021-030  
September 2020

**STATE OF FLORIDA AUDITOR GENERAL**

**Operational Audit**

## **CITY OF GULF BREEZE**

**Tiger Point Golf Club Acquisition and Management  
and Other Activities**



Sherrill F. Norman, CPA  
Auditor General

## **Mayor, Council Members, and City Manager**

During the period October 2016 through March 2018, Matt Dannheisser was Mayor and the following individuals served as a City of Gulf Breeze Council Member or City Manager:

Cherry Fitch, Council Member  
Tom Naile, Council Member from 12-9-16  
Joe Henderson, Council Member to 12-8-16  
Renee Bookout, Council Member  
David G. Landfair, Council Member  
Samantha Abell, City Manager from 9-6-17,  
Interim City Manager 5-1-17, to 9-5-17,  
Deputy City Manager to 4-30-17  
Edwin 'Buz' Eddy, City Manager to 4-30-17

The audit was supervised by Derek H. Noonan, CPA.

Please address inquiries regarding this report to Michael J. Gomez, CPA, Audit Manager, by e-mail at [mikegomez@aud.state.fl.us](mailto:mikegomez@aud.state.fl.us) or by telephone at (850) 412-2881.

This report and other reports prepared by the Auditor General are available at:

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**State of Florida Auditor General**

**Claude Pepper Building, Suite G74 · 111 West Madison Street · Tallahassee, FL 32399-1450 · (850) 412-2722**

# CITY OF GULF BREEZE

## Tiger Point Golf Club Acquisition and Management and Other Activities

### **SUMMARY**

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This operational audit of the City of Gulf Breeze (City) focused on the City's acquisition and management of the Tiger Point Golf Club and other selected City processes and administrative activities. Our audit disclosed the following:

#### **Tiger Point Golf Club**

**Finding 1:** City records did not demonstrate that the City's purchase of the entire 365-acre Tiger Point Golf Club (TPGC) was necessary or that the process used to acquire the property was prudent and appropriate. To help ensure that future real property acquisitions are appropriate and in the City's best interest, the City needs to establish effective policies and procedures that require formal independent appraisals, business valuations, and feasibility studies be obtained for appropriate consideration.

**Finding 2:** The City did not seek legal counsel, prior to the TPGC acquisition, regarding the authority to make certain concessions promised by the then City Manager to property owners near the TPGC nor was the City Council informed, prior to approving the TPGC acquisition, of the concessions. Many of the concessions were subsequently determined to be not reasonable, practical, or enforceable.

**Finding 3:** Notwithstanding the intent to make the TPGC a successful golf venue, the City has experienced ongoing losses from TPGC operations totaling \$5.4 million through the 2017-18 fiscal year.

**Finding 4:** The City's oversight of the contracted management company operating the TPGC could be enhanced to better ensure that all fees due the City for TPGC operations are properly assessed, collected, recorded, and deposited and that all expenses paid by the management company are appropriate and reported to the City.

**Finding 5:** The City did not require the TPGC management company to execute, for each event at the TPGC, an agreement that specified relevant details for the event and the sponsoring entity's responsibilities.

**Finding 6:** City personnel did not always verify assertions made by consultants used to solicit competitive bids or quotes on the City's behalf and written agreements were not always properly executed for consultant and other professional services.

**Finding 7:** The City did not always obtain timely independent appraisals of property values for consideration by the City Council prior to selling surplus City-owned real property.

## **Related Organizations – Financing Programs**

**Finding 8:** The City did not, of record, assess that it was economically or otherwise advantageous for the City to use Gulf Breeze Financial Services, Inc. (GBFS), and Capital Trust Agency, Inc. (CTA), to administer its financing programs. Additionally, the use of these entities resulted in less accountability and transparency for program transactions and activities when compared to direct administration of those programs by the City, and resulted in costs that could have been avoided had City personnel been solely responsible for administering the financing programs.

**Finding 9:** City measures to ensure that CTA operations are conducted consistent with City Council intent and in accordance with applicable laws, established policies and procedures, CTA articles of incorporation, and good business practices were not always effective.

**Finding 10:** The City lacked comprehensive policies and procedures governing significant aspects of GBFS and CTA operations.

**Finding 11:** Enhanced transparency of GBFS and CTA operations is needed.

**Finding 12:** The City had not executed a contract with the CTA or formally established directives regarding the amounts and frequency of GBFS and CTA transfers of resources to the City.

**Finding 13:** The City could have exercised more diligence in resolving questions regarding compensation paid to the GBFS and CTA Executive Director and his company, and the City needs to improve oversight and transparency regarding the Executive Director's compensation and administration of GBFS and CTA operations.

**Finding 14:** The City had not established a documented methodology for allocating City personnel and other City-provided support costs to the GBFS and CTA.

**Finding 15:** City records lacked documented determinations of the necessity for certain loans made to and from related organizations and the appropriateness of the assessed interest rates for those loans.

**Finding 16:** City records, as of July 2020, did not document the current status of a United States Department of Justice investigation regarding the City's use of the United States Department of Treasury's State and Local Government Series securities program to invest bond proceeds.

## **Utility Services**

**Finding 17:** City records did not always evidence that utility rate studies were based on applicable cost factors and that enterprise fund transfers for internal services costs were proper and reasonable.

**Finding 18:** City records did not demonstrate that the same factors were used to assess water and sewer utility rates, fees, and charges for customers inside and outside the City. In addition, the transparency of potential rate assessment increases and surcharges to South Santa Rosa Utility Services (SSRUS) customers could be enhanced by openly discussing such rate increases and surcharges at SSRUS Board meetings.

**Finding 19:** The City could enhance procedures for recording and documenting utility billing adjustments.

## **Payroll and Personnel Administration**

**Finding 20:** The City did not verify, of record, that individuals participating in the City group insurance plans were eligible participants.

**Finding 21:** City records did not always demonstrate that accumulated leave payment calculations were verified before payments were made or that payments complied with City policies.

**Finding 22:** The City made certain severance and other compensation payments that exceeded limits set by State law and made payments to a former employee for unsubstantiated consulting services.

**Finding 23:** Contrary to State law, the City paid extra compensation after services were rendered.

**Finding 24:** The City hired a Special Advisor although that position was not included on the City Council-approved Schedule of Authorized Positions. In addition, City records did not evidence that payments to the Special Advisor were supported by records evidencing hours worked, and the City made salary overpayments and excess contributions to the Special Advisor's deferred compensation plan account.

**Finding 25:** Contrary to City policies requiring that individuals using personal vehicles for City travel be reimbursed at rates established by State law, the City provided automobile and toll allowances to certain employees and City records did not evidence how the allowances were determined.

## **Motor Vehicles**

**Finding 26:** The City could enhance controls over motor vehicle assignment and use.

**Finding 27:** City records did not demonstrate that the value of personal use of City vehicles was appropriately included in each applicable employee's gross income reported to the Internal Revenue Service.

**Finding 28:** City efforts to monitor fuel use at the fuel pumping station need enhancement.

**Finding 29:** To reduce the risk of costly repairs and inconvenient downtime, the City needs to establish a comprehensive vehicle preventative maintenance plan.

## **Travel**

**Finding 30:** City personnel and City contractors did not always comply with City travel policies and City records did not always evidence that travel-related expenditures were adequately reviewed and supported by appropriate documentation and signed travel reports.

## **Procurement and Use of Public Funds**

**Finding 31:** To better ensure that the process for acquiring goods and services is effective and consistently administered, and procurements are made in an equitable and economic manner, the City Charter or purchasing policies need to be revised to provide clear and consistent terms, provisions, and requirements that comply with State law and to promote good business practices.

**Finding 32:** City records did not always demonstrate the use of competitive selection procedures in accordance with City purchasing policies or good business practices and the City did not always retain records supporting procurements of goods and services.

**Finding 33:** For some acquired services, the City did not execute contracts to establish the duties, expectations, and other requirements of each party.

**Finding 34:** City procedures did not provide for identifying and documenting potential and actual conflicts of interests.

**Finding 35:** City records did not demonstrate that the City financial statement auditors were selected in accordance with State law.

**Finding 36:** The City did not document a cost-benefit analysis that considered alternative options to achieve City objectives prior to entering into protracted and expensive litigation regarding beach access.

**Finding 37:** City controls over purchasing cards and related charges need improvement.

## **Tourist Development Tax Funds**

**Finding 38:** The City needs to seek clarification from Santa Rosa County (County) on the restrictive uses of Tourist Development Tax (TDT) proceeds and ensure that quarterly TDT reports are filed with the County Clerk, even during the absence of the individuals primarily responsible for filing the reports.

**Finding 39:** The City did not always competitively select goods and services purchased with TDT moneys in accordance with the City Charter and City purchasing policies.

## **Capital Assets**

**Finding 40:** City policies and procedures did not require and ensure that an annual physical inventory of tangible personal property (TPP) was conducted and reconciled to City TPP records or that property schedules used for insurance purposes were accurate and complete.

## **Administration and Management**

**Finding 41:** The City had not established an internal audit function or otherwise provided for internal audit activities to assist management in maintaining a comprehensive framework of internal controls.

**Finding 42:** The City needs to periodically evaluate the sufficiency of, and amend as appropriate, its parliamentary procedures for conducting City Council business.

**Finding 43:** Contrary to State law, the City’s 2016-17 and 2017-18 fiscal year budgets did not include balances brought forward from prior fiscal years.

**Finding 44:** For the 2016-17 and 2017-18 fiscal year adopted budgets, the City did not specify the legal level of budgetary control, and record and report the budget in a consistent manner, to more easily enable City personnel and financial statement users to readily determine whether resources were expended within budgeted amounts. In addition, contrary to State law, General Fund and certain proprietary fund expenditures exceeded budgeted amounts for the 2016-17 fiscal year.

**Finding 45:** The City did not always maintain records in accordance with applicable public records retention requirements.

## ***BACKGROUND***

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In 1961, the City of Gulf Breeze (City) was incorporated as a municipality.<sup>1</sup> The City is located on the end of the Fairpoint Peninsula in Santa Rosa County, comprises 4.5 square miles of land, and has a population of approximately 5,849 residents.<sup>2</sup> The City is governed by the City Council composed of five elected Council members, including the Mayor, and operates under a Council-Manager form of government. The Mayor is the presiding officer of the City Council, which is responsible for enacting ordinances, resolutions, and regulations governing the City, as well as appointing the City Manager and members of the various advisory boards. The Mayor is also the City’s Chief Executive Officer. The City Manager is the City’s administrative head and, as such, is responsible for the City’s daily operations and implementation of City Council adopted policies. The City Manager is also charged with preparing and submitting the annual budget and capital improvement plan to the City Council.

The City provides citizens with municipal services for general government, public safety, streets and public works, housing, economic and community development, education through its library, and recreation and cultural services. Additionally, the City operates water, sewer, and natural gas utilities, stormwater management, and Gulf Breeze Financial Services as enterprise activities. This operational audit focused on selected City processes and administrative activities.

## ***FINDINGS AND RECOMMENDATIONS***

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### **TIGER POINT GOLF CLUB**

In December 2012, the City purchased approximately 365 acres of land referred to as the Tiger Point Golf Club (TPGC) for \$2.8 million. The TPGC consists of two golf courses, a driving range, and a clubhouse. The golf courses are referred to as the east and west courses. Pursuant to a 1985 agreement, a portion of the purchased TPGC acreage has been used to provide spray<sup>3</sup> fields for

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<sup>1</sup> Chapter 61-2207, Laws of Florida.

<sup>2</sup> *Florida Population Estimates for Counties and Municipalities, April 2019*; Florida Office of Economics and Demographic Research.

<sup>3</sup> Spray irrigation is a method for disposing of secondary treated municipal wastewater (i.e., effluent) by spraying it on the land surface.

effluent disposal from the City wastewater treatment plant, which is adjacent to the TPGC. The TPGC acquisition resulted from the City's need to expand its wastewater treatment plant operations and capacity.

### **Finding 1: TPGC Purchase**

To be appropriate, public expenditures must be authorized by applicable law or ordinance, reasonable in the circumstances, and necessary to accomplish the governmental entity's purposes. Authority for City officials to expend moneys is set forth in various general and special laws and City ordinances and is manifested through the City's approved budget. Notwithstanding that authority, as of June 2020, the City had not established effective policies and procedures for acquiring real property. To be effective, such policies and procedures should, among other things, require and ensure that, prior to real property purchases, appropriate and independent appraisals are obtained to help justify and support purchase prices and appropriate feasibility studies are performed to demonstrate that the purchases are in the City's best interests.

Our examination of City records and discussion with City personnel related to the TPGC purchase indicated that, prior to the City's acquisition of the TPGC, the City had discussed opportunities to acquire various land parcels within the TPGC to allow the City to expand the City wastewater treatment plant (WWTP). The three properties discussed included a 65-acre parcel, a 46-acre parcel, and a 16.6-acre parcel with potential prices of \$.8 million, \$.7 million, and \$.5 million, respectively. While the 16.6-acre parcel was determined by the City's contracted engineering firm as too small for City needs, the 65-acre and 46-acre parcels were determined by the City to be sufficient for expansion of the City's WWTP. City records indicate that, before a final determination was made regarding the purchase of one or more of the parcels, the owner of the TPGC approached the City with the need to sell the entire facility (365 acres) as soon as possible, and their preference that the City be the purchaser.

In a memorandum dated October 29, 2012, the then City Manager recommended purchasing the entire 365-acre TPGC for \$2.8 million, indicating the following reasons for doing so:

- Because the TPGC is contiguous to the existing waste-water treatment facility, the acquisition would provide land that could be used to expand the existing facility at a cost lower than building another facility at a different site.
- The land would offer the potential for future expansion as demand for additional capacity increases.
- Acquiring the entire TPGC property would provide the City sole control over the spray fields and allow for additional disposal capacity resulting in increased treatment facility cost efficiency.<sup>4</sup>
- The City could better control any future development of portions of the property that were not used by the City.
- The cost of the property was appropriate.

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<sup>4</sup> According to the City Manager's October 29, 2012, memorandum, at that time the City was leasing the spray fields from the TPGC owner pursuant to a 1985 agreement.



Notwithstanding those stated reasons, the City had a fiduciary responsibility to take appropriate measures to ensure the financial feasibility of purchasing the entire 365-acre TPGC. Although the City took some such measures, the adequacy of those measures was questionable. Specifically:

- There was no evidence that the City requested or obtained a formal independent appraisal to determine the value of the land separate from the golfing operation or a formal independent business valuation to determine the value of the land and facilities in the context of a golfing operation. Prior to purchasing the TPGC, it would have been prudent for the City to obtain formal independent appraisals and business valuations conducted in accordance with applicable professional standards and substantiated by written reports that explained the process and standards followed in deriving the appraised or business valuation amounts. As the City did not obtain a formal appraisal or business valuation, the City did not document that the \$2.8 million paid for the TPGC was a fair and appropriate price.
- Although the City did not obtain a formal appraisal or business valuation, in August 2012 the City obtained two informal valuations via a local golf design company. The initial informal valuation indicated that an offer of \$2 million would be reasonable.<sup>5</sup> A second informal valuation indicated that a conservative value would be \$1.8 million.<sup>6</sup> However, the City paid \$2.8 million, which was \$.8 million to \$1 million more than the values indicated by the informal valuations.
- City personnel provided a worksheet that compared estimated costs of building a new WWTP facility on existing City property to the costs of purchasing certain TPGC property tracts (three tracts from 16 to 50 acres) and expanding the WWTP facility on one of those tracts. The cost comparison, based on 1.5 million gallons of additional needed capacity, showed an estimated net capital cost of \$17 million for building a new WWTP facility on existing City property and estimated net capital costs ranging from \$8.4 million to \$9.6 million for purchasing one of the TPGC tracts and expanding the existing WWTP facility on the purchased tract. Factors considered by City personnel included the costs of acquiring the TPGC property tracts, revenues generated from the sale of unneeded property, impact fees generated, costs for a new WWTP storage lake, costs for adding new capacity with a rapid infiltration basin, and costs to move field operations. The worksheet also compared the estimated costs of operating a new facility built on existing City property, \$1.3 million, to the costs of operating an expanded facility on purchased TPGC property, \$640,000. While the cost comparisons indicated it was beneficial to acquire the TPGC property tracts and expand the WWTP facility on that property, we noted that:
  - City records did not evidence how City personnel determined the reasonableness of the cost estimates. Although we requested, City personnel did not provide records, such as documentation supporting amounts obtained from an engineering firm, to support the basis for the cost estimates used.
  - City personnel did not, of record, compare the costs of building and operating a WWTP facility on existing City property to the costs of purchasing the entire TPGC (365 acres), expanding and operating a WWTP facility on the purchased property, and managing the remaining portion of the purchased property, to include operating the golf course internally or through a contracted management entity.
- City personnel obtained unaudited TPGC financial statements covering calendar years 2007 through 2011 and the first half of the 2012 calendar year prior to the TPGC purchase. In a City e-mail dated October 23, 2012, the Executive Director of the Gulf Breeze Financial Services

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<sup>5</sup> The local golf design company provided the initial informal valuation in an e-mail dated August 15, 2012. This valuation indicated a value between \$1.8 million and \$2.5 million after considering the gross revenues and net operating income of the golfing operation and the land that was not being used by the TPGC.

<sup>6</sup> The local golf design company provided the second informal valuation in an e-mail dated August 16, 2012. This valuation indicated a value between \$1.77 million and \$2.65 million based on the "Gross Revenues" ratio and a value between \$1.24 million and \$1.69 million based on the "Net Operating Income" ratio.

and a member of the City's team involved in the negotiations for the purchase of TPGC requested the TPGC management team to provide more detail related to the TPGC financial statements, as well as audited financial statements. The TPGC management team responded that their chief financial officer would telephone the City to discuss the financial information. City records also included a memorandum dated October 29, 2012, from the then City Manager to the Mayor and City Council indicating that City personnel reviewed TPGC financial records. However, although we requested, City personnel did not provide records evidencing what, if any, analyses were performed by the City on the TPGC-provided financial information, or that the City obtained the requested audited financial statements to verify the accuracy and completeness of the financial data (e.g., revenues and expenditures) considered by the City in its reviews of the TPGC financial operations. Without evidence of appropriate and thorough financial analyses based on audited financial data, the City did not demonstrate that it prudently considered all factors in the decision to purchase the TPGC property and continue related golf operations.

- The City and TPGC owners executed a real estate purchase and sale agreement for the TPGC property on November 9, 2012. One provision of that agreement established an "inspection period" of November 9 through November 28, 2012, during which the City could terminate and cancel the agreement for any or no reason. The inspection period allowed the City time to inspect and evaluate the property and, if the property was no longer desirable, to retract its decision to acquire the property without penalty.

The City obtained the services of a golf consultant to evaluate the aspects of operating the TPGC, including golf course maintenance, golf operations, clubhouse management, financial operations, sales and marketing, and staffing. The golf consultant issued a report, dated November 29, 2012, that stated, "While this is not a complete report, it is designed to give the City comfort that there are no significant issues that would prevent the purchases of the assets at this time." The report went on to note that "there seems to be heavy machinery that was buried at some given point" and that "while this may not be an environmental issue, it is important to determine what else might [be] buried...in regards to contaminants." The report stated that this was "one issue that must be addressed as part of this purchase." The report also noted other significant concerns, including possible water damage in the clubhouse's main dining room and on the back wall of a stairwell. However, the consultant report was obtained after the end of the inspection period, thereby limiting the usefulness of the report and the City's ability to terminate the contractual agreement without penalty based on the results of the consultant's evaluation.

- In November 2012, the City also obtained the services of an architectural firm to assess the conditions of the TPGC clubhouse, pro shop, and cart storage and maintenance buildings. However, although we requested, City personnel did not provide records evidencing the results of the architectural firm's assessment. In response to our inquiry, City personnel stated the firm gave an oral report but did not provide a written report. Absent documented consideration of the architectural firm's assessments before the TPGC was purchased, there was an increased risk that the purchase was not in the City's best interests.

According to City memoranda and e-mails, the City Council was provided information indicating that the TPGC owner wanted to sell the TPGC property as soon as possible and had already negotiated with a private citizen interested in purchasing the property prior to the City's decision to acquire the property. The risk of losing the opportunity to acquire the property may have contributed to the City's purchase of the property prior to completing all actions that are prudent and appropriate for such a purchase. Given the inadequate measures taken by the City and issues regarding the City's conditional use permit and subsequent ownership and operation of the TPGC described in Findings 2 through 7, we question whether the City's process for acquiring the TPGC was prudent and appropriate and whether the acquisition was in the City's best interests.

**Recommendation: The City should establish effective policies and procedures for acquisitions of real property, to include:**

- **Prudent and appropriate steps to ensure that formal independent appraisals or business valuations are obtained to help determine appropriate and fair purchase prices.**
- **A requirement that comprehensive and appropriate feasibility studies are timely performed and the results therefrom appropriately considered in determinations as to whether such acquisitions are in the City's best interests.**

**Finding 2: Conditional Use Permit**

A conditional use permit from Santa Rosa County was necessary to allow the City to expand the WWTP on the TPGC property, as the property is located in an unincorporated part of the County. Accordingly, in anticipation of acquiring and using the TPGC property to expand the WWTP and relocate the City utility field operations, the City submitted an application for a conditional use permit to the Santa Rosa County Zoning Board (Zoning Board) on October 22, 2012.<sup>7</sup> The Zoning Board staff's analysis, dated November 1, 2012, of the City's application indicated uncertainty as to whether City expansion of the current facility and relocation of field operations would be designed, located, and operated in such a manner as to protect public health, safety, and welfare. The analysis also indicated concerns that the expansion could adversely affect other property in the impacted area including, but not limited to, single-family and mixed-use residences and vacant land. Based on similar concerns, several property owners adjacent to and otherwise near the WWTP were opposed to the WWTP expansion on the TPGC property.

Our examination of City e-mails disclosed that, on the morning of November 8, 2012, the day of the Zoning Board's public meeting to discuss the City's application for a conditional use permit, the then City Manager met with a representative of property owners who could be affected by the WWTP expansion to discuss what concessions the City could offer to entice the property owners to support the conditional use permit. At that meeting, the then City Manager agreed to several concessions regarding the west course proposed by the property owners' representative, including heavily landscaping the out-of-play areas, restoring the back nine holes (damaged in October 2004 by Hurricane Ivan), rebuilding the front nine holes, resurfacing existing cart paths or building new cart paths, and evaluating the installation of lighting on the driving range. Other concessions included repairing and replacing existing golf course fences and including various owner groups in periodic roundtable meetings with TPGC management. After that meeting, the then City Manager sent an e-mail to the property owners' representative restating the agreed-upon concessions and, before the Zoning Board meeting, met with other property owners, who opposed the permit and were present for the Zoning Board meeting, to discuss the concessions made earlier that day to encourage the property owners to support the conditional use permit for the WWTP expansion.

According to the November 8, 2012, Zoning Board meeting minutes, the then City Manager discussed the concessions that were provided in writing to a representative of certain property owners and verbally

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<sup>7</sup> The County Land Development Code includes land jurisdiction for all unincorporated areas of Santa Rosa County. The County established the Zoning Board to make recommendations to the Santa Rosa County Board of County Commissioners regarding land use changes.

communicated with other property owners prior to the meeting. Based on the apparent expectation that the City Council would honor the concessions presented by the then City Manager, the majority of the adjacent and nearby property owners did not oppose the permit and the Zoning Board approved the City's conditional use permit, considering the concessions presented by the then City Manager for recommendation to the Santa Rosa County Board of County Commissioners (County Commissioners).

On the following day, at the City Council's November 9, 2012, meeting, the then City Manager presented to the City Council a memorandum stating the reasons that the City should purchase the TPGC. In that memorandum, the then City Manager stated that "because of immediacy of this action, we pledged to the local home owners and the Santa Rosa County Planning Board that we would landscape around the golf maintenance facilities and treatment plant and, in lieu of a wall, road or trail built at this time, we would set aside \$200,000 for local improvements." The then City Manager did not detail the other key concessions promised to the property owners, such as the City's commitment to restore the back nine holes and rebuild the front nine holes of the west course. The City Council subsequently approved the TPGC purchase. Absent being provided a comprehensive list of concessions promised to the adjacent and nearby property owners, and considering the feasibility of those concessions, it is not apparent how the City Council could have made an informed decision prior to approving the TPGC purchase on November 9, 2012.

Subsequently, on November 28, 2012, the then City Manager provided a written response to the Zoning Board's staff analysis that included additional information needed to update the staff report for the County Commissioners consideration. The additional information primarily addressed the benefits of the WWTP expansion and upgrades and stated that the permit was needed for the City to purchase the TPGC. While the City Manager's written response did not include all the concessions he verbally presented at the November 8, 2012, Zoning Board meeting, it did include the City's plan to heavily landscape the facilities to mitigate visual, noise, and odor concerns, and to set aside \$200,000 for improvements in the adjacent neighborhood. On December 13, 2012, at the recommendation of the Zoning Board, the County Commissioners approved the conditional use permit to include all concessions promised to the property owners by the then City Manager. The City's acquisition of the property was subsequently finalized on December 17, 2012.

In addition to the lack of documented notification to the City Council of the detailed concessions to affected property owners, we determined that, prior to the TPGC acquisition, the City did not, of record, seek legal counsel as to the City's authority to grant and comply with the concessions made to the property owners. Following a consulting study that evaluated golf course operations and proposed development of a business plan (as discussed in Finding 3) that would discontinue use of the west course, the City Council on December 21, 2015, authorized the City to contract with an attorney to evaluate conditions imposed by the County Commissioners in connection with the approved conditional use permit, including the concessions made by the then City Manager.

In a May 13, 2016, letter to the County Commissioners, the attorney advised that the City had determined that many of the imposed conditions, including most of the aforementioned concessions made by the then City Manager, such as the \$200,000 set-aside for local improvements, were not reasonable, practical, or enforceable because the conditions had little or no relationship to the WWTP expansion. The letter further requested that the County Commissioners concur with this determination and direct

County personnel to work with City personnel in developing modifications to the conditional use permit. The County Commissioners subsequently met on August 11, 2016, and amended the conditional use permit to remove all concessions promised to property owners relating to TPGC improvements. Based on these circumstances, some of the property owners adjacent to and nearby the TPGC asserted at the August 11, 2016, County Commissioner's meeting that the City used deceptive practices to obtain the conditional use permit.

In summary, the then City Manager did not obtain legal counsel on the City's authority to make the concessions promised to property owners when obtaining the initial conditional use permit and did not obtain prior City Council approval to make those specific concessions. As a result, certain significant concessions promised to property owners were subsequently determined to be not reasonable, practical, or enforceable.

**Recommendation: The City should establish policies and procedures that require, prior to real property acquisitions or conditional use permit applications:**

- **Consultation with appropriate legal counsel regarding the reasonableness, practicality, and enforceability of any concessions associated with the real property acquisition or conditional use, including concessions that will result in additional costs to the City after the acquisition or permit issuance.**
- **City Council prior approval of all proposed concessions.**

### **Finding 3: TPGC Operating Losses**

On November 9, 2012, when the City Council approved the TPGC purchase, it also approved retaining the former owner's management company to continue managing the TPGC golf operations and facilities. However, prior to closing on the TPGC purchase in December 2012, City personnel decided that using the former owner's management company was not in the City's best interests due to differences in management style and, therefore, decided to manage the operations in-house.

City personnel operated the TPGC from the initial purchase in December 2012 until October 2015, when the City contracted with a golf course management company to manage and operate the golf operations and facilities. The management agreement provided that the management company would be responsible for all golf facility transactions, would retain any profits generated from the golf and related operations, and pay the City an annual fee. Upon the management company's termination of that agreement in March 2017, the City entered into an agreement with another management company effective April 2017, which provided that the City was responsible for payment of all operating expenses and payment of a management fee plus an incentive fee to the management company if golf operations resulted in a positive net operating income to the City.

TPGC financial activities are accounted for in the City's Golf Course Facilities Fund. Activities of that fund are combined with the South Santa Rosa Utility (SSRU) Fund and reported in the City's audited financial statements as part of the City's comprehensive annual financial report. The TPGC generates revenues from golf operations, the sale of food and beverages, and other retail operations such as the golf pro shop. TPGC operating expenses include staff salaries and benefits, purchases of goods for resale, utilities, cleaning supplies, chemicals, maintenance, and advertising. The TPGC's financial

condition and viability is significantly impacted by the economy, the condition of the golf courses, and TPGC’s ability to compete with other golf courses.

As shown in Table 1, the TPGC has experienced annual losses since the TPGC was purchased by the City.

**Table 1**  
**Golf Course Facilities Fund Net Losses**  
**For the 2012-13 through 2017-18 Fiscal Years**

Fiscal Year	Net Loss
2012-13	\$ (894,013)
2013-14	(1,007,979)
2014-15	(1,552,574)
2015-16	(112,753)
2016-17	(662,726)
2017-18	(735,843)
<b>Total</b>	<b><u>\$(4,965,888)</u></b>

Source: City records.

We determined that those losses do not include any portion of debt service incurred on the \$5 million Series 2016A Loan the City issued in 2016, the proceeds of which were used, in part, to repay a \$3 million line-of-credit used by the City to purchase the TPGC and make related improvements, including the purchase of new equipment for the TPGC. The debt service on the Series 2016A Loan is accounted for and reported in the SSRU Fund. For the 2012-13 through 2017-18 fiscal years, debt service expenditures attributable to the acquisition of the TPGC and related improvements and equipment purchases totaled \$433,978, as shown in Table 2. If the City had allocated these debt service expenditures to the Golf Course Facilities Fund, the total TPGC losses for the 2012-13 through 2017-18 fiscal years would have totaled \$5.4 million. Further, had all debt service, including principal payments, attributable to the acquisition of the TPGC and related improvements and equipment purchases been allocated to the Golf Course Facilities Fund, that Fund’s net position would have been \$644,970 less at September 30, 2018.

**Table 2**  
**Debt Service Related to the Purchase of TPGC**  
**For the 2012-13 through 2017-18 Fiscal Years**

Fiscal Year	Debt Service Payments
2012-13	\$ 29,468
2013-14	34,188
2014-15	35,016
2015-16	23,458
2016-17	145,125
2017-18	166,723
<b>Total</b>	<b><u>\$433,978</u></b>

Source: City records.

Subsequent to acquiring the TPGC, the then City Manager, in a memorandum dated December 21, 2012, to the Mayor and City Council members, indicated the City’s intent to turn the TPGC back into a

“successful golf venue.” Notwithstanding, the aforementioned losses show that the TPGC has not been a successful financial endeavor for the City.

Our further review and analysis of City records and discussions with City personnel regarding TPGC management and profitability disclosed:

- As previously noted, the City opted to manage the TPGC golf operations and facilities in-house upon the City’s acquisition of the TPGC property in December 2012. On December 21, 2012, the then City Manager sent the Mayor and City Council members an e-mail with two attached memoranda informing them of this decision. The decision to manage the operations in-house was not discussed at a City Council meeting and, as such, no formal action was taken by the City Council to approve or otherwise acknowledge the decision. Open discussion about this matter at a City Council meeting would have enhanced transparency and promoted public dialog and may have resulted in a different or better way to operate the TPGC.
- In accordance with the decision to manage TPGC golf operations and facilities in-house, the then City Manager assigned the City’s Director of Parks and Recreation (Director) the responsibilities for oversight of the TPGC golf operations and facilities. The Director managed the TPGC operations and facilities through September 2015. We noted:
  - No formal assessment of the Director’s skills and experience was made when assigning him the responsibility of TPGC oversight. According to the then City Manager, the Director was selected because he was an active golfer and knew how a golf club should be managed.
  - The assigned responsibilities were in addition to the Director’s other responsibilities, which may have impacted his ability to devote sufficient time to his TPGC responsibilities.
  - A job description was not prepared, nor was the Director’s job description updated, to address the skills and responsibilities associated with managing the golf operations and facilities. Such skills and responsibilities would likely include, but not be limited to, analyzing ongoing operations and the impact of competition (i.e., other golf courses), networking to improve stakeholder involvement, and developing a business plan that maximizes market potential. Preparing a detailed job description would have provided additional assurance that the Director fully understood his responsibilities.

Under the above conditions, there was an increased risk that the Director would not be able to effectively carry out his responsibility to oversee TPGC golf operations and facilities.

City personnel recognized by December 4, 2014, that the TPGC was not profitable and, therefore, contracted with a consultant on March 3, 2015, to perform an audit of the TPGC operations and develop a business plan to improve performance. According to the business plan dated May 2015, one of the causes for the TPGC’s poor financial performance was “lack of oversight by a management component with experience and knowledge in operating a semi-private golf club.” The business plan indicated that the City acknowledged it did not have the required expertise to manage the TPGC. The business plan also concluded that, although the TPGC had adequate revenue to be profitable, its high cost structure was the biggest impediment to achieving profitability.

In addition to the lack of adequate oversight by an experienced and knowledgeable manager, the plan identified other factors that needed to be addressed, such as member and or guest experience, golf course conditions, curb appeal, restaurant operations, staff organization, high payroll and operating expenses, and accountability. According to City records, the City implemented some of the recommendations made in the 2015 business plan in an attempt to improve the TPGC operations and profitability.

Notwithstanding City efforts to research and identify the factors resulting in the TPGC operating losses, identify areas to improve TPGC profitability, and improve oversight and management through contracted golf management companies, the TPGC continued to experience operating losses.

**Recommendation:** As the TPGC golf operations continue to experience losses, the City Council should consider alternatives, including closing the golf course and related facilities or selling the golf operations and related facilities to a private entity. Additionally, the City should:

- Prorate and allocate debt service costs attributable to golf course operations to the Golf Course Facilities Fund.
- Ensure that significant topics, such as the aforementioned decision to manage the TPGC operations in-house, are openly discussed at City Council meetings.

#### **Finding 4: City Oversight of TPGC Operations**

As discussed in Finding 3, the City contracted with a second external golf course management company in April 2017 to manage and operate the TPGC golf operations and facilities. The City agreement with the management company covered an initial 4.5-year term through September 2022 and provided that the City was responsible for payment of all operating expenses and a base management fee to the company, as well as an incentive fee if golf operations resulted in a positive net operating income to the City. The initial management fee was \$108,000 annually, payable in equal monthly installments of \$9,000, to be adjusted annually by the greater of 3 percent or the percentage change, if any, in the Consumer Price Index, not to exceed 5 percent in any 12-month period. The incentive fee is to equal the aggregate of 20 percent of the first \$100,000 in positive net operating income and 10 percent of the amount that net operating income exceeds \$100,000 for each fiscal year, or portion thereof, during the agreement term. For the period April 2017 through March 2018, the City paid 12 payments of \$9,000 each to the management company for a total of \$108,000 and no incentive fees were paid as no positive net operating income was incurred.

The agreement provides that, while the management company agreed to be guided by City goals, purposes, and policies, the management company has the right to determine and implement the operating policies, standards of operation, quality of service, and any other matters affecting customer relations or the efficient management and operation of the golf course. The management company also has the authority to:

- Establish all prices, including rates and prices for dues, greens fees, rental fees, and other similar fees and charges for use of the golf course and facilities.
- Supervise food and beverage services, including, but not limited to, banquet services, menu prices, and other guest charges.
- Receive and disburse funds and maintain bank accounts.

Further, the agreement requires the management company to provide the City the information necessary to allow City personnel to perform accounting procedures and functions for the golf course facilities. Our examination of City records disclosed that, although City personnel review monthly reports and bank account reconciliations provided by the management company and confirm the bank account cash balances, the City's monitoring of the TPGC agreement could be enhanced. Specifically:



- The TPGC management company provides City personnel with monthly financial reports that include the monthly totals for revenue and expenditure accounts. City personnel record total revenues and expenses reported on the golf course financial reports into the City accounting records. Notwithstanding, City procedures did not require that sufficient supporting documentation be submitted by the management company to allow City personnel to verify that the reported revenues are supported by detailed records from the TPGC point of sale system or that expenses incurred and paid by the management company are adequately supported by detailed invoices or vendor receipts. Accordingly, the City has limited assurance that all TPGC revenues and expenses are being properly reported by the management company and reported expenses are appropriate, substantiated, and properly classified.
- As further described in Finding 5, individuals and other entities periodically hold events (e.g., golf tournaments) at the TPGC for which fees are charged by the management company. Revenues for those events are aggregated and reported to the City by the management company as facility fees in the monthly financial reports. However, City records did not evidence that City personnel independent of the TPGC operations monitor the event activities to ensure appropriate agreements are executed for the events and that the event revenues reported and deposited are reasonable based on the number of events held, the event type, the number of event participants, and the event fees established by the management company. Without such monitoring, the City has limited assurance that event fees are properly assessed, collected, recorded, deposited, and reported by the management company.

Absent adequate monitoring of management company activities, the City has limited assurance as to the accuracy of TPGC activities and operating results reported by the management company and recorded in City records. In addition, the City has limited assurance that all fees due the City for TPGC operations are being properly assessed, collected, recorded, and deposited and that all expenses paid by the management company are appropriate. Consequently, there is an increased risk that the TPGC's financial losses discussed in Finding 3 will continue.

**Recommendation:** The City should enhance oversight and monitoring procedures by assigning City personnel independent of TPGC operations responsibility for monitoring TPGC activity and reviewing applicable TPGC records to ensure:

- All fees due the City for TPGC operations are properly assessed, collected, recorded, deposited, and reported by the management company.
- Expenses incurred are appropriate, substantiated, and properly classified and reported to the City by the management company.

### **Finding 5: Event Fees**

To properly account for TPGC golf and other events hosted at the TPGC and safeguard the related event fee collections, effective procedures that promote appropriate documentation and recordkeeping are essential. Such procedures should require, for example, proper agreements executed between the TPGC management company and representatives of the entities sponsoring the events. The agreements should identify the entity sponsoring the event and its representatives; specify the type of and purpose for the event, event times and dates, applicable rates and fees, any authorized fee waivers, and other relevant details for the event; detail the sponsoring entity's responsibilities; and include appropriate signatures demonstrating execution of the agreement. Without agreements and other appropriate documentation for events hosted at the TPGC, the City has limited assurance that event activities are

appropriate and accurately reported by the management company or that event fees due the City are properly assessed, collected, recorded, and deposited.

According to City records, during the period April 2014 through May 2018, 37 events were hosted at the TPGC that generated revenue totaling \$142,104. We requested for examination records supporting 5 selected events, including 3 events with reported revenue totaling \$14,076 and 2 events with no reported revenue. Our examination of City records and discussions with City personnel disclosed that:

- The management company did not execute an agreement for 3 of the 5 selected events. The revenue reported for 1 event totaled \$2,703 and, for the other 2 events, no revenue was reported as generated because the events were not considered official events. For those 2 events, the event participants played golf after normal operating hours when the course was closed to other golfers.
- 2 events were supported by agreements and generated revenue totaling \$11,373. However, neither agreement had been signed by representatives of the sponsoring entity, potentially limiting the authority and legality of those agreements.

The management company did not always properly execute agreements, in part, because the City did not require the management company to execute such documents.

The lack of properly executed agreements with entities sponsoring events at the TPGC increases the risk that fees will not be properly assessed and collected, inappropriate event activities will be held, and responsibilities will not be legally established thereby increasing the City's liability risks. Additionally, absent such agreements, the ability of City personnel to effectively monitor event activities at the TPGC, as addressed in Finding 4, is significantly limited.

**Recommendation: The City should establish, through a contractual amendment or otherwise, provisions requiring the TPGC management company to implement effective procedures over events hosted at the TPGC. Such provisions should require and ensure that the management company properly executes an agreement for each event. Each event agreement should:**

- **Identify the sponsoring entity and its representatives.**
- **Specify the type of and purpose for the event, event times and dates, applicable rates and fees, any authorized fee waivers, and other relevant details for the event.**
- **Detail the sponsoring entity's responsibilities.**
- **Be signed by appropriate representatives of the management company and the sponsoring entity.**

## **Finding 6: Competitive Selection of TPGC Goods and Services**

State law<sup>8</sup> establishes that fair and open competition is a basic tenet of public procurement and that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. State law specifies that documentation of the acts taken is an important means of curbing any improprieties and establishing public confidence in the process by which goods and services are procured.

<sup>8</sup> Section 287.001, Florida Statutes.

Due to allegations, we examined City records supporting certain TPGC-related procurements of goods and services. We found:

- In November 2012, the City engaged two consultants concurrently to evaluate TPGC operations, make recommendations for TPGC improvements and equipment purchases, and provide other consulting services as needed. The first consultant was paid \$152,438 and the second consultant was paid \$64,541 for these services during the period November 2012 through November 2014. Regarding the selection of these consultants, we noted that:
  - The City did not solicit bids or proposals through a documented competitive selection and negotiation process prior to hiring and paying the consultants for their services. According to City personnel, the City selected the first consultant because the consultant lived near the TPGC, was familiar with the property, and City personnel believed the consultant was qualified to perform the services. A memorandum dated November 14, 2012, from the then City Manager to the Mayor and City Council indicated that the City selected the second consultant based on a recommendation from the first consultant. As described in Finding 31, the City purchasing policies did not adequately address purchases of services during the period these consultant services were acquired. Without appropriate competitive procurement of consultant services, the City had limited assurance that it received the desired services at the lowest price commensurate with acceptable quality.
  - Although we requested, City personnel did not provide records evidencing that the City had executed a written contract for the intended services with either of the two consultants. Absent properly executed contracts that specify the rights and responsibilities for both parties, the services to be provided, the fees for such services, and the consequences for nonperformance, there is an increased risk that the City may not receive the desired services or pay the intended price for the services received.
- On September 17, 2013, the City Council approved a design-build contract totaling \$100,000 for the construction of two restrooms for the TPGC. Rather than procure the design-build services using a competitive selection process as required by State law and City policies,<sup>9</sup> City personnel recommended the contract to the City Council based on recommendations from a TPGC consultant and an architect employed by the City on another project.

City records, including a memorandum from the consultant to the City and a memorandum from the Director of Parks and Recreation to the then City Manager, indicated that the consultant provided the recommended contractor with technical drawings of the restrooms and that, based on the drawings, the contractor prepared a proposal for design-build restrooms. The consultant compared the contractor's proposal to costs in a Miami-Dade County contract for prefabricated modular restrooms and calculated a cost savings of \$13,691. The contractor's proposal was reviewed by the architect and submitted to the City along with a suggestion from the architect that the City not bid the project due to the expense of providing bid documents (e.g., drawings, specifications) to the public and the risk of inexperienced contractors responding to the bid.

Notwithstanding the consultant's efforts to assist in procuring the design-build services, City records did not evidence that any of the conditions specified in State law or the City Charter were met to allow waiver of the required competitive selection process. Additionally, we noted that:

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<sup>9</sup> The City is required to procure design-build services using a competitive selection process prescribed by Section 287.055(9), Florida Statutes, and to award design-build contracts in accordance with the procurement laws, rules, and ordinances applicable to the City. Pursuant to Section 287.055(9)(c)6., Florida Statutes, the prescribed competitive selection process can only be waived for a public emergency. Part 1, Subpart A, Section 3(r), City of Gulf Breeze Charter requires contracts for construction and materials exceeding \$5,000 to be publicly bid and provides that the City Council may only waive competitive selection in certain circumstances.

- City records did not evidence that City personnel verified the accuracy of the consultant-calculated cost savings or obtained from the consultant the Miami-Dade County contract used in the cost comparison.
- Because the alleged cost savings were based on dissimilar services (i.e., prefabricated modular construction versus design-build construction), the usefulness of the consultant's cost comparison was extremely limited.

Without appropriate competitive procurement of construction services in accordance with requirements of State law and City policies, the City has limited assurance that it is receiving those services at the lowest price commensurate with acceptable quality.

- In May 2013, and again in December 2013, the City Council approved purchases for golf club maintenance equipment based on recommendations made by a TPGC consultant. During that period, City purchasing policies<sup>10</sup> required the solicitation of “written, sealed formal bids” for purchases of items costing more than \$5,000. The policies also required the solicitation of competitive quotes from at least three vendors for purchases of more than \$1,000 but less than \$5,000. However, City records did not evidence that the maintenance equipment was purchased in accordance with the requirements or intent of City purchasing policies. Specifically:
  - City records indicated that for a \$45,833 equipment purchase in May 2013, the consultant identified the needed equipment, the vendors from which the equipment should be purchased, and the prices that should be paid. A memorandum from the consultant to the City indicated that the consultant obtained competitive bids for two equipment items with costs totaling \$17,552 and determined that the other two equipment items with costs totaling \$28,281 were available on an existing State contract. However, City records did not evidence that City personnel obtained records from the consultant to support that the consultant solicited and obtained competitive bids consistent with City purchasing policies or that City personnel verified the accuracy of the State contract terms cited by the consultant.
  - City records indicated that for a \$655,000 purchase of lawn mowers and other golf course maintenance equipment in December 2013, the consultant presented a list of TPGC equipment needs to three leading golf club maintenance equipment vendors and requested quotes from each vendor based on terms for a cash purchase, a 36-month lease, and a 48-month lease. City records indicated that the vendor providing the lowest price and best warranty terms was selected for the purchase. Notwithstanding that competitive quotes were obtained by the consultant on behalf of the City, as each item cost more than \$5,000, City purchasing policies required the public solicitation of written, sealed formal bids from interested vendors rather than quotes from a limited number of pre-selected vendors.

In the above instances, City records did not demonstrate that the purchased equipment was acquired in accordance with City purchasing policies at the lowest price commensurate with acceptable quality.

Findings 32 and 39 note similar deficiencies relating to other City purchases of goods and services.

**Recommendation: The City should:**

- **Enhance efforts to purchase goods and services in accordance with State laws, the City Charter, and City purchasing policies. Such efforts should include, when applicable, verifying assertions made by consultants used to solicit competitive bids or quotes on the City's behalf.**
- **Require and ensure that written agreements for consultant and other professional services are properly executed to specify the rights and responsibilities of both parties, the services**

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<sup>10</sup> Section 4(1), City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

**to be provided, the fees for such services, and the consequences for nonperformance with the terms of the agreement.**

## **Finding 7: TPGC Land Sale**

City ordinances<sup>11</sup> provide that the City Council, upon the City Manager's recommendation, may find and declare real property to be surplus and may dispose of such property in a good faith manner that is in the City's best interests. Appropriate methods of disposal provided by City ordinances include, for example, sealed bids, auction, negotiated sale, or real estate listing. City ordinances further provide that surplus real property with any value may, upon City Council approval, be sold or donated to another governmental entity, with such sale or donation accomplished through terms and conditions deemed appropriate by the City Council.

As a matter of good business practice, policies and procedures should be established to provide guidelines for the efficient and consistent disposal of surplus real property. As a means to assist the City Council in determining if real property disposals are in the City's best interests, such policies and procedures should include consideration of appraisals obtained for the current real property values prior to disposal.

As of June 2020, the City had sold one TPGC tract (the former driving range) and was in the process of selling another tract (located in the west course). As part of our audit, we examined City records and inquired of City personnel regarding those TPGC land sales.

**West Course.** As of June 2020, the City was in the process of selling a portion of the west course to the Santa Rosa District School Board (SRDSB). Our examination of City records disclosed the following sequence of events:

- At the July 5, 2016, City Council meeting, a business owner expressed interest in purchasing all or part of TPGC. Although the City Council had not, of record, considered selling a portion of the TPGC prior to that date, the business owner was encouraged to submit an offer for purchase of TPGC property.
- In August 2016, to prepare for any purchase offers, the City Council approved the then City Manager's request to obtain appraisals of various tracts of TPGC property, including the east course, the west course, and the driving range. During that month, the City obtained an appraisal for each of those tracts. The east course (180 acres), the west course (125 acres), and the driving range (13 acres) were appraised at \$2.5 million, \$5.4 million, and \$1.5 million, respectively.
- In April 2017, a homebuilder proposed purchasing 47 acres of the 125-acre west course tract for \$2.4 million, or \$51,064 per acre.
- In May 2017, the City obtained an updated appraisal of \$6.3 million, or \$50,400 per acre, for the 125-acre west course tract.
- In June 2017, the SRDSB expressed an interest in purchasing 45 acres of the 125-acre west course tract for a new school site. The City Manager authorized the SRDSB to obtain surveys, various geotechnical and environmental analyses, and appraisals for the 45-acre tract.
- On March 15, 2018, the SRDSB authorized its attorney to prepare a contract to be executed with the City to acquire the 45-acre tract for \$1.9 million (\$42,222 per acre).

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<sup>11</sup> Sections 2.127 and 2.128, City of Gulf Breeze, Code of Ordinances.

- On March 19, 2018, the City Council agreed to sell the 45-acre tract for \$1.9 million to the SRDSB and directed City personnel to work out the terms and conditions for the sale. In recommending that the City Council consider the SRDSB offer, the City Manager noted that the sale would not generate the highest return for taxpayers, but the City Council should consider that schools strengthen the community and increase surrounding property values.
- In April 2018, the City obtained another updated appraisal for the 45-acre tract. The updated appraised value based on the land's "highest and best use" was \$3.6 million, or \$80,000 per acre, which was a significantly higher value than the \$1.9 million value (\$42,222 per acre) tentatively agreed on by the City and the SRDSB.
- At the May 7, 2018, City Council meeting, the SRDSB Superintendent was asked about the possibility of the SRDSB acquiring less than 45 acres, and the City Council directed City personnel to discuss alternatives with the SRDSB, including the City retaining a portion of the 45-acre tract to use for required effluent disposal capacity.
- In September 2018, the SRDSB Superintendent offered to revise the initial agreement to instead purchase 30.5 acres for the same per acre price (\$42,222) as the original offer, or approximately \$1.3 million; however, the offer was not accepted.
- In October 2018, based on the assumption that the SRDSB would provide for the necessary effluent disposal capacity, the City Manager indicated that the purchase price of \$1.9 million and the value associated with the SRDSB's recapture of effluent disposal would collectively provide the City with a total value of \$2.9 million if the sale is finalized.
- In November 2018, the City Council, after considering the proposed use of the land, approved the original offer of \$1.9 million, or \$42,222 per acre, for the 45-acre tract with the condition that the SRDSB recapture the estimated 253,000 gallons per day loss of effluent disposal capacity.

As of June 2020, the sale of the 45-acre west course tract to the SRDSB had not been completed. Had the City obtained a more current appraisal of the property prior to accepting the SRDSB's original offer, the City may have been in a stronger bargaining position and able to sell the 45 acres to the SRDSB for a higher amount given the April 2018 appraised fair market value of \$80,000 per acre. However, ultimately the City Council made its decision to accept the SRDSB's original offer based on the resultant total value of the property sale to the City of \$2.9 million and consideration of the value to the City of a school being constructed on the property.

**Driving Range.** In June 2019, the City sold the TPGC 13-acre driving range to a private developer. Our examination of City records and discussions with City personnel related to the sale disclosed the following sequence of events:

- In August 2016, the City obtained an appraisal of \$1.5 million for the driving range.
- In May 2017, when the driving range was placed on the market, the City obtained an updated appraisal that indicated a value of \$1.75 million for the property.
- In a memorandum dated June 27, 2017, the City Manager informed the Mayor and City Council that the City had received three offers to purchase the driving range, ranging from \$750,000 to \$1.925 million. However, according to City personnel, none of the offers were accepted because the City's required terms could not be agreed upon.
- In a memorandum dated October 26, 2018, the City Manager informed the Mayor and City Council that the City had received two additional offers of \$1.5 and \$1.525 million to purchase the driving range.

- On November 5, 2018, the City Council approved a recommendation to authorize the City Attorney and City Manager to draft a contract with the developer making the higher offer of \$1.525 million to include terms and conditions addressing the recapture of effluent disposal and concurrency. From that date forward, the City negotiated with the developer to reach favorable terms for the City.
- At its May 20, 2019, meeting, the City Council approved accepting the developer's \$1.525 million offer and the City subsequently sold the driving range to the developer for that amount. In connection with the sale, the developer agreed to allow the City to continue using the property (or adjacent property the developer already owned) for effluent disposal, which represented an estimated cost savings of \$720,000<sup>12</sup> for the City.

City personnel asserted that, although the sales price was less than the May 2017 updated appraised value, the \$1.525 million sales price along with the estimated \$720,000 cost savings provided the City a value totaling \$2.245 million, or \$495,000 more than the \$1.75 million appraised value. Notwithstanding, the sales price was \$225,000 less than the \$1.75 million May 2017 appraised value and, had the City obtained a more current appraisal of the property before accepting the \$1.525 million offer in May 2019, the City may have been in a position to negotiate the sale of the driving range for a higher amount.

Considering the cost of purchasing, equipping, and repairing the TPGC and the impact of that cost on utility customers discussed in Finding 17, as well as the significant TPGC operating losses discussed in Finding 3, it is essential that the City maximize gains on the sale of portions of TPGC property to the fullest extent possible.

**Recommendation: The City should establish policies and procedures that require independent appraisals of current property values be obtained and considered by the City Council prior to selling surplus City-owned real property.**

#### RELATED ORGANIZATIONS – FINANCING PROGRAMS

Local governments often issue bonds to secure funds to finance the cost of major capital projects or other endeavors when other resources are not available for those purposes. To facilitate the issuance of bonds, improve their marketability, and minimize the cost of issuance and borrowing, many local governments, as an alternative to the direct issuance of bonds, participate in pooled bond funding arrangements. Under such arrangements, a qualified entity (e.g., a local government) issues bonds for participating local governments and qualified nonprofit organizations to fund capital projects and other endeavors.

The City created, sponsored, and funded, through bond issuances, a loan program to provide funding arrangements for local governments and qualified nonprofit entities. According to the City's 2017-18 fiscal year audited financial statements, four bond issues totaling nearly \$537 million were issued to fund the City loan program.

In addition to the loan program, the City assists entities in securing funds to finance projects through conduit financing. Typically, under a conduit-financing concept, an entity issues tax-exempt bonds on

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<sup>12</sup> The \$720,000 is the amount City personnel estimated it would cost the City to acquire new property, and make improvements to such property, to provide for the level of effluent disposal capacity the City was achieving from the property prior to selling the property to the developer. The \$720,000 estimate was based on historical costs of procuring and improving five existing City effluent disposal sites costs.

behalf of another entity to build projects, such as utilities, courthouses, hospitals, jails, and other public buildings, that benefit the general public. However, the entity that issues the bonds is not legally or otherwise responsible for bond principal and interest payment. Instead, the entity for which the bonds were issued is obligated to pay the principal and interest. To date, the City has assisted other entities in obtaining over \$2.6 billion through conduit financing for various projects. To assist in administering these financing programs, the City created and uses two related organizations: Gulf Breeze Financial Services, Inc. (GBFS) and Capital Trust Agency, Inc. (CTA).

The GBFS, a nonprofit organization, was incorporated (created) in March 1997 as authorized by the City Council. City Council members, including the Mayor, serve as the GBFS Board of Directors (GBFS Board). The GBFS was created to assist the City in the administration, operation, marketing, organizing, and servicing of various financing programs, including the loan program. The GBFS is reported as a blended component unit and an enterprise fund within the City financial statements.

According to the GBFS audited financial statements, the GBFS reported revenues and operating expenses of \$340,429 and \$618,479, respectively, for the 2017-18 fiscal year, and a net position of \$9,464,950 at September 30, 2018. Revenues are derived primarily from origination and program fees charged to entities that obtain financing through the City loan program and investment earnings. Operating expenses consist primarily of personal services and professional services.

The CTA, a nonprofit organization, was incorporated (created) on June 28, 1999, as authorized by the City Council, for the primary purpose of providing conduit financing. Subsequently, the City Council adopted a resolution<sup>13</sup> approving an interlocal agreement between the City and the Town of Century (Town), which was executed on August 2, 1999. The interlocal agreement provides for the City and Town's joint participation in City financing programs through the CTA. The agreement further provides that the CTA was created "for administrative convenience" for the purpose of planning, financing, acquiring, constructing, and other project-related activities (as defined in the agreement) and establishing, implementing, financing, and administering programs (as defined in the agreement). The City Council appoints CTA Board of Director (CTA Board) members. The CTA and its subsidiary, the CTA - Community Development Entity (CTA-CDE),<sup>14</sup> are reported as a discretely presented component unit within the City financial statements.

According to the CTA's audited financial statements, the CTA reported revenues and operating expenses of \$2,423,678 and \$1,156,756, respectively, for the 2017-18 fiscal year, and a net position of \$4,900,686 at September 30, 2018. Revenues are derived primarily from origination and program fees charged to entities that obtain financing through the City's conduit financing program. Operating expenses consist primarily of personal services, professional services, and other contractual services.

Our audit procedures found that administration of City financing programs could be enhanced.

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<sup>13</sup> City of Gulf Breeze Resolution No. 14-99 adopted July 19, 1999.

<sup>14</sup> The CTA-CDE was created to attract tax credit funding incentives for projects that will have substantial economic impact to help renew distressed neighborhoods. The CTA holds a 99 percent ownership interest in the CTA-CDE and is the managing member. As such, the CTA presents its financial statements consolidated with those of the CTA-CDE. Any references to CTA activities in this report also refer to activities of its subsidiary, the CTA-CDE.



## Finding 8: Administration of Financing Programs

The Legislature has recognized that a governmental entity's use of a nonprofit corporation or other non-governmental entity to provide services may be beneficial. However, the Legislature has also recognized that, before creating or contracting with other entities to assist in performing its functions, a governmental entity should make a determination of whether doing so is cost effective and in the public's best interest.<sup>15</sup> In addition, once created and used, good business practices require periodic evaluation of the non-governmental entity's cost effectiveness and continued value to the government.

During our audit, we identified certain disadvantages of the City creating and using the GBFS and the CTA to assist in administering City financing programs. Those disadvantages include less accountability and transparency for program transactions and activities, when compared to direct administration of those programs by the City, and costs that could have been avoided had City personnel been solely responsible for administering the financing programs. Specifically:

- As nonprofit entities, the GBFS and the CTA are not required to comply with certain key provisions of State law applicable to local governments that help establish and foster ethical behavior, accountability, and transparency. For example, there is no requirement for:
  - The CTA to comply with the code of ethics established by State law,<sup>16</sup> which, among other things, provides standards for the conduct of entity officials and employees and for protection against conflicts of interest.
  - The CTA to establish certain safeguards required by State law<sup>17</sup> regarding the investment of public moneys.
  - The GBFS and the CTA to post the governing body-approved budgets and budget amendments required by State law<sup>18</sup> to their Web sites and limit expenditures to budgeted expenditures as shown in the approved budget.
  - The GBFS and the CTA to obtain and undergo annual financial audits in accordance with Chapter 10.550, Rules of the Auditor General,<sup>19</sup> and State law.<sup>20</sup> Although the GBFS and the CTA undergo annual financial audits, those audits are not conducted in accordance with Chapter 10.550, Rules of the Auditor General, and, as such, the scope of the audits do not provide the level of coverage required for the City's annual financial audit. For example, the scope of the City's annual financial audit must include procedures to determine whether one or more of the conditions described in State law<sup>21</sup> occurred, to assess financial condition, and

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<sup>15</sup> For example, Section 455.32, Florida Statutes, known as the Management Privatization Act, authorizes the Department of Business and Professional Regulation to contract with nonprofit corporations to assist regulatory boards in carrying out their oversight responsibilities; however, the Department may only do so based on a privatization request from a regulatory board that includes a financial feasibility study. Similarly, pursuant to Section 216.023(4)(a)7., Florida Statutes, State agency legislative budget requests for outsourcing or privatizing agency functions must contain a cost-benefit analysis. Additionally, Sections 125.3401, 180.301, and 189.054, Florida Statutes, require counties, municipalities, and special districts, respectively, to make a determination of public interest before entering into a wastewater facility privatization contract.

<sup>16</sup> Chapter 112, Part III, Florida Statutes.

<sup>17</sup> Section 218.415, Florida Statutes.

<sup>18</sup> Section 166.241, Florida Statutes.

<sup>19</sup> Chapter 10.550, Rules of the Auditor General, prescribe requirements for local governmental entity financial audits.

<sup>20</sup> Section 218.39, Florida Statutes.

<sup>21</sup> Section 218.503(1), Florida Statutes.

to determine whether the City complied with State law<sup>22</sup> regarding investments, whereas the scope of the GBFS and CTA audits are not required to include such procedures.

- By creating and using the GBFS and the CTA to administer the financing programs, unnecessary administrative costs may have been incurred. For example:
  - Pursuant to the interlocal agreement executed with the Town in accordance with State law<sup>23</sup> to facilitate creation, authorization, and use of the CTA to issue bonds, the City has been obligated to pay the Town \$1.3 million<sup>24</sup> since the CTA was created. The interlocal agreement<sup>25</sup> indicates that these payments were for the Town’s administrative fees and expenses associated with CTA bond issues, although City records indicate that the City, and not the Town, has been providing the CTA administrative support.
  - In addition to the City annual financial audit, the City annually provides for separate financial audits of the GBFS and the CTA. According to the City audit contract for the City, GBFS, and CTA financial audits for the 2013-14 through 2017-18 fiscal years, the audit costs associated with the separate GBFS and CTA audits totaled \$65,000 over those 5 years.

Although we requested, we were not provided City records (e.g., audio tapes or minutes of City Council workshops or meetings) evidencing the City’s determination that it was economically or otherwise more advantageous for the City to create and use the GBFS and the CTA rather than using City employees or employing additional staff or consultants to administer the financing programs within the City organizational structure. In response to our inquiries as to why the City created the GBFS and the CTA instead of administering the financing programs internally, City personnel indicated that the CTA “exists for purposes very different from the delivery of services provided by the City for its citizens.” Notwithstanding, many other governmental entities have issued, marketed, and administered debt to finance loan pools or for conduit financing without creating separate non-governmental entities. If necessary, the City could have employed additional qualified and knowledgeable staff or consultants to administer the financing programs within the City organizational structure, which could have provided increased accountability and transparency, as discussed in Findings 9 through 16, and possibly reduced administrative costs.

In response to our further discussions on this matter, City personnel provided to us a memorandum dated July 20, 2020, from contracted legal counsel indicating that the City created the CTA to issue bonds on the City’s behalf to protect the City and its staff from unnecessary administrative burdens. The memorandum also indicated that one advantage of the CTA was that it allowed board meetings to be assembled in a timely manner. However, the merits of those statements were not apparent as the City could handle any additional necessary administrative duties and facilitate timely board meetings by employing additional staff or consultants within the City’s organization structure.

The memorandum also indicated that one of the reasons for the CTA’s success is its flexibility and that it is likely that, if the conduit debt program were administered by the City directly, this flexibility “would be significantly reduced for the sake of core governmental programs and necessary bureaucracy.” However, the reasoning of this statement is also questionable, as in April 2015, the CTA’s Executive Director (ED)

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<sup>22</sup> Section 218.415, Florida Statutes.

<sup>23</sup> Section 163.01, Florida Statutes.

<sup>24</sup> \$1.3 million was due to the Town based on payment rates in effect at the time of the bond issues as specified in the interlocal agreement, as amended.

<sup>25</sup> Interlocal Agreement, Section 3.

became a City employee and, along with two support staff (both also City employees), has been responsible for conducting CTA business and maintaining related records for several years with no apparent reduction in productivity or flexibility.<sup>26</sup>

The memorandum further indicated that utilizing the CTA to issue the conduit debt shields the City from certain potential legal exposure. While this may be true to some extent, this protection is diminished by the use of a City employee (the ED) to manage CTA operations and the City's sometimes ineffective control over CTA activities as discussed in Finding 9. Additionally, the City, without the CTA's creation, is already afforded some protection from potential liability through sovereign immunity.<sup>27</sup>

Notwithstanding the advantages and disadvantages of creating a separate entity for issuing conduit debt, if the City desired to create a separate entity to administer its financing programs, it could have accomplished this by creating a special district, rather than creating nonprofit organizations such as the GBFS or CTA. Many special districts have been created for conduit debt financing purposes, and, unlike the GBFS and CTA, such districts are subject to the aforementioned statutory accountability and transparency requirements. Accordingly, use of a special district to administer the City's financing programs may have provided increased accountability and transparency and possibly reduced administrative costs.

**Recommendation: The City should assess and document whether there are economic or other advantages gained by continuing to administer the financing programs using the GBFS and the CTA. If the City determines that there are no discernible advantages, the City should increase accountability and transparency by administering the programs solely within the City organizational structure using qualified and knowledgeable City personnel.**

#### **Finding 9: Control Over CTA Activities**

State law<sup>28</sup> provides that any separate legal entity created by an interlocal agreement pursuant to State law<sup>29</sup> and controlled by one or more Florida municipalities, may, for the purpose of financing or refinancing any capital projects, exercise all powers in connection with the authorization, issuance, and sale of bonds.

Because of the significant public resources entrusted to the CTA and because control of the CTA is a prerequisite for the City and Town in authorizing the CTA to issue bonds pursuant to State law,<sup>30</sup> it is incumbent on the City and Town to maintain sufficient control over CTA activities. Additionally, the Attorney General has opined<sup>31</sup> that, when a public purpose is involved, a municipality may accomplish this purpose through the medium of a nonprofit quasi-public corporation provided that some degree of control over public funds or property be retained by the public authority through implementation of proper safeguards to assure accomplishment of the public purpose.

<sup>26</sup> The CTA issued 88 bonds during the 5-year period subsequent to the ED becoming a City employee effective April 1, 2015, and issued 31 bonds in the 5-year preceding period.

<sup>27</sup> Section 768.28, Florida Statutes, under the Doctrine of Sovereign Immunity, effectively limits the amount of the liability of governmental entities for State tort claims to \$200,000 per claim and \$300,000 per occurrence.

<sup>28</sup> Section 163.01(7)(d), Florida Statutes.

<sup>29</sup> Section 163.01, Florida Statutes.

<sup>30</sup> Section 163.01(7)(d), Florida Statutes.

<sup>31</sup> Attorney General Opinion No. 86-44.

Our examination of City records and discussions with City personnel disclosed that the City attempted to maintain control over CTA activities through use of various measures; however, such measures were not always effective. Specifically:

- **Articles of Incorporation.** The CTA Articles of Incorporation,<sup>32</sup> as amended, establish the CTA Board of Directors' powers and include certain restrictions and limitations on CTA actions. For example, the Articles of Incorporation<sup>33</sup> provide that the City Council shall appoint the CTA Board members, that Board members are subject to removal by the City Council, and that amendments to the Articles are to be approved by the City Council.<sup>34</sup> Accordingly, the Articles of Incorporation should provide the City a means of controlling CTA activities to some extent; however, our examination disclosed that the CTA Board approved certain amendments to the Articles without City Council knowledge and approval. Specifically, since the CTA was created, the CTA Board has amended the CTA Articles of Incorporation three times. City records evidenced that the City Council, at its October 7, 2002, meeting, approved the CTA Board amendment to the Articles of Incorporation made on September 26, 2002. However, City records did not evidence that the City Council was made aware that the CTA Board also amended its Articles of Incorporation on May 10, 2001, and July 31, 2012, to expand CTA purposes and powers.

In response to our inquiries, City personnel indicated that the CTA Board approves amendments to the CTA Articles of Incorporation, and the amendments do not have to be approved by the City Council. City personnel also indicated that they did not know why the City Council approved the September 26, 2002, amendment. Notwithstanding, the lack of awareness of amendments to the CTA Articles of Incorporation illustrates the potential for the CTA Board to amend the Articles, for example to remove the aforementioned City Council appointment and removal provision, without City Council approval.

Additionally, our review of 2017-18 fiscal year CTA vendor payments totaling \$574,274, as discussed in Finding 13, disclosed payments totaling \$18,126 for contributions to 20 nonprofit organizations. City personnel indicated that the contributions were made pursuant to requests by the various organizations and the CTA feels community support for nonprofit organizations meets the CTA's mission. However, it was not apparent how contributions to local nonprofit organizations would help achieve the CTA's primary mission to issue conduit debt, especially as the vast majority of CTA bond issuances have been to finance projects located in other parts of the State or outside the State.

- **Interlocal Agreement.** The Articles of Incorporation and CTA Bylaws<sup>35</sup> do not address many aspects of CTA operations, including, for example, the assessment and collection of charges, rates, or fees; the purchase of good or services and execution of related contracts; and the manner in which debt is to be issued. As such, and given the lack of established CTA policies and procedures discussed in Finding 10, it is important that the interlocal agreement provide sufficiently detailed guidance to ensure that the CTA is operated consistent with City Council intent and in accordance with applicable laws and good business practices.

State law<sup>36</sup> prescribes several provisions that should be considered for inclusion in interlocal agreements entered into pursuant to State law.<sup>37</sup> To determine the extent to which the interlocal agreement included these provisions, and otherwise provided guidance as to the CTA operations, we reviewed the agreement as amended over time. Our review disclosed that the agreement

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<sup>32</sup> CTA Articles of Incorporation, Articles III and IX.

<sup>33</sup> CTA Articles of Incorporation, Article VI.

<sup>34</sup> CTA Articles of Incorporation, Articles VIII and IX.6(b).

<sup>35</sup> CTA Bylaws as adopted by the CTA Board on September 28, 2000.

<sup>36</sup> Section 163.01(5), Florida Statutes.

<sup>37</sup> Section 163.01, Florida Statutes.

includes some of the suggested provisions; however, it does not include or sufficiently address several other provisions and could be enhanced. Specifically:

- Pursuant to State law,<sup>38</sup> interlocal agreements may need to indicate the manner in which the parties to such an agreement will provide financial support, including but not limited to, personnel, equipment, or property. The interlocal agreement<sup>39</sup> provides that the City may cooperate in providing the CTA offices and work spaces, equipment, supplies, and staff assistance; however, the agreement is not specific as to the extent to which the City is to provide such support, whether the CTA is to reimburse the City for such support, or the methodology to be used to determine the amounts the CTA is to reimburse the City for such support.

As discussed in Finding 14, the CTA is charged a percentage of various City costs (e.g., costs for telephone service, utilities, professional services) attributable to CTA activities. Addressing City support provided to the CTA in the interlocal agreement would provide additional assurance that the CTA reimburses the City for such support consistent with City Council intent.

- Although pursuant to State law<sup>40</sup> interlocal agreements may need to address the assessment and collection of charges, rates, or fees, the interlocal agreement does not address such revenues. According to the CTA 2017-18 fiscal year audited financial statements, the CTA generates revenues by charging origination and program fees when assisting other entities in obtaining conduit financing through the City. The CTA reported revenues from “charges for services” totaling \$1.5 million and \$2.2 million for the 2016-17 and 2017-18 fiscal years, respectively. Addressing CTA charges, rates, or fees in the interlocal agreement would provide assurance that the CTA is generating revenue consistent with City Council intent.
- Pursuant to State law,<sup>41</sup> interlocal agreements may need to indicate the manner in which purchases are to be made and contracts entered into and funds disbursed; however, these areas are not addressed in the interlocal agreement. The CTA reported professional and contractual services expenses totaling \$516,693 and \$737,945 for the 2016-17 and 2017-18 fiscal years, respectively. Establishing the manner and process for procuring goods and services in the interlocal agreement would help ensure that the CTA expends funds in an effective, efficient, and appropriate manner consistent with City Council intent. For example, the agreement could address the establishment of policies and procedures requiring goods and services to be procured using appropriate competitive selection processes, prescribing the disbursement process, and requiring appropriate supervisory approvals.
- Pursuant to State law,<sup>42</sup> interlocal agreements may need to address the manner of insuring against potential liabilities that may be incurred through performance of duties specified in the interlocal agreement. The interlocal agreement, as amended,<sup>43</sup> provides that the City and the CTA shall hold the Town harmless regarding any claims, losses, liabilities, or damages occurring in connection with bond issuances or project finances thereof. However, the interlocal agreement does not address measures the CTA should take to insure against the possibility of such claims, losses, liabilities, or damages.

According to City personnel, the CTA has professional liability insurance for its Board members. However, addressing required CTA insurance coverage in the interlocal

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<sup>38</sup> Section 163.01(5)(d), Florida Statutes.

<sup>39</sup> Interlocal Agreement, Section 8.

<sup>40</sup> Section 163.01(5)(h), Florida Statutes.

<sup>41</sup> Section 163.01(5)(e) and (5)(i), Florida Statutes.

<sup>42</sup> Section 163.01(5)(o), Florida Statutes.

<sup>43</sup> Interlocal Agreement, Section 11, and Interlocal Agreement amendment No. 116.

agreement would provide additional assurance that the CTA obtains the appropriate level of professional liability insurance coverage consistent with City Council intent.

- Pursuant to State law,<sup>44</sup> interlocal agreements may need to address accountability of funds and reporting of all receipts and disbursements to each participating party to the interlocal agreement. However, the interlocal agreement does not establish, or adequately address, CTA responsibilities regarding accountability for CTA resources. Specifically:
  - The interlocal agreement does not include any provisions that address the safeguarding of moneys. According to Note 3 to the CTA 2017-18 fiscal year audited financial statements, the CTA maintains its deposits with qualified public depositories as defined in State law.<sup>45</sup> However, requiring such in the agreement would provide additional assurance that CTA moneys are afforded protection consistent with City Council intent.
  - The interlocal agreement<sup>46</sup> requires the CTA to prepare and adopt an annual budget and provides that the budget, and all amendments thereto, shall be subject to prior City approval. However, the interlocal agreement does not include transparency and expenditure limitations required by State law for municipalities, such as a requirement that:
    - The governing body-approved budget and amendments thereto be posted on the municipality’s Web site.<sup>47</sup>
    - Expenditures be limited to budgeted expenditures as shown in the budget approved by the governing body.<sup>48</sup> For the 2017-18 fiscal year, CTA expenses (\$1,156,756) exceeded the CTA Board-approved budget (\$422,049) by \$734,707. In response to our inquiry, City personnel indicated that CTA revenues exceeded budgeted revenues by \$1,261,457 for that fiscal year and that some of the over expenditures were attributable to circumstances that provided the additional revenues. City personnel also indicated that the CTA Board was provided explanations for any line items materially different from the budget, but the CTA Board did not formally approve a budget amendment to increase the budgeted expenditures.

In addition, City personnel indicated that City representatives (including the City Manager and a CTA Board member who is also a City Council member) monitor CTA Board activity and may report information to the City as they deem pertinent and material. While we recognize that there may be legitimate circumstances that result in expenditure increases not anticipated in the adopted budget, the CTA Board should amend the adopted budget for such increases and inform the City of any significant variances from the adopted budget. However, although we requested, City personnel did not provide documentation evidencing inquiries by City representatives regarding the \$734,707 budget variance or that the City Council was informed of, and provided explanations for, the variance.

Including the above-noted requirements in the interlocal agreement would provide additional assurance that the CTA Board-adopted budget and amendments thereto are transparent and that CTA expenditures are limited to budgeted amounts.

- The interlocal agreement<sup>49</sup> requires the CTA to provide for an annual audit by a “recognized firm of certified public accountants” within 180 days after the CTA fiscal year

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<sup>44</sup> Section 163.01(5)(q), Florida Statutes.

<sup>45</sup> Chapter 280, Florida Statutes.

<sup>46</sup> Interlocal Agreement, Section 5.

<sup>47</sup> Section 166.241(3) and (5), Florida Statutes.

<sup>48</sup> Section 166.241(2), Florida Statutes.

<sup>49</sup> Interlocal Agreement, Section 9.

end and to submit copies of the audit report to the City. However, the agreement does not specify:

- The scope of the audit. For example, a specified scope could include an examination to determine whether CTA operations are conducted in accordance with applicable laws, established policies and procedures, interlocal agreement provisions, and good business practices, in addition to an examination of the financial statements in order to express an opinion on the fairness with which the statements are presented in conformity with generally accepted accounting principles.
- The professional standards the audit firm is to follow when conducting the audit. For example, to provide the same level of assurance as provided by City or Town financial audits, the interlocal agreement could require that the audit be conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. In practice, the City has been contracting with an audit firm to conduct separate financial audits of the City, GBFS, and CTA, and such audits are conducted in accordance with *Government Auditing Standards*.
- How the audit firm is to be selected and whether an auditor selection committee should be established to assist in selecting the audit firm, monitoring the audit, and ensuring that the CTA takes timely and adequate measures to address audit findings. Although the City reportedly selected the audit firm contracted to conduct financial audits of the City, GBFS, and CTA in accordance with State law,<sup>50</sup> City records did not sufficiently evidence this, as discussed in Finding 35.

Adequately addressing audit provisions in the interlocal agreement would provide additional assurance that auditors are selected, and audits are conducted, consistent with City Council intent and that CTA operations are conducted in accordance with applicable laws, established policies and procedures, interlocal agreement provisions, and good business practices.

Although the City and Town, when entering into the interlocal agreement, were not required to include the provisions suggested by State law, including those provisions in the agreement would clarify City, Town, and CTA responsibilities and provide additional safeguards and assurance that the CTA conducts business in an effective, efficient, transparent, and appropriate manner consistent with City and Town Council intent.

- **Other CTA Oversight.** The City employs an Executive Director to manage CTA operations. However, as discussed in Finding 10, neither the City Council nor the CTA Board had established policies and procedures governing CTA operations. Established policies and procedures would provide assurances the City Council and CTA Board currently lacks as they primarily rely on the Executive Director's best judgment for managing CTA operations. Such assurances are crucial given the Executive Director's relationship with the CTA (as discussed in Finding 13).

City personnel indicated that a City Council member is also a member of the CTA Board and the City Manager attends most CTA Board meetings. However, this level of oversight does not provide sufficient control over CTA activities, as the City Council member is only one of eight CTA Board members, and the CTA Board is not required to comply with City Manager recommendations. City personnel further indicated that "the City respects and values the competency of the CTA board and does not interfere in the board's governance of CTA unless reasons exist to do so." Notwithstanding, the City and Town are responsible for CTA activities because of the significant public resources entrusted to the CTA and because such control was a prerequisite for the City and Town in authorizing the CTA to issue bonds pursuant to State law.<sup>51</sup>

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<sup>50</sup> Section 218.391, Florida Statutes.

<sup>51</sup> Section 163.01(7)(d), Florida Statutes.

Additionally, our review of 2017-18 fiscal year CTA vendor payments totaling \$574,274, as discussed in Finding 13, disclosed payments totaling \$21,113 representing reimbursements to the ED for CTA-related expenses that the ED paid using his personal credit card, including \$19,450 for travel expenses. CTA records provided to us in support of these travel expenses generally did not indicate the nature of the travel and did not include certifications by the ED that the reported expenses served an authorized CTA purpose. This is likely because CTA-related travel expenses are not subject to the City travel processing procedures prescribed in City travel policies,<sup>52</sup> and neither the City Council nor the CTA Board had established policies and procedures governing CTA travel.

In summary, while City has established certain measures to control CTA activities, such measures were not always effective, which likely contributed to the deficiencies discussed in Findings 10 through 14. The CTA is not a party to the interlocal agreement, and the City and Town have not executed contracts with the CTA obligating the CTA to comply with the provisions of the CTA Articles of Incorporation or interlocal agreement. Executing a contract with the CTA with sufficiently comprehensive and detailed provisions, including the provisions suggested in State law,<sup>53</sup> would provide the City additional assurance that CTA operations are conducted consistent with City Council intent and in accordance with applicable laws, established policies and procedures, and good business practices.

**Recommendation:** The City should execute a contract with the CTA that includes sufficient provisions to ensure that CTA operations are conducted consistent with City Council intent and in accordance with applicable laws, established policies and procedures, and good business practices. Additionally, should the City Council deem it necessary for the CTA to make contributions to nonprofit organizations, the CTA Board, with the City Council's approval, should amend the Articles of Incorporation to explicitly address such contributions.

#### **Finding 10: GBFS and CTA Policies and Procedures**

The City has established various policies and procedures to promote safeguarding of City resources and effective, efficient, and appropriate use of those resources in accordance with applicable State and local laws and prudent business practices. Given the significant public resources entrusted to the GBFS and the CTA, it is incumbent on the City to ensure that similar policies and procedures have been established for those two organizations. Although we requested, City personnel did not provide records evidencing that the City Council or the GBFS or CTA Boards had established policies and procedures governing GBFS or CTA operations, except for an investment policy<sup>54</sup> that governs GBFS investments.

City personnel indicated that they consider the GBFS to be a City department. Notwithstanding, if the GBFS was a City department, the GBFS would be compelled, without GBFS Board action, to comply with City policies and procedures. However, our review of City records disclosed no apparent legal basis for designating the GBFS as a City department since the GBFS is a separate legal entity. As such, making a City policy or procedure applicable to the GBFS would require specific action by the City Council or City Council acting as the GBFS Board. Also, while the interlocal agreement between the City and Town addresses, in certain respects, how the CTA is to carry out its responsibilities, as discussed in Finding 9,

<sup>52</sup> Section 13.11, *Personnel Manual*, Travel Policy.

<sup>53</sup> Section 163.01, Florida Statutes.

<sup>54</sup> City of Gulf Breeze Investment Policy, adopted April 4, 2011, and last revised January 16, 2018.



the agreement does not address many key aspects of CTA operations and the CTA is not a party to the agreement.

Established policies and procedures addressing the various aspects (e.g., budgets, cash revenues, procurement of goods and services, disbursement processing) of GBFS and CTA operations would provide additional assurance that the GBFS and the CTA, under the Executive Director's management, will conduct business in an effective, efficient, and appropriate manner consistent with City and Town Council intent.

**Recommendation: The City should ensure the establishment of policies and procedures governing all significant aspects of GBFS and CTA operations.**

### **Finding 11: Transparency of GBFS and CTA Transactions and Activities**

Certain State laws require municipalities to provide transparency regarding their transactions and activities. These laws include the Public Records Law,<sup>55</sup> which requires the maintenance of public records and the Sunshine Law,<sup>56</sup> which establishes requirements to provide public access to governmental proceedings, including a requirement that meetings of governing bodies be reasonably noticed and minutes of those meetings be promptly recorded and open to public inspection. As the GBFS and CTA were created by, are subject to the control of, and act on behalf of the City and Town to assist with the administration of financing programs, it is important to effectively communicate how the public may view or request copies of GBFS and CTA records and find the information necessary to understand GBFS and CTA activities.

Our examination of City records and discussions with City personnel disclosed that City efforts to promote transparency of GBFS and CTA activities could be improved. Specifically, as of January 20, 2020:

- The GBFS and CTA Web sites did not identify how to view or request copies of GBFS or CTA records. In addition, although the City Web site disclosed how to request City public records, it did not display how to view or request copies of GBFS or CTA records. As such, it was not apparent from the GBFS, CTA, or City Web sites that GBFS and CTA Board meeting minutes and other records were available for public inspection. Additionally, we noted that the same level of transparency afforded the public regarding City Council meeting minutes is not afforded the public for GBFS and CTA Board meeting minutes. Specifically:
  - The GBFS Web site did not include minutes for GBFS Board meetings or identify how to obtain the minutes. While the City Web site included a document center Web page with links to minutes of various City Council and GBFS Board meetings, including seven GBFS Board meetings held from 2015 through 2018,<sup>57</sup> the City Web site did not inform users that GBFS Board meeting minutes could be found on the City's document center Web page. As such, it was not readily apparent from the GBFS or City Web sites that minutes for GBFS Board meetings maintained pursuant to the Sunshine Law were available for public inspection or how an interested party could view those minutes.
  - The CTA Web site provided access to agenda and resolutions for 17 CTA Board meetings held during 2019; however, the Web site did not provide access to minutes of those CTA

<sup>55</sup> Chapter 119, Florida Statutes.

<sup>56</sup> Section 286.011, Florida Statutes.

<sup>57</sup> According to the City's Web site at the time of our review on January 15, 2020, the two most recent GBFS Board meetings were held on July 16, 2018, and December 4, 2017.

Board meetings or CTA Board meetings held prior to 2019. Although the City Web site provided notices for certain recent CTA Board meetings, it did not provide access to recordings or minutes for CTA Board meetings. As such, it was not evident from the CTA or City Web sites that minutes for CTA Board meetings maintained pursuant to the Sunshine Law were available for public inspection or how an interested party could view those minutes.

City personnel indicated that any meeting minutes or other records not available on the City Web site may be obtained from the City Clerk. Additionally, the City Web site home page includes a search button and directs users to contact the City Clerk's office for assistance in locating applicable records and information. However, providing clearer directions and information on the City, GBFS, and CTA Web sites for requesting and obtaining GBFS or CTA public records, including meeting minutes, would facilitate access to that information and increase public awareness.

**Recommendation: The City should enhance the City, GBFS, and CTA Web sites to afford GBFS and CTA Board meeting minutes and other records the same level of transparency as City Council meeting minutes and other City records.**

### **Finding 12: GBFS and CTA Transfers to the City**

The GBFS and the CTA annually transfer a portion of the earnings resulting from their financing programs to the City to be used by the City to help fund City operations. According to the City's audited financial statements,<sup>58</sup> the amounts transferred to the City for each of the 2016-17 and 2017-18 fiscal years totaled \$1 million, \$380,000 from the GBFS and \$620,000 from the CTA.

In response to our inquiries about how the amounts transferred from the GBFS and the CTA to the City were determined for the 2016-17 and 2017-18 fiscal years, we were referred to the individual who serves as Executive Director for both the GBFS and the CTA. According to the Executive Director, "available projected and historical actual revenues" were used to determine the required transfers. Additionally, the City Manager indicated that the transfers were based on budgeted amounts established by the City Council. However, although we requested, we were not provided records evidencing the determination of transfer amounts for the 2016-17 and 2017-18 fiscal years. Consequently, City records did not demonstrate the basis for the 2016-17 and 2017-18 fiscal year transfer amounts.

City Council members comprise the GBFS Board and, as such, the City Council acting as the GBFS Board may compel GBFS to make transfers to the City as needed. Regarding the CTA, the interlocal agreement and Articles of Incorporation include provisions indicating that ultimately, upon termination of the interlocal agreement or dissolution of the CTA, CTA residual assets shall be distributed to the City. However:

- Neither the interlocal agreement nor the CTA Articles of Incorporation specify the amounts or frequency of CTA transfers to the City prior to CTA dissolution, although the amounts available for transfer could be significant. For example, according to the CTA 2017-18 fiscal year audited financial statements, CTA cash and cash equivalents and unrestricted net position totaled \$4.98 and \$4.83 million, respectively, at September 30, 2018, after CTA transfers of \$620,000 to the City for that fiscal year.

<sup>58</sup> The 2018-19 fiscal year financial audit report was the most recent report available as of June 2020.

- As discussed in Finding 9, the CTA is not a party to the interlocal agreement, and the City and Town have not executed contracts with the CTA obligating the CTA to comply with the provisions of the interlocal agreement or Articles of Incorporation.

Policies and procedures for the GBFS and the CTA that formally establish directives as to the amounts and frequency of GBFS and CTA transfers to the City would provide additional assurance that transfers are properly determined and made consistent with City Council intent. In addition, absent execution of a contract with the CTA addressing transfers, the City may be limited in its ability to obtain needed transfers from the CTA in the event of a dispute.

**Recommendation: The City should specify the amounts and frequency of GBFS and CTA transfers to the City by executing a contract with the CTA and establish policies and procedures for the GBFS and the CTA that include transfer directives.**

### **Finding 13: GBFS, CTA, and CTA–Community Development Entity Executive Director**

Although the GBFS, the CTA, and the CTA-Community Development Entity (CTA-CDE) are separate legal entities, one individual serves as the Executive Director (ED) of all three entities. Prior to April 2015, the ED’s services were engaged by the GBFS and the CTA. Effective April 2015, the ED was employed directly by the City. As part of our audit, we examined records supporting the ED’s employment terms.

**ED Compensation Prior to April 2015.** Prior to April 2015, the ED worked for the GBFS based on an “employee agreement” and for the CTA based on an “independent contractor agreement” between the CTA and his consulting services firm, Municipal Advisory Services, Inc. (MAS). These agreements provided that the ED’s compensation was to consist of a fixed monthly salary amount, a percentage of outstanding bond issuances, and origination and issuance fees or similar charges associated with City financing programs.

In late 2014, the City hired an independent CPA firm to review the ED’s compensation and determine whether the ED was paid in accordance with the two agreements. Regarding the CPA firm’s evaluation of the employment agreement between the GBFS and the ED, the CPA firm report<sup>59</sup> disclosed that the ED was not entitled to \$184,777 of the \$752,637 paid as compensation by the GBFS for the period October 2002 through September 2014. Specifically, the report indicated the ED was paid:

- \$162,000 for bond issues paid as a minimum payment of \$500 per month for each bond issue instead of \$500 per month for all bond issues in aggregate.
- \$11,000 for base salary increases not authorized by the employment agreement.
- \$2,777 more than the amount provided by the employment agreement for bond origination fees.
- \$9,000 for ED-asserted “efforts related to extension of certain bonds affected by the downgrade in credit ratings” that occurred in 2008 due to the impact of subprime mortgages. According to the report, documentation was not provided evidencing GBFS Board approval of this compensation and City management indicated they were unaware of any such approval.

The CPA firm report further noted that the GBFS paid MAS \$693,253 in consulting fees during the period January 2002 through September 2014. According to the CPA firm report, the ED asserted those fees were paid for services consisting of remarketing and restructuring loan programs affected by the

<sup>59</sup> Report on Consulting Services, March 19, 2015.

downgrade in credit ratings in 2008 due to the impact of subprime mortgages, and MAS was the appropriate entity to provide these services. The CPA firm report noted that:

- According to City management, the City was not involved in the ED's decision to form MAS and the City did not authorize consulting services to be provided through MAS.
- The ED's employment agreement with the GBFS provided that the ED may charge at closings of future loan programs a consultant fee or similar charge, but that the GBFS would retain \$18,750 of such fees or charges each year to offset compensation paid to the ED (i.e., the \$18,750 would not be paid to the ED but retained by the GBFS as a source to pay the ED's compensation). If the \$693,253 of fees were derived from future loan programs, as contemplated in the ED's employment agreement with the GBFS, then the ED would owe \$56,250 to the GBFS in accordance with that retainage provision.
- If the fees are not considered to be from future loan programs as contemplated in the employment agreement, there should be a determination of whether such consulting fees are authorized by the ED's employment agreement with the GBFS.

Neither the City Council nor the City Council acting as the GBFS Board directed that action be taken to recover or otherwise resolve the reported overpayments. During its March 21, 2015, workshop the City Council discussed possible actions to recover or resolve the reported overpayments. In the audio tape of the workshop, the Mayor and some City Council members expressed concern that it may not be worthwhile to initiate legal proceedings to recover the overpayments because the employment agreement language relating to the calculation of the ED's compensation was ambiguous, the ED had been consistently paid for numerous years based on the ED's understanding of the employment agreement's compensation provisions, and legal proceedings could be expensive. Notwithstanding, we noted that:

- Notice of the March 21, 2015, workshop did not indicate that there was to be discussion regarding whether action should be taken to recover the questioned payments totaling \$878,030 (\$184,777 made directly to the ED and \$693,253 made to the ED's company, MAS) and City personnel indicated that there was no discussion of this matter at any other City Council or GBFS Board meeting or workshop. Specific notice of the intended discussion at the workshop or open discussion about this matter at a regular City Council or GBFS Board meeting would have enhanced transparency and promoted public dialog regarding this matter.
- City records did not evidence that the City Attorney was consulted regarding the feasibility of the City or the GBFS initiating legal proceedings or taking other action to recover these questioned payments. Such input from the City Attorney likely would have assisted the City Council in making an informed decision regarding this matter.
- \$9,000 of the questioned payments totaling \$184,777 made directly to the ED, and the \$693,253 of payments made to MAS, involved additional work the ED or MAS allegedly performed for the GBFS. While, during the workshop, the ED was requested to explain the necessity of the work done by MAS, there was no specific discussion about the work for which the ED directly received \$9,000.
- City records did not evidence that the ED was requested to provide, or that the ED provided, documentation, such as MAS billings showing the number of hours worked and the hourly rate of pay at which those hours were billed, work products, or other evidence of work performed to support the \$693,253 paid to the ED's company, MAS, and the \$9,000 paid directly to the ED. Absent such documentation, City records did not demonstrate that these payments were for services in addition to or different from the services the ED was obligated to provide pursuant to his employment agreement with the GBFS or that the amounts paid were reasonable based on actual services provided.

Regarding the CPA firm's evaluation of compensation paid under the independent contractor agreement (agreement) between the CTA and MAS, the CPA firm report<sup>60</sup> indicated that, during the period October 2002 through September 2014 the CTA paid \$1,524,721 in compensation to MAS, which was \$338,824 more than provided for in the agreement. According to the report, the \$338,824 represents the difference between the CPA firm's calculation of compensation due to MAS based on the agreement (minimum of \$500 per month for bond issues in the aggregate) and the ED's interpretation of the agreement (\$500 per month per bond issue).

Although the CPA firm's evaluation identified the \$338,824 overpayment by CTA to MAS, City records do not evidence consideration of potential actions to recover or resolve the overpayment. For example, City records did not evidence that:

- The City Council or CTA Board, at a public meeting, discussed resolution of the overpayment.<sup>61</sup> Such discussion at a City Council or CTA Board meeting would have enhanced transparency and promoted public dialog regarding this matter.
- The City Attorney or CTA legal counsel was consulted regarding the feasibility of the City directing the CTA to initiate or of the CTA initiating legal proceedings or taking other action to recover the \$338,824. Such input likely would have assisted the City Council or CTA Board in making an informed decision regarding this matter.

In response to our inquiry, City personnel indicated that no repayment was owed, that the CPA firm calculated the \$338,824 based on an interpretation that was "contrary to what had been practiced for the prior 12 years," the GBFS employment agreement with the ED and the CTA agreement with the MAS had been audited for those 12 years, and the payments had been authorized by the City for those 12 years. Although the GBFS and CTA are subject to annual financial audits, the scope of those audits would not include a specific determination of compliance with the compensation terms of those agreements, and City personnel did not provide records evidencing that such a determination had been made prior to the CPA firm being engaged to do so in 2014. Additionally, the questioned payments made by the GBFS and the CTA to the ED and MAS, as identified and reported by the CPA firm may have been attributable, in part, to the lack of established policies and procedures (as discussed in Finding 10) requiring documented independent reviews (i.e., by someone other than the ED) to verify the propriety and appropriateness of such payments. Such independent reviews, if performed, may have resulted in clarification as to the compensation terms in the agreement at the time the payments totaling \$2,970,161 were made to the ED and MAS, and, as a result, precluded some, if not all, of the questioned payments totaling \$1,216,854.

**ED Compensation Effective April 2015.** Due in part to the results of the CPA firm reports, effective April 1, 2015, the City began directly entering into annual employment agreements with the ED. Those employment agreements contain provisions for all compensation payable to the ED for management of the GBFS, the CTA, and the CTA-CDE.

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<sup>60</sup> *Report on Consulting Services*, January 7, 2015.

<sup>61</sup> During the March 21, 2015, City Council workshop, a City Council member inquired as to why they (City Council) were looking at an audit report involving the CTA. In response, the Mayor indicated that the City was materially affected by the report because the City is the primary beneficiary of CTA profits. However, there was no specific discussion about whether the City should direct the CTA to initiate action to recover or otherwise resolve the \$338,824 overpayment.

The annual employment agreements with the ED provide for an annual base compensation amount and annual incentive bonus based on performance. The employment agreement in effect for the period April 1 through September 30, 2015, provided for a base salary of \$150,000 and an incentive bonus based on the percent by which the CTA's 2014-15 fiscal year net income exceeded the 2013-14 fiscal year net income. Effective for the 2015-16 fiscal year, the incentive bonus provision was revised to be based on a percentage of actual "Net Income of CTA Before Transfer" equal to, or in excess, of a specified amount, not to exceed \$150,000. Table 3 illustrates the bonus calculation methodology for the ED's 2017-18 fiscal year employment agreement.

**Table 3**  
**2017-18 Fiscal Year Annual Incentive Bonus Calculation**  
**Based on Actual Net Income of the CTA Before Transfer as a**  
**Percent of Estimated \$441,912 Net Income of the CTA Before Transfer**

Percent Criteria	Amount of Annual Incentive Bonus
Less than 100 percent	\$0
100 percent	\$50,000
101 to 124 percent	Additional \$25,000
125 percent	Additional \$25,000
Greater than 125 percent	60 percent of excess subject to a maximum of another \$50,000

Source: City's 2017-18 fiscal year employment agreement with the ED of the GBFS, CTA, and CTA-CDE.

Although we requested, City records were not provided to evidence the basis upon which the City determined the reasonableness of the ED's compensation. Specifically:

- City records did not evidence how the specified amounts to be used in calculating the ED's incentive bonus were determined. The specified amounts for calculating the incentive bonus per the 2016-17 and 2017-18 fiscal year employment agreements were \$441,497 and \$441,912, respectively. According to the employment agreements, these specified amounts were used to reflect "a reasonably accurate calculation of CTA revenues and expenses." However, the actual "Net Income of CTA Before Transfer" amounts were \$1,156,606 and \$1,266,922 for the 2016-17 and 2017-18 fiscal years, respectively, representing 262 percent and 287 percent of the actual "Net Income of CTA Before Transfer" amount for those fiscal years. As such, it is not apparent how the City determined that the specified amounts for calculating the incentive bonus for the 2016-17 and 2017-18 fiscal year were reasonable.
- City records did not evidence any attempt by City personnel to determine the reasonableness of the ED's salary.<sup>62</sup> Such City efforts could have included, for example, identifying comparable entities and determining the salaries for similar positions at those entities. We compared the ED's maximum potential salary of \$300,000 per his 2016-17 and 2017-18 fiscal year employment agreements to the current maximum potential salary of individuals in similar positions at six comparable entities. The six comparable entities are Florida special districts that issue conduit debt like the GBFS and the CTA, reported net position or operating expenses in amounts totaling at least that of the GBFS and the CTA combined, and employed an individual responsible for directing the entity and supervising at least two employees. Although various factors, including

<sup>62</sup> Subsequently, the City contracted with a consulting firm to conduct a study, the objective of which was to "develop a Comprehensive Pay Plan that is equitable to both the employees and to the City." However, the consulting firm's *Classification, Compensation, and Benefits Study* report issued in July 2019 did not include any recommendations specific to the ED position.

specific assigned duties and the number of employees supervised, could affect the comparability of salaries, our comparison disclosed that the ED's maximum potential salary exceeded the total maximum potential salaries, which ranged from approximately \$160,000 to \$250,000 and averaged approximately \$193,000, of the individuals in similar positions at the six comparable entities.

Based on the ED's employment agreement incentive bonus provisions and actual "Net Income of CTA Before Transfer" reported on the CTA's audited financial statements, the ED was entitled to the maximum \$150,000 bonus for the 2016-17 and 2017-18 fiscal years. Earnings records provided for the ED indicated that he received two bonus payments totaling \$150,000 for the 2016-17 fiscal year; however, for the 2017-18 fiscal year he received two bonus payments totaling \$155,000, or \$5,000 in excess of the bonus amount he was entitled to for that fiscal year, due to oversight. Subsequent to our inquiry, the City recovered the \$5,000 overpayment by reducing the ED's June 2020 paycheck by that amount.

The ED's compensation is initially paid by the City through its established payroll process. Subsequently, the City invoices and receives reimbursement from the GBFS. In turn, the CTA reimburses the GBFS for the ED's compensation. In substance, the CTA pays the ED's compensation, and the CTA reports the ED's compensation as an expense on its financial statements. According to City personnel, the then City Manager decided that the ED's compensation would be handled this way to make the tracking of employee expenses easier. Notwithstanding, the ED's employment agreement indicated that the City was to pay the ED and did not indicate that the GBFS and the CTA were to reimburse the City or prescribe a methodology for allocating a portion of the ED's compensation to the GBFS and the CTA (as discussed in Finding 14 regarding allocation of GBFS and CTA related personnel costs). Addressing this allocation in the employment agreement would provide full transparency as to the manner in which the ED is to be compensated.

**Potential Conflict of Interest.** The Legislature has declared in State law<sup>63</sup> that it is essential to the proper conduct and operation of government that public officials be independent and impartial and that no officer or employee of a municipality have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of their duties in the public interest. State law<sup>64</sup> specifies that no officer or employee of an agency may have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The City employment agreement with the ED provides that the ED is responsible for directing, overseeing, supervising, and managing GBFS and CTA activities and operations. As such, the ED, as both a City employee and director of the GBFS and the CTA, is in a position that requires him to simultaneously represent the best interests of the City and those two entities. Because his compensation is, in part, based on CTA financial performance, his position as ED may conflict with his role as a City employee. Specifically, the incentive to maintain or increase his compensation may be perceived as affecting his decisions for the operation of the CTA in a manner that is in the best interests of the City.

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<sup>63</sup> Section 112.311, Florida Statutes.

<sup>64</sup> Section 112.313(7)(a), Florida Statutes.

The Statements of Cash Flows included in the GBFS and CTA audited financial statements show that the GBFS and the CTA made payments totaling \$447,319 and \$818,346, respectively, to vendors for the 2017-18 fiscal year. We requested City records supporting those vendor payments to determine whether additional potential conflicts of interest existed. In response, we were provided reports<sup>65</sup> that showed payments to vendors totaling \$877,316<sup>66</sup> and \$574,274 from the GBFS and the CTA, respectively, for the 2017-18 fiscal year. Although we requested, City personnel did not explain why these amounts were \$429,997 greater and \$244,072 less, respectively, than the payments reported on the audited financial statements and indicated that they were unaware of how the audited financial statement amounts were determined. However, GBFS and CTA management are responsible for the preparation and fair presentation of the financial statements, and records supporting amounts reported on the financial statements should be maintained.

Because of the unexplained differences, we could not be assured that we had been provided a complete and accurate list of GBFS and CTA vendor payments for the 2017-18 fiscal year. Additionally, our review of the detail payments comprising the GBFS vendor payments of \$877,316 shown on the provided report disclosed that \$430,775 were payments to the City. Although we requested, City personnel did not explain the purposes of these payments.

The ED's relationship with the GBFS and the CTA, the continued use of these entities to administer the financing programs, and the City's continued employment of the ED with responsibilities related to these entities, creates perceived, if not actual, conflicts of interest. These circumstances may affect the ED's ability to impartially carry out his responsibilities with respect to the City, the GBFS, and the CTA.

**Recommendation: The City should:**

- **Consult with the City Attorney or other appropriate legal counsel to determine what additional actions, if any, should be taken regarding the questioned GBFS payments totaling \$184,777 to the ED and \$693,253 to the MAS and the \$338,824 questioned overpayment for services MAS provided to the CTA. Potential actions could include, for example, requesting the ED to provide, for the \$9,000 paid directly to the ED and \$693,253 paid to MAS for services allegedly provided to the GBFS, detailed records supporting those payments and evidencing that such work was not already contemplated in the duties the ED was required to perform pursuant to his employment agreements.**
- **To avoid violations of the Sunshine Law, promote transparency, and encourage public interest, ensure that significant topics, such as the aforementioned findings in the CPA firm reports impacting GBFS and CTA operations, are openly discussed at City Council meetings or at GBFS Board or CTA Board meetings and the public is properly noticed as to such meetings.**
- **Determine the reasonableness of the ED's potential total salary (including the incentive bonus) using a documented reasonable and relevant methodology and, if appropriate based on such determination, modify the ED's employment agreement compensation terms.**
- **Revise the City employment agreement with the ED to specify that the GBFS and the CTA will reimburse the City for an appropriate portion of the ED's compensation and prescribe**

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<sup>65</sup> Vendor Balance Detail reports.

<sup>66</sup> Excludes \$342,518 of payments to the City representing a GBFS loan to the City to purchase golf carts for the Tiger Point Golf Course as discussed in Finding 15.



**a methodology for allocating a portion of the ED's compensation to the GBFS and the CTA based on work effort associated with those entities.**

- **Take appropriate action to eliminate the potential for future conflicts of interest regarding the ED's responsibilities. Such action could include discontinuing use of the GBFS or CTA to administer the financing programs (as discussed in Finding 8) or, should the City opt to continue using those entities:**
  - **Restructuring the ED's compensation so that it is not contingent, in part, on CTA net profits, or**
  - **Making the ED a GBFS or CTA employee.**
- **Take action to ensure that the purpose is documented, of record, for the GBFS payments totaling \$430,775 to the City.**

#### **Finding 14: Allocation of City Costs Incurred on Behalf of GBFS and CTA**

The City provides operational support to the GBFS and the CTA (including its subsidiary the CTA-CDE). Specifically, the City provides the services of City personnel and supplies and use of a City-owned building and equipment, and incurs other costs on behalf of these entities. The costs of the support are allocated to the GBFS and the CTA and the City's determination and allocation of the costs affects the propriety of operating cost amounts recorded in the accounting records and reported on the financial statements of the City and the other entities.

Our examination of records supporting the operational costs and allocations disclosed that:

- The GBFS and the CTA have no employees; instead, they are staffed solely by three City employees, including the ED, who spend a portion of their time performing GBFS and CTA activities. The GBFS and CTA audited financial statements<sup>67</sup> show that the GBFS and the CTA incurred personnel costs of \$122,651 and \$343,895, respectively, during the 2017-18 fiscal year. We inquired as to what portion of these amounts was attributable to each of the three employees and requested that City personnel provide records evidencing the methodology used to allocate the costs to the GBFS and the CTA. In response, City personnel indicated that:
  - The \$122,651 allocated to the GBFS represented the estimated personnel costs of two City employees (not the ED) attributable to GBFS activities based on historical charges that were revised as appropriate as the responsibilities of the applicable employees changed. Although we requested, City personnel did not provide records demonstrating that the estimated costs were based on documented time studies or other formal analyses or to explain why a portion of the personnel costs of the two City employees were not also allocated to the CTA.
  - The \$343,895 allocated to the CTA represented 100 percent of the ED's total salary and benefits costs. Although we requested, City personnel did not explain why a portion of those costs were not also allocated to the GBFS.

Accordingly, the City did not demonstrate that the personnel costs allocated to the GBFS and the CTA were reasonable and appropriate.

- For the 2017-18 fiscal year, the City allocated \$64,502 of non-personnel costs, including \$21,492 to the GBFS and \$43,010 to the CTA, for use of the City-owned building and equipment, supplies, and other City costs incurred on behalf of these entities. City records indicated that the costs allocated represent 30 percent of the City's total costs in those respective categories; however,

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<sup>67</sup> Statement of Cash Flows.

although we requested, City personnel did not provide records substantiating the reason or basis for that allocation.

Additionally, our review of 2017-18 fiscal year GBFS vendor payments, as discussed in Finding 13, disclosed payments to several vendors for services (e.g., pest control, commercial cleaning, landscaping) or supplies that, according to City personnel, were obtained solely for the benefit of the GBFS or the CTA. City personnel indicated that the GBFS directly paying for the services and supplies, with costs totaling \$15,303, resulted in reduced administrative burden. However, City personnel did not provide records evidencing that the GBFS allocated to the CTA the portion of the costs for the services and supplies that benefitted the CTA.

As of June 2020, the City had not established policies and procedures addressing the allocation of City personnel and other costs to the GBFS and the CTA. Absent such policies and procedures, there is an increased risk that such costs may not be properly and equitably allocated.

**Recommendation: The City should establish policies and procedures that provide a documented reasonable methodology for allocating City personnel and other costs to the GBFS and the CTA and requiring retention of documentation evidencing the calculation and allocation of such costs.**

#### **Finding 15: GBFS Loans to and from the City**

In December 2017, the GBFS loaned the City \$342,518 to purchase golf carts for the Tiger Point Golf Course. The loan terms established a maturity date of December 1, 2021, and an annual interest rate of 3.5 percent. At the time of the loan, the City had a significant amount of available unrestricted cash and cash equivalents. Specifically, as shown in the City's 2016-17 and 2017-18 fiscal year audited financial statements, the City had \$10.3 million and \$7.7 million of unrestricted cash at September 30, 2017, and September 30, 2018, respectively.

In July 2018, the City loaned the GBFS \$600,000 to pay the settlement of a lawsuit. The loan terms established a maturity date of October 1, 2021, and an annual interest rate of 3 percent. The City's loan of \$600,000 to the GBFS approximately 6 months after borrowing \$342,518 from the GBFS further indicates that the City had significant available unrestricted cash to purchase the golf carts. Given the City's available unrestricted cash, it was not apparent why the City borrowed the funds from the GBFS and incurred related financing costs.

City personnel indicated that they had analyzed cash available at the time the City borrowed the \$342,518 from the GBFS and determined that sufficient cash was not available at that time to purchase the golf carts because of cash needed for future capital projects. City personnel further indicated that the results of the cash analysis had been communicated to the City Council. Additionally, City personnel provided records evidencing discussions about the need to maintain reserves to fund projects shown on the City's 10-year capital improvements plan. However, although we requested, City personnel did not provide records evidencing that City personnel made an analysis of City cash available at the time of the borrowing and communicated the results of such analysis to the City Council.

We inquired as to why the interest rate on the loan from the GBFS to the City was higher than the interest rate on the loan from the City to the GBFS (i.e., 3.5 percent compared to 3 percent). City personnel

indicated that the interest rates varied because of the difference in market conditions at the time the loans were made. City personnel further indicated that the 3.5 percent rate on the loan from the GBFS to the City was determined acceptable because it was less than the rate (5 percent) quoted by a vendor had the City decided to lease instead of buy the golf carts. However, City personnel did not provide records evidencing the market rate determinations at the times the loans were made. Our analysis of the market conditions in effect at the times the two loans were made show that the Federal prime interest rate was 4.5 percent at the time the GBFS loaned the City money at 3.5 percent, and was 5 percent at the time the City loaned GBFS money at 3 percent, thereby indicating the actual interest rates for these loans may not have been based on market conditions.

City personnel indicated that the City had not established a policy related to loans because each need for funds is analyzed on a case-by-case basis. Notwithstanding, in the absence of policies and procedures addressing loans to and from related organizations, including documented determinations of the necessity of such loans and related terms, such as interest rates to be assessed on such loans, the City has limited assurance that the loans are the best financing option for the circumstances and that interest rates applied to such loans are fair and equitable.

**Recommendation: The City should establish policies and procedures addressing loans to and from related organizations. Such policies and procedures should require documented determinations of the necessity of such loans and the methodology for determining appropriate interest rates, if any, to be assessed on such loans.**

#### **Finding 16: Local Government Loan Program Investments**

The GBFS Board is responsible for investment of the City loan program bond proceeds.<sup>68</sup> GBFS investments are subject to an investment policy that delegates to the ED responsibility for managing the GBFS investment program.

In October 2013, the U.S. Department of Treasury (Treasury) began an investigation of the City's use of the Treasury's State and Local Government Series (SLGS) securities program (i.e., the SLGS Program) to invest proceeds from bonds issued to fund the City loan program administered by the GBFS. Under the SLGS Program, special low-interest bearing Treasury securities are offered to tax exempt entities, such as the City, for the investment of their bond proceeds subject to Internal Revenue Service (IRS) arbitrage restrictions. SLGS buyers may choose any interest rate at or below the maximum rate published daily by the Treasury's Bureau of the Fiscal Service. Proper investment in SLGS securities allows the City (and the GBFS on behalf of the City) to earn reasonable interest on bond proceeds without violating IRS arbitrage regulations.

The Treasury's SLGS Working Group issued a "Report and Recommendation" on April 24, 2014, which concluded that the City and its then municipal advisors (collectively referred to as Respondents), conducted transactions under the municipal advisors' "Yield Enhancement Program," that appeared to create impermissible cost-free interest rate options under certain specified scenarios. The Report and Recommendation further indicated that the Respondents' actions appeared to have been taken for the

<sup>68</sup> At its February 22, 2011, meeting, the City Council approved a motion that the City Council serving as the GBFS Board pursue steps to properly invest surplus GBFS moneys.

purpose of maximizing the return on the SLGS securities, and not for complying with the intended purpose of the SLGS Program. As a result, the Treasury suspended the City from future purchases of SLGS securities for a period of 5 years.

Subsequently, in May 2016, the U. S. Department of Justice (DOJ) notified the City that DOJ was opening a civil investigation into allegations concerning the City's aforementioned investment of bond proceeds under the SLGS Program. In July 2020, we requested, but City personnel did not provide, records evidencing the current status of the investigation.

The City hired a legal firm to assist in responding to the DOJ's inquiries, and the City paid \$194,521 for legal fees and other related costs for the period June 2016 through March 2017 in connection with the investigation. In response to our inquiry, City personnel indicated that the City relied on the then municipal advisors in investing in the SLGS Program; however, City personnel did not respond to our inquiry as to whether the City intended to take actions to recover those legal costs, or a portion thereof, from the former municipal advisors.

Documenting the DOJ investigation status and taking action to recover applicable legal costs from the former municipal advisors would enhance transparency and demonstrate the proper use of public funds in fulfilling the City's legally established responsibilities.

**Recommendation: The City should document, of record, the current status of the DOJ investigation and, once the investigation is officially resolved, take action to the extent appropriate and practical to recover legal costs from the applicable municipal advisors.**

## UTILITY SERVICES

The City Public Services Department provides water, sewer, natural gas, stormwater, and solid waste control utility services to customers in South Santa Rosa County. The City uses enterprise funds<sup>69</sup> to account for utility operations, such as the City Water and Sewer, Natural Gas, Stormwater Management, and South Santa Rosa Utility (SSRU) Funds. The SSRU Fund is used to account for activities of South Santa Rosa Utility Services (SSRUS), which provides water and sewer services to customers located in Santa Rosa County but outside the City.

In addition to the enterprise funds used to account for utility operations, the City uses an enterprise fund, the Golf Course Facilities (GCF) Fund, to account for Tiger Point Golf Course (TPGC) operations. For financial reporting purposes, GCF Fund activities are included in the SSRU Fund because the acquisition of the TPGC enabled the City to control the effluent disposal process at the TPGC.

### **Finding 17: Overall Utility Rates and Utility Fund Costs**

The City periodically obtains utility rate studies to help evaluate the adequacy of existing utility rates that generate revenue recorded in respective enterprise funds. To ensure utility rates are fair and equitable, it is important that rate studies consider available cost projections, including applicable debt service expenses, and demonstrate that utility rates are equitably billed to all customers to recover those costs.

<sup>69</sup> An enterprise fund is a self-supporting government fund that accounts for fee charges to external users in exchange for goods or services.

In addition, appropriate accountability for enterprise fund transfers to the General Fund promote the use of records that demonstrate the propriety and reasonableness of the transfers.

In July 2012, the Florida Rural Water Association (FRWA) completed a study of the City and SSRUS water and wastewater rates. The rate study recommended, for example, that the City revisit its revenue and expense predictions and financial position during the annual budget approval process; continue to evaluate the health of enterprise funds to determine when future utility rate adjustments will be necessary; and make automatic adjustments to the rates based on a verifiable cost-of-living index, such as the Consumer Price Index (CPI).

In May 2016, the City Council issued the Series 2016A Loan totaling \$5 million, requiring debt service payments totaling \$348,560 each fiscal year through the 2025-26 fiscal year, to finance the TPGC purchase, equipment, and repair costs (as discussed in Finding 3). According to a memorandum by the then City Manager, the annual debt service payment on the Series 2016A Loan was to be allocated between the SSRU (out-of-City utilities) and the City Water and Sewer (in-City utilities) Funds based on customer base and waste water flow of 72 percent (out-of-City) and 28 percent (in-City), respectively.

Our examination of the rate analysis of the SSRU Fund and the Water and Sewer Fund performed by City personnel for the 2016-17 and 2017-18 fiscal years disclosed that estimated debt service expense totaling \$348,560, or 100 percent of the debt service for the Series 2016A Loan, was used in the analysis of the SSRU Fund but not the Water and Sewer Fund when considering rate increases, and the entire debt service of \$348,560 was paid by the SSRU Fund. Consequently, the entire debt service expenses for the Series 2016A Loan used to finance the cost of purchasing, equipping, and repairing the TPGC was paid by utility customers located outside City limits for those fiscal years. According to City personnel, they did not prorate the debt service expenses between the Water and Sewer Fund and the SSRU Fund due to an accounting oversight, which was corrected during the 2018-19 fiscal year.

Although we requested, City records were not provided to justify allocating 100 percent of these debt service expenses to utility enterprise funds when the purchase, equipment, and repair provided utility customers only an indirect benefit for spray field use. Additionally, insofar as the portion of the debt service expenditures directly attributable to the utilities was not allocated between the City and SSRUS water and sewer services, the costs of the TPGC debt service in its entirety was being borne by the SSRUS (out-of-City) water and sewer services customers.

Consistent with the rate study recommendations, City personnel performed annual analyses of utility rates for the 2016-17 and 2017-18 fiscal years considering City budget estimated revenues, expenses, and transfers for the SSRU and City Water and Sewer Funds. For the 2016-17 fiscal year, the analysis projected that a utility rate increase based on the CPI would provide for a 3 percent reserve. For the 2017-18 fiscal year, the analysis projected that a rate based on the CPI would result in a deficit reserve in the SSRU Fund and the SSRUS Board proposed a rate of 5.2 percent or 3.7 percent higher than the CPI, which would provide a 2.7 percent reserve. Notwithstanding the SSRUS Board proposal, the City Council approved rate increases based on the CPI for both the 2016-17 and 2017-18 fiscal years. Should the City decide to bill utility customers based on future utility rate studies, which may consider available reserves, utility customers located outside the City may experience increased utility rates and related billings since the SSRU Fund incurred the full amount of the debt service expenses for the Series 2016A

Loan, decreasing its reserves. In response to our inquiries, City personnel anticipate that the TPGC will probably be sold during 2020, allowing the acquisition and improvement costs to be recovered and the SSRU Fund repaid.

According to City personnel, moneys are transferred to the General Fund from the various City funds to recoup internal services costs, such as City management and support services salaries and benefits, that are recorded in the General Fund but benefit operations accounted for in other City funds. During the 2016-17 fiscal year, the City reimbursed internal services costs by transferring \$1,823,431 to the General Fund. The transfer to the General Fund was composed of \$361,200 from the SSRU Fund, \$248,310 from the Natural Gas Fund, \$228,122 from the Stormwater Management Fund, and \$985,799 from various other funds.

To determine whether transfers to the General Fund for reimbursement of internal services costs were appropriate, reasonable, and documented, we examined City records supporting 2 selected journal entries totaling \$237,181 for October 2016 and January 2017 from the 17 journal entries for the period October 2016 through March 2018 totaling \$1,966,971. The records included a general ledger printout showing the monthly amounts transferred from each fund, which agreed to budgeted amounts, and a summary listing of interfund transfers for all funds. However, City records prepared by the then Finance Director did not evidence how the internal services costs transfer amounts were determined and, although we requested, City personnel could not provide explanations for the amounts transferred.

In response to our request, City personnel provided the City's 2016-17 fiscal year budget, which identified \$1,009,208 total budgeted costs for the Internal Services Department, including amounts for shared services provided to other funds, such as accounting and utility customer services, and \$1,862,082 for interfund transfers to the General Fund to reimburse internal services costs. However, the documentation did not:

- Include calculations of the amount to be transferred by each individual fund to the General Fund.
- Explain the basis for budgeting \$1,862,082 for interfund transfers to the General Fund to reimburse internal services costs when only \$1,009,208 was budgeted for the entire Internal Services Department, a difference of \$852,874. Absent such documentation, the basis for the two amounts is not apparent.
- Demonstrate that the budgeted transfers representing allocations of internal service costs were reasonable and necessary costs associated with the operations of City utilities. Although we requested, we were not provided with City records, such as utility customer counts or payroll records showing the amount of time and effort that Internal Services Department personnel spent performing utility-related activities, to support and justify the allocation of internal services costs.

In response to our inquiries, City personnel indicated that documentation of calculations supporting the propriety of the budgeted transfers totaling \$1,862,082 and actual transfers totaling \$1,823,431 was not available because the then Finance Director either had not prepared or retained supporting documentation.

Absent documentation justifying enterprise fund transfers, City records do not demonstrate that the transfers were reasonable and necessary. For the 2018-19 fiscal year, City personnel prepared a detailed allocation plan, which allocated expenses based on each utility fund's customer count as a percent of total customer counts for all funds.

**Recommendation:** The City should establish policies and procedures to ensure that utility rate studies are based on applicable cost factors in evaluating and establishing utility rates and the propriety and reasonableness of enterprise fund transfers for internal services costs are documented.

### **Finding 18: South Santa Rosa Utility System Utility Rates**

State law<sup>70</sup> provides that the City may assess water or sewer utility customers outside the City with rates, fees, and charges that are just, equitable, and based on the same factors used in fixing the rates, fees, and charges for utility consumers inside the City. In addition, State law provides that the City may add a surcharge not to exceed 25 percent to consumers outside City boundaries provided that the total of all rates, fee, charges, and surcharges shall not be more than 50 percent in excess of the total amount the City charges consumers served within the City for the corresponding service.

Utility rates, fees, and charges may not be fixed until after a public hearing at which all interested parties have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision to such rates, fees, or charges may be made in the same manner as they were originally established unless the change or revision is to be made substantially pro rata to all classes of service both inside and outside the City, in which case no hearing or notice is required.

The City purchased the SSRUS in 1989 from a privately-owned utility to provide water and sewer services to customers located in Santa Rosa County but outside the City. Our comparison of water and sewer rates<sup>71</sup> for customers inside and outside the City for the 2014-15 through 2017-18 fiscal years disclosed that customers outside the City routinely paid higher rates than customers inside the City. In response to our inquiries regarding the higher rates paid by customers outside the City, City personnel indicated that rates are established according to rate studies periodically prepared by utility consultants and, for fiscal years without rate studies, updated based upon City personnel recommendations. Notwithstanding, City records do not demonstrate compliance with State law as the rates charged to City water and sewer customers outside the City differ from the rates charges for utility consumers inside the City and, although we requested, justification for the rate differences was not provided. For example, although we requested, City records were not provided to explain why SSRUS water and sewer customer rates were 3.9 to 17.1 and 6.3 to 6.5 percent higher, respectively, than City resident rates for the 2017-18 fiscal year.

In October 2015, the City Council voted<sup>72</sup> to impose a 3 percent surcharge on water and sewer rates and consumption for customers outside the City. According to a memorandum dated October 2, 2015, from the then Deputy City Manager to the then City Manager, City personnel recommended the surcharge based on an August 2015 City survey of 11 municipalities located in Northwest Florida that operate water and sewer utilities outside their respective City. The results of the survey disclosed that 8 of the municipalities imposed surcharges ranging from 10 to 25 percent.

The memorandum also purported that:

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<sup>70</sup> Section 180.191(1)(b), Florida Statutes.

<sup>71</sup> Water and sewer rates are the same for both residential and commercial utility customers.

<sup>72</sup> City of Gulf Breeze Resolution No. 27-15, dated October 5, 2015.

- City personnel took into consideration that SSRUS customers are not subject to the 5 percent municipal public service tax paid by City residents on water and sewer charges.
- Imposing the surcharge would equitably share in the cost of government services, including City parks and recreational facilities and the middle school after school program, offered to both City and SSRUS customers.

City personnel ultimately decided that the surcharge was reasonable because it was less than both the maximum allowed by State law and the rates charged by other Florida municipalities in the area, such as Milton and Jay. Notwithstanding, although we requested, City records (e.g., a revenue and expense analysis) supporting the basis for assessing a 3 percent surcharge instead of a different percent surcharge were not provided.

In October 2016, the City Council increased the surcharge<sup>73</sup> by an additional 3 percent to 6 percent. The rate analysis performed by City personnel for the 2016-17 fiscal year (as discussed in Finding 17) showed that the increased surcharge would provide a 2.5 percent profit margin for the SSRU Fund. Although approved by City Council in October 2016, the surcharge rate increase from 3 to 6 percent was not discussed at an SSRUS Board meeting until December 2016. Open discussions at SSRUS Board meetings prior to City Council approval would have enhanced transparency and allowed for public discussion regarding the necessity and reasonableness for the surcharges imposed on SSRUS customers.

In July 2019, the City engaged a financial consulting firm to perform a 6-month, comprehensive rate study of the SSRU and the City Water and Sewer Funds. The memorandum from the Assistant Director of Public Services to the City Manager requesting the rate study notes that the comprehensive scope of the study will include all aspects of the financial condition of both utilities, including evaluating the potential impact of combining the separate SSRUS and City water and sewer utility operations into one operating entity. Subsequently, at the City Council's June 29, 2020, workshop, a consulting firm representative presented the results of the rate study.

**Recommendation:** The City should demonstrate compliance with State law by documenting that water and sewer utility rates, fees, and charges charged to customers outside the City are just, equitable, and based on the same factors used in fixing the rates, fees, and charges for utility customers inside the City. In addition, the City should ensure that any potential rate increases, as well as additional surcharges, to be assessed to SSRUS customers are adequately documented as to necessity and amount and openly discussed at SSRUS Board meetings.

### **Finding 19: Water and Sewer Customer Account Adjustments**

Adjustments to water and sewer customer utility accounts are necessary for various reasons, including billing errors, returned checks, penalty adjustments, and unusually high water and sewer usage. During the period October 2016 through March 2018, the City had 9,613 water and sewer customers and processed 1,374 water and sewer utility account adjustments totaling \$206,960.

<sup>73</sup> City of Gulf Breeze Resolution No. 32-16, dated October 17, 2016.



City ordinances<sup>74</sup> allow utility customers, including SSRUS customers, to request a credit for sewer fees when filling swimming pools. In addition, City policies<sup>75</sup> authorize City personnel to adjust customer utility accounts for water or sewer charges resulting from leaks, pool filling, unexplained high usage,<sup>76</sup> and unusual situations. City policies provide that a customer's account may only be adjusted once per 12-month billing cycle for pool filling and leaks and may only be adjusted once per lifetime of the customer for unexplained high usage of water. Adjustments for unusual situations may be made at the discretion of the Director of Public Services or the City Manager and there is no limit as to the number of such adjustments.

If an adjustment is requested, City personnel review the customer's account history and prior usage and, if warranted, provide the customer with a City utility adjustment request form to request a one-time adjustment. The adjustment request form, when completed by the utility customer, includes information about the customer and the adjustment being requested, such as:

- Customer name and account number.
- Type of adjustment requested. For example, a leak adjustment or swimming pool filling allowance adjustment.
- Details about the adjustment, such as the cause of a leak and duration of the leak, or the date a pool was filled and capacity of the pool, as appropriate.

The adjustment request form also explains how adjustments are determined and how often an adjustment may be requested and requires the customer's signature and date. Customers may mail, e-mail, or hand-deliver completed adjustment request forms to City personnel for processing.

Our examination of City records and discussions with City personnel for 35 selected customer utility account adjustments totaling \$24,055 for 21 accounts made during the period October 2016 through March 2018 disclosed that none of the 35 adjustments were supported by documentation evidencing who approved the adjustment. Specifically, City electronic records did not include a data field showing who approved the adjustment, and the approval was not manually noted on supporting documentation. Additionally, we noted:

- For 3 adjustments totaling \$779, resulting from a "seasonal average problem during billing," City records did not evidence how City personnel determined that the meter readings should be reduced from 17 gallons to 6 gallons, 125 gallons to 21 gallons, and 76 gallons to 1 gallon, respectively. According to City personnel, revised meter readings are based on customers average yearly usage; however, no calculation of the average yearly usage was evident in City records.
- For 1 adjustment totaling \$338, resulting from a misread meter, City records evidenced the incorrect reading of 140 gallons but not the revised meter reading of 72 gallons.

In addition, our evaluation of City adjustment approval procedures disclosed that the Senior Customer Service Representative proposes an adjustment and the Utility Billing Supervisor approves the adjustment. However, there were no documented procedures for an independent review of billing

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<sup>74</sup> Sections 19.289 and 19.387, City of Gulf Breeze Code of Ordinances.

<sup>75</sup> City of Gulf Breeze Policy, *Credits Bill Adjustment For Leaks and Pool Filling*, May 7, 2007.

<sup>76</sup> The City of Gulf Breeze *Credits Bill Adjustment For Leaks and Pool Filling* policy defines "unexplained high usage" as high water usage that cannot be explained by leaks or pool filling. A number of unexplained high usages occurred while customers were out of town for extended periods and may be indicative of water theft.

adjustments when either the Senior Customer Services Representative or Utility Billing Supervisor is absent. According to City personnel, if one of the two employees is absent, the other employee may both make and approve the adjustments. No other City personnel are assigned responsibility to review the adjustments and, upon their return, the absent employee does not review adjustments made during their absence. In these circumstances, the City has limited assurance that utility account adjustments are appropriate, and there is an increased risk that improper adjustments could be made and not timely detected and resolved.

**Recommendation:** The City should enhance procedures for recording water and sewer billing account adjustments to ensure that adjustments are reviewed and approved by someone other than the employee making the adjustment and documentation supporting all adjustments is retained in City records.

## PAYROLL AND PERSONNEL ADMINISTRATION

City ordinances<sup>77</sup> adopted the *Personnel Policies and Procedures Manual (Personnel Manual)* that establishes the procedures that serve as a guide to various payroll and personnel activities and transactions. Effective payroll and personnel policies and procedures address, among other things, the health insurance benefits provided by the City, the basis for accumulated leave balance payments, statutory limits associated with severance payments, prohibited extra compensation payments, and employee travel reimbursements. Effective payroll policies and procedures should also establish controls to ensure that payroll transactions are handled accurately and consistently in accordance with applicable laws and the directives of the City Council and City management.

### Finding 20: Group Insurance Plan Eligibility

State law<sup>78</sup> authorizes the City to provide health insurance for City officers, employees, and their dependents. Pursuant to State law,<sup>79</sup> retirees who elect to continue participation in the City's group health insurance plan pay a premium cost of no more than the premium cost applicable to active employees. The City provides group insurance benefits to employees through participation in the Public Risk Management of Florida (PRM) Group Health Trust, a fully funded, self-insured pool, which operates on the premise of spreading risk with cost saving advantages of group purchasing, allowing for a more stable renewal process. The *Personnel Manual*<sup>80</sup> provides that the City will contribute the total cost of health insurance for City employees, including individuals providing full-time services through employment agencies, and a portion of the cost for their dependents.

As of March 31, 2018, 97 individuals, including City employees and retirees, and 85 dependents participated in the City group health insurance plan and, during the period October 2016 through March 2018, the City paid \$1.2 million to insure these individuals. City personnel indicated that, to enroll in the City group health insurance plan, employees are required to complete a *Health Benefit Options and Payroll Deductions Form* when hired. City personnel also indicated, and our examination of City

<sup>77</sup> Section 13.1, City of Gulf Breeze Code of Ordinances.

<sup>78</sup> Section 112.08, Florida Statutes.

<sup>79</sup> Section 112.0801, Florida Statutes.

<sup>80</sup> Section 7.1, *Personnel Manual*.

records confirmed, that a comparison of health insurance premium billings to payroll deduction records is conducted monthly to help ensure premium payments are for eligible employees. However, the City had not established procedures to conduct and document verification of initial dependent eligibility by, for example, examination of birth and marriage certificates for child and spouse dependents and periodic verifications to ensure that employee dependents remain eligible for plan services.

While the City did not verify initial and continued dependent eligibility, the PRM performed limited dependent eligibility verifications. Specifically, employees were required to provide overage dependent<sup>81</sup> eligibility documentation to the PRM and, according to PRM personnel, the PRM conducted audits to verify eligibility for these dependents. In addition, the PRM *Group Health Benefits Guide* required employees to contact the PRM for any other dependent eligibility changes, such as marriage or divorce. Notwithstanding PRM verifications and eligibility change notification requirements, to ensure that only eligible dependents participate in the City health insurance plan, procedures to obtain and verify documentation supporting dependent eligibility are necessary.

To determine whether City efforts to compare health insurance premium billings to payroll deduction records procedures were sufficient to ensure that only eligible employees received health insurance benefits, we requested a list of insured individuals as of March 31, 2018, and compared the list to a list of City employees as of that date. We identified a temporary waste transfer station worker employed through an employment agency who did not provide full-time services to the City but received health, as well as, vision, dental, and life insurance benefits. According to City records, premiums totaling \$20,641 had been paid by the City for the individual's insurance benefits for the 2015-16 through 2017-18 fiscal years.

According to City personnel, following the individual's initial approval to participate in the City group health insurance plan in 1996, the individual's participation was treated as a reconciling item to the insurance premium billing to payroll deduction record comparison and his participation was not questioned in subsequent years. Notwithstanding, insofar as insurance coverage for the individual was contrary to the *Personnel Manual*, the authority for the insurance benefits was not readily apparent. Subsequent to our inquiries, the City removed the individual from participation in the City group insurance plans, effective October 1, 2018.

**Recommendation: The City should establish procedures to verify that individuals who participate in the City group insurance plans are eligible participants. Such procedures should require and ensure that:**

- **Upon enrollment of a dependent, City personnel verify the dependent's eligibility through examination of applicable documentation such as birth or marriage certificates.**
- **Documented, periodic verification procedures are conducted to ensure that participants, including dependent participants, in the insurance plans remain eligible.**
- **Ineligible participants are timely removed from participation in City group insurance plans.**

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<sup>81</sup> Dependents are considered to be overage beyond the end of the calendar year in which dependents, other than a spouse, reach age 30.

## Finding 21: Accumulated Leave Payments

The *Personnel Manual*<sup>82</sup> provides that, upon separation from City employment, employees are entitled to payment for accumulated annual and sick leave at their current hourly wage or salary. The City pays for accumulated annual leave based on 100 percent of the annual leave balance at employment separation and, although there is no specified limit on the amount paid for annual leave, employees may not accumulate annual leave in excess of 240 hours at September 30 (fiscal year-end).<sup>83</sup> Full-time City employees may carry forward unused sick leave to succeeding years as accumulated sick leave up to a maximum of 90 working days and, upon employment separation, the City will pay up to the maximum of 90 working days of accumulated sick leave at the rate of 25 percent of the employee's daily pay.<sup>84</sup> For certain employees, who at the inception of disability insurance opted not to participate, the maximum sick leave that may be accrued is 120 working days.<sup>85</sup>

While the *Personnel Manual* provides that full-time employees are entitled to two floating holidays<sup>86</sup> per fiscal year and provides for compensatory time for nonexempt employees required to work in excess of a designated work week,<sup>87</sup> neither the *Personnel Manual* nor other City policies and procedures provide for payment of unused floating holidays or compensatory leave upon employment separation. City personnel indicated that, in practice, the Senior Accountant calculates accumulated leave payments upon employment separation using the employee leave history report and multiplying the number of accumulated leave hours, hours for floating holidays, and accumulated compensatory hours by the employee's hourly rate of pay. However, as of June 2020, the City had not established procedures to ensure consistent and accurate calculations for the related payments of accumulated annual and sick leave, floating holidays, and compensatory hours.

Our examination of City records and discussions with City personnel disclosed that, during the period October 2016 through March 2018, 46 employees separated from City employment and 19 of those employees received payments totaling \$96,213 for a combination of accumulated annual and sick leave, floating holidays, or compensatory time. To determine whether the payments were correctly calculated and complied with the *Personnel Manual* provisions, we examined City records supporting payments totaling \$65,949 made to 8 selected employees upon their separation of employment. We found that:

- In an internal e-mail dated August 3, 2017, the City Manager extended the date in the *Personnel Manual* that limited employees to 240 hours of accumulated annual leave from September 30, 2017, through December 31, 2017. City personnel indicated that, although not authorized by the *Personnel Manual* or City Council, or documented in City records, the practice of capping annual leave balances at December 31, rather than September 30, had existed since

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<sup>82</sup> Sections 6.2 and 6.3, *Personnel Manual*.

<sup>83</sup> Section 6.2(c) and (e), *Personnel Manual*.

<sup>84</sup> Section 6.3(g), *Personnel Manual*.

<sup>85</sup> Section 6.3, *Personnel Manual*.

<sup>86</sup> Section 6.10, *Personnel Manual*.

<sup>87</sup> Section 5.10(c), *Personnel Manual*.

at least 2014. Notwithstanding, because employee accumulated annual leave was not limited to 240 hours at September 30:

- The Water and Sewer (WS) Supervisor, who separated from City employment in April 2017, was paid \$2,162 for 84 additional hours.
- The Utility Billing (UB) Supervisor, who separated from City employment in December 2017, was paid \$2,326 for 72 additional hours.
- Two employees received accumulated sick leave payments for hours in excess of the 90-day maximum set by the *Personnel Manual*. Specifically, the Finance Director who separated from City employment in July 2017 was paid \$7,273 for 25 percent of his 758 accumulated sick leave hours and the WS Supervisor who separated from City employment in April 2017 was paid \$4,839 for 25 percent of his 752 accumulated sick leave hours, resulting in overpayments of \$365 and \$206, respectively. In response to our inquiries, City personnel indicated that the calculations of sick leave payments were not independently verified of record due to City personnel turnover.
- The Finance Director was paid \$614 for 16 hours related to unused floating holidays; however, neither the *Personnel Manual* nor City the Council authorized payments for such holidays. City personnel indicated that, in practice, the City pays separating employees for unused floating holidays, although such practice is not specifically authorized.

Absent documented, independent verifications that accumulated leave payments are calculated in accordance with the *Personnel Manual* before payments are made, there is an increased risk that the City may overpay employees or make payments that are contrary to City policies.

**Recommendation:** City procedures should ensure that accumulated leave payments are made in accordance with the *Personnel Manual* provisions. Such procedures should include documented, independent verifications that the calculations are accurate before payments are made. Also, the City Council should take appropriate action to recover any employment separation overpayments, amend the *Personnel Manual* to address the payment of unused compensatory time, and determine whether any other *Personnel Manual* revisions should be made for consistency with City practices.

## **Finding 22: Severance Pay**

Pursuant to State law,<sup>88</sup> on or after July 1, 2011, a municipality that enters into an employment agreement, or renewal or renegotiation of an existing agreement, that contains a provision for severance pay must include a provision that precludes the severance pay from exceeding an amount greater than 20 weeks of compensation. An officer or employee may receive severance pay that is not provided for in a contract or employment agreement if the severance pay represents the settlement of an employment dispute. Such severance pay may not exceed an amount greater than 6 weeks of compensation.

As discussed in Finding 20, the City participates in a group health insurance plan and, according to the *Personnel Manual*,<sup>89</sup> contributes the total cost of employee health insurance and a portion of the health insurance cost for employee dependents. The City does not provide continued health insurance contributions when an employee separates from employment as the group health insurance plan provides

<sup>88</sup> Section 215.425(4)(a), Florida Statutes.

<sup>89</sup> Section 7.1, *Personnel Manual*.

that, when an employee separates from employment, employee health insurance coverage ends at the end of the month in which the employee separates from employment.<sup>90</sup>

Our discussions with City personnel and examination of City records disclosed that the City made severance payments and provided health care benefits totaling \$22,603 to 2 of the 46 employees who separated from City employment during the period October 2016 through March 2018. Specifically:

- Pursuant to the Notice of Termination signed by the WS Director and City Manager and dated April 27, 2017, the City agreed to pay 60 workdays of severance pay to the WS Supervisor and for a month of continued group health insurance. However, the City did not have an employment contract or severance agreement with the WS Supervisor, and City policies did not provide for payment of health insurance premiums for individuals after they separate from City employment. According to City personnel, severance pay was provided to the WS Supervisor because he voluntarily separated employment over an employment dispute. Notwithstanding, State law provides that, when severance pay represents the settlement of an employment dispute, such severance pay may not exceed an amount greater than 6 weeks of compensation. Although we requested, City records were not provided to identify the statutory authority for paying the WS Supervisor severance of \$12,355, which was \$7,214 more than the \$6,178 maximum (6 weeks of compensation) set by State law or for payment of continued group health insurance costing \$1,037.
- On July 21, 2017, the Finance Director resigned over an employment dispute and signed a severance agreement with the City. The agreement provided for \$39,913 to be paid to the individual in 6 equal monthly installments. However, shortly after signing the severance agreement, City personnel became aware of the 2011 statutory changes limiting severance pay and revised the agreement on October 22, 2017, to reduce the amount of severance pay to \$9,211, the equivalent of 6 weeks of compensation. However, the City also offered the former Finance Director a 6-month consulting services contract totaling \$24,000, approved by the City Council on October 16, 2017, to begin on the date of the revised severance agreement (October 22, 2017). In August 2017, the City Manager sent a memorandum to the City Council indicating that the combined dollar amount of the proposed October 2017 revised severance agreement and the proposed October 2017 independent consultant agreement reflect the general terms as agreed upon in the original severance agreement.

The consulting services agreement approved by City Council on October 16, 2017, and signed by the Mayor, provided that the City would pay the former Finance Director, as an independent contractor, \$4,000 per month for 6 months, and specified that he “shall be reasonably available to perform whatever services may be requested by the City,” but the agreement did not provide for any specific deliverables and banned him from working at any City facilities. We requested evidence of the consulting services provided by the former Finance Director and, in November 2018, City personnel indicated that the former Finance Director verbally consulted with the Assistant City Manager and other various City employees on an as-needed basis regarding, for example, State and Federal reporting requirements and competitive selection of the City’s waste management contract and related franchise agreement. However, City personnel also indicated that records documenting such services were not available because the City did not require that documentation of the work performed by the former Finance Director be prepared and retained.

Subsequently, in March 2019, the Assistant City Manager provided an e-mail to the City Manager summarizing monthly communications with the former Finance Director. The e-mail indicated that:

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<sup>90</sup> Public Risk Management of Florida, *Group Health Benefits Guide*, Section 14 *Frequently Asked Questions*.

- In November and December 2017, the former Finance Director assisted City personnel in the development and review of request for proposal documents for waste disposal services and provided guidance in evaluating responses.
- Although the former Finance Director contacted the Assistant City Manager and asked if there were potential assignments for the months of January, February, and April 2018, no assignments were provided to him.
- In March 2018, the former Finance Director provided “the necessary information and documentation as requested” to “resolve issues with one of the City’s vendors.”

However, although we requested, no records were provided to specify the time frames, document deliverables, or otherwise evidence the described services and information provided by the former Finance Director. Given that the contract prevented the former Finance Director from working at City facilities, we further requested evidence of correspondence between the former Finance Director and City employees to support work performed by the former Finance Director as directed by the Assistant City Manager; however, City personnel were unable to locate any such correspondence.

While the former Finance Director may have provided some consulting services during the contract period, absent records evidencing the time frames and related deliverables provided, it is not apparent how the City demonstrated that the former Finance Director provided the level of services contemplated by the City Council when the contract was approved. Further, given the absence of records supporting the provision of services and the August 2017 memorandum from the City Manager to the City Council indicating that the combined dollar amount of the revised severance agreement and the consulting contract would reflect the general terms of the original severance agreement, the consulting services contract appears to comprise, in substance, unallowed severance pay rather than an arms-length agreement for services.

**Recommendation: The City should ensure that severance payments and other compensation do not exceed the limits set by State law. In addition, the City should take appropriate action to recover the \$7,214 of severance paid to and the \$1,037 for health insurance coverage paid for the former WS Supervisor in excess of the 6 weeks of maximum severance pay set by State law. Also, the City should document the basis for the \$24,000 paid to the former Finance Director or take appropriate action to recover that amount for unsubstantiated consulting services.**

### **Finding 23: Extra Compensation**

Pursuant to State law,<sup>91</sup> no City employee may be paid extra compensation after service has been rendered; however, the City had not established procedures that prohibited extra compensation payments. We examined City records supporting payments totaling \$65,949 for eight employees who separated from City employment as discussed in Finding 21 and found that the City Manager authorized extra compensation payments totaling \$6,000 for two of the eight employees. Specifically:

- A payment of \$5,000, designated as a “retirement bonus,” was made to the Police Chief 1 day before his November 4, 2016, retirement date.
- Two \$500 payments totaling \$1,000, each designated as a “retirement merit increase,” were made to a retiring Utility Billing Supervisor on her last two paychecks in December 2017.

Additionally, as discussed in Finding 24, our review of compensation paid to a former City Manager disclosed that he was paid an extra compensation “retirement bonus” of \$10,000.

<sup>91</sup> Section 215.425(1), Florida Statutes.

In response to our inquiries, City personnel indicated that retirement gifts are historically provided in recognition for years of service, and retirement merit incentives are typically given to long-time employees in good standing upon separation from City employment. Notwithstanding City personnel responses, extra compensation for services already rendered is prohibited by State law.

**Recommendation: The City should establish policies and procedures that prohibit extra compensation pursuant to State law.**

#### **Finding 24: Special Advisor Compensation**

The former City Manager resigned his position effective April 30, 2017, and entered into another employment agreement as a Special Advisor with the City for the period May 2017 through April 2018. According to City personnel, the agreement was entered as part of the City's succession planning effort and, as a City employee, the Special Advisor would be paid an annual salary of \$65,000 for performing tasks assigned by the new City Manager. Our examination of City records supporting this employment arrangement and discussions with City personnel disclosed that:

- The employment agreement provided that the Special Advisor would “perform other legally permissible and proper duties and functions as the Interim City Manager or City Manager from time to time may assign” and he would “only work part time up to eighty-five (85) hours per month.” Although the agreement established a fixed salary, it did not specifically prescribe his job duties or establish a minimum number of work hours. In response to our inquiry, City personnel indicated that specific job duties and a minimum number of work hours were not prescribed in the agreement because the City Manager developed a list of projects, programs, and initiatives for the Special Advisor. Notwithstanding, without City-established job duties and work hours, City records did not demonstrate the reasonableness of the Special Advisor's compensation based on the expected services.
- City personnel indicated that employees are required to electronically prepare a time sheet every 2 weeks, which shows hours worked and approval by applicable supervisory personnel. However, the Special Advisor was not required to prepare time sheets or otherwise periodically report hours worked for the period May 2017 through April 2018 because, according to City personnel, he was not contractually obligated to do so.

City personnel provided a copy of handwritten notes purportedly prepared by the Special Advisor on the day of his performance appraisal, April 25, 2018, showing hours worked and briefly describing work performed for the period May 2017 through April 2018. However, the handwritten notes did not identify the preparer or the date the notes were prepared. Also, the notes did not indicate any hours worked for May 2017 and only provided hours totaling 1,003 hours (for the months of June 2017 through April 2018), which is 37 hours less than the 1,040 hours indicated as paid for by City earnings records.

In the absence of a requirement for the Special Advisor to prepare time sheets for approval by supervisory personnel, or otherwise document hours worked, City records did not evidence his actual hours worked, and the City had limited assurance that the Special Advisor actually worked the 1,040 hours for which he was paid \$65,000.

- For the period May 2017 through April 2018, the Special Advisor was generally paid his \$65,000 annual salary in increments of \$2,500 per pay period. Our review of City earnings records for this period and inquiry of City personnel disclosed that the Special Advisor received additional compensation totaling \$10,000 (\$750 for the 13 pay periods ended October 20, 2017, through



April 6, 2018, and \$250 for the pay period ended April 26, 2018). In response to our inquiry, City personnel indicated that the \$10,000 represented a retirement bonus. However, as similarly discussed in Finding 23, since the bonus represents extra compensation after service was rendered, the \$10,000 was paid contrary to State law.<sup>92</sup>

During the period May 2018 through the pay period ended February 21, 2020, the Special Advisor's pay rate varied, as follows:

- For the period May 2018 through April 2019, the Special Advisor's employment agreement was amended to pay him \$35 per hour for work performed. According to City personnel, during this period duties were performed as assigned by the City Manager or as specified in the amended agreement. Duties specified in the agreement included, for example, attending meetings as a City representative, providing background information to the City Manager on various topics, and conducting and facilitating the City of Gulf Breeze Citizen's Academy<sup>93</sup> and similar activities.
- For the period May 2019 through September 2019, the Special Advisor was to be paid an annual salary of \$5,200. Effective October 1, 2019, he was to be paid at a rate of \$31.25 per hour. According to City personnel, as of June 2020, he continues to perform tasks assigned by the City Manager, including leading the City of Gulf Breeze Citizen's Academy.

According to City earnings records, during the period May 2018 through the pay period ended February 21, 2020, the Special Advisor was paid a total of \$56,793, including:

- \$44,000 for payment of 688 hours of unused vacation and sick leave and 16 hours of floating holidays that were accrued as of April 30, 2017, his last day as City Manager.
- \$12,793 for 238 hours worked during the period May 2018 through April 2019 and 78.5 hours worked during the period May 2019 through the pay period ended February 21, 2020.

Our examination of City records and discussions with City personnel related to these compensation payments disclosed that:

- For the period May 2018 through April 2019, the Special Advisor submitted weekly handwritten reports indicating hours worked and tasks performed; however, the reports lacked evidence of review and approval by applicable supervisory personnel. City personnel indicated that, effective May 1, 2019, the Special Advisor was no longer required to submit weekly reports of hours worked but instead verbally reported hours worked to the Administrative Services Director. Although we requested, City personnel did not explain why the Special Advisor was not required to obtain supervisory approval for reported hours worked. Absent documented supervisory review and approval of time reported as worked, the City has limited assurance that the employee worked the hours for which he was paid.
- Although the Special Advisor's amended employment agreement expired April 30, 2019, the City did not execute another employment agreement and the City Council did not otherwise approve the Special Advisor's continued employment. According to the City Manager, she opted to continue his employment and individually spoke with each City Council member to determine whether they desired to continue the Special Advisor's employment with the City. City personnel indicated that the Special Advisor was an at-will employee like all other regular employees and there was no desire to execute another employment agreement given his limited role as Special Advisor.

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<sup>92</sup> Section 215.425(1), Florida Statutes.

<sup>93</sup> The City of Gulf Breeze Citizens Academy is a free, 8-week, two-hour course that provides an opportunity for City residents to learn about City government through interactive classes designed to provide insight and an up-close and personal look at how City government functions and helps shape the community.

Section 5.1 of the City's *Personnel Manual* provides that the pay of all employees be established by a pay plan, and that the pay plan must include the minimum and maximum rates of pay for each position classification. The City Council, at its October 7, 2019, meeting, adopted a Schedule of Authorized Positions (Schedule) that was in effect at the time the City Manager opted to continue employing the Special Advisor. However, according to City personnel, due to oversight, the approved Schedule did not include the Special Advisor position. Additionally, although we requested, City personnel did not explain the basis, such as anticipated hours to be worked or an hourly rate to be applied to hours worked, for the Special Advisor annual salary of \$5,200. Ensuring that positions and associated pay ranges are established consistent with approved pay plans helps control payroll costs and facilitates effective budget monitoring.

- During the period May 2018 through the pay period ended February 21, 2020, the City paid the Special Advisor \$12,793 for time worked; however, that amount was \$717 more than the \$12,076 he should have been paid based on the aforementioned pay rates in effect during this period. Our inquiry with City personnel disclosed that the overpayment was primarily due to the City not paying him the correct pay rate for time worked in April 2018 and not timely implementing the new salary rate established effective May 1, 2019.
- In December 2015, the City Council approved a "Money Purchase Plan & Trust" (Plan & Trust), which established a retirement plan for certain employee positions, including City Manager, and provided that the City would contribute 12.5 percent of these positions' base salary and final payout for unused vacation and sick leave into a Plan & Trust account. Additionally, the Special Advisor's employment agreement in effect May 2017 through April 2018<sup>94</sup> provided that the City would contribute 12.5 percent of his base salary into a deferred compensation plan account of his choosing and, according to City personnel, such contributions were made into the same account as established for the Plan & Trust contributions made when the Special Advisor was City Manager.

According to City records, during the period May 2017 through the pay period ended February 21, 2020, the City contributed a total of \$13,969 to the Special Advisor's Plan & Trust account based on salary paid for time worked through April 2018 and the aforementioned \$44,000 payment of 688 hours of unused vacation and sick leave (\$43,000) and 16 hours of floating holidays (\$1,000). However, we determined this was \$156 more than the \$13,813 that should have been contributed. The excess contributions occurred because of the aforementioned salary overpayment for time worked during the period May 2018 through the pay period ended February 21, 2020, and because the City incorrectly contributed 12.5 percent of the \$1,000 the Special Advisor was paid for unused floating holidays, contrary to the established Plan & Trust which only authorized contributions based on payment for salary and final payout for unused vacation and sick leave.

**Recommendation: The City should:**

- **Ensure that the Special Advisor's position description and established pay rate are in accordance with the City Council approved Schedule of Authorized Positions.**
- **Require the Special Advisor to prepare time sheets to document the actual hours worked. Such time sheets should evidence supervisory review and approval.**
- **Ensure that the Special Advisor is paid at the correct pay rate based on actual hours worked.**
- **Take action to recover from the Special Advisor the salary overpayments and excess Plan & Trust account contributions totaling \$873.**

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<sup>94</sup> Section 5.C of the employment agreement in effect May 1, 2017, through April 30, 2018.

## Finding 25: Automobile and Toll Allowances

When entities provide monthly automobile allowances to employees, it is important to require those employees to sign statements showing the places and distances for a typical month's official business travel to help demonstrate the extent to which the employees use their personal vehicles for City business and support determination of the allowance amount. Although City policies<sup>95</sup> provide that the use of personal vehicles for City travel will be reimbursed using the State of Florida per mile reimbursement rate,<sup>96</sup> the policies are silent regarding automobile allowances for City personnel. Notwithstanding, during the period October 2016 through March 2018, the City paid a total of \$16,200 in monthly automobile allowances of \$500 and \$400 to the Director of Parks and Recreation and the Public Services (PS) Compliance Officer, respectively, for the use of their personal vehicles while performing City business. Additionally, during that period, the City paid a total of \$900 in monthly \$50 toll allowances to a senior services worker for the reimbursement of tolls incurred on workdays between the employee's home and the City.

City records indicated that applicable City Managers approved:

- In 1988, a \$200 monthly automobile allowance for the PS Compliance Officer;
- In 2006, a \$50 monthly toll allowance for the senior services worker; and
- In 2010, a \$500 monthly automobile allowance for the Director of Parks and Recreation.

However, although we requested, City records did not evidence City Manager approval of a \$400 monthly automobile allowance for the PS Compliance Officer or how any of these allowances were determined. According to the City Manager, the allowances were established prior to her employment and she did not know why the allowances were granted or how the allowance amounts were determined.

In addition, the City did not require the Director of Parks and Recreation and the PS Compliance Officer to submit a log of actual miles driven while on City business and did not periodically perform calculations or comparisons to determine whether the allowances were reasonable compared to the miles driven. Similarly, the senior services worker was not required to provide itemized lists of tolls incurred while commuting to and from work.

Insofar as City policies do not authorize automobile allowances to employees, the payments for these allowances are contrary to City policies. In addition, absent signed statements of the travelers showing the places and distances for an average typical month's travel on official business and periodic analyses to determine whether the allowance amounts remain reasonable, the City cannot demonstrate the extent to which employees used their personal vehicles for City business or that employees were only reimbursed for personal vehicle use costs associated with official City business.

**Recommendation: City personnel should comply with City policies by reimbursing travelers for personal use of their vehicles at the rate established by State law. If the City Council intends to provide automobile and toll allowances to employees, the City Council should establish policies and procedures to properly support, calculate, and pay such allowances. To support the reasonableness of the automobile and toll allowance amounts, the policies and procedures**

<sup>95</sup> Section 13.11, *Personnel Manual*, Travel Policy.

<sup>96</sup> Section 112.061(7)(d)1., Florida Statutes, establishes a rate of 44.5 cents per mile.

**should require and ensure that all employees receiving a monthly automobile or toll allowance periodically provide documentation supporting the actual costs of official business travel for a given month.**

## MOTOR VEHICLES

As of March 2018, the City motor vehicle fleet was composed of 96 motor vehicles (57 public services vehicles, 29 police vehicles, and 10 other vehicles) for use by City employees while conducting official business. According to City personnel, 40 City employees were assigned specific City vehicles on a 24-hour take home basis, including 22 Police Department employees, 12 Public Services Department employees, the City Manager pursuant to her employment contract,<sup>97</sup> and 5 other employees.

To promote accountability and appropriately manage and safeguard City motor vehicles and fuel inventories, it is important to establish procedures to, among other things, effectively monitor and evaluate vehicle and fuel use, accurately determine the value of personal use of City motor vehicles, and provide for and document appropriate vehicle maintenance and repairs.

### **Finding 26: Motor Vehicle Assignment and Use**

Proper accountability for motor vehicle use includes, but is not limited to, documented authorizations for vehicle assignments, verifications that drivers are appropriately licensed, and records, such as motor vehicle usage logs, supporting the use of public resources. Well-designed vehicle use records evidence, among other things, the vehicle driver and details of the travel performed, such as beginning and ending odometer readings, date and time, destination, and purpose for each use.

Our examination of City records and discussions with City personnel disclosed that City controls related to the assignment and use of motor vehicles need improvement. Specifically, we found that:

- While Police Department procedures<sup>98</sup> were established for take-home vehicle assignments, as of June 2020, the City had not established uniform policies and procedures for other take-home vehicle assignments. According to City personnel, each department head is responsible for the assignment, maintenance, and repair of vehicles assigned to their departments. Subsequent to our inquiries, the Public Services Department established procedures for vehicle assignments; however, the procedures did not identify who was responsible for making and authorizing the assignments.
- Although we requested, City records were not provided to demonstrate that 18 of the take-home vehicle assignments were justified and authorized. For example, a vehicle was assigned to the Police Department's information technology employee who was not a police officer and City records did not document justification or authorization for the assignment. In response to our inquiry, the City Manager indicated that department heads assign take-home vehicles to individuals who are expected to return to work for after-hour emergencies. In addition, Police Department procedures provide that low-mileage vehicles may be assigned to non-uniformed personnel. However, absent City policies and procedures that identify who is authorized to make vehicle take-home assignments and the documentation required to evidence justification and

<sup>97</sup> In September 2017, the City Manager was assigned a take-home vehicle pursuant to her employment agreement, which was authorized by the City Council.

<sup>98</sup> Section 194, *Fleet System*, City of Gulf Breeze Police Department Procedures.

authorized approval of those assignments, there is an increased risk that City motor vehicles will be used for unauthorized purposes.

- Pursuant to the City Personnel Manual,<sup>99</sup> department heads are required to conduct periodic audits to verify that employees who operate City vehicles have valid driver's licenses. According to City personnel, an internal review of the City's various departments indicated that driver's licenses are verified upon hire for all employees and periodically checked by individual departments thereafter. However, although we requested, records were not provided evidencing that driver's license audits had ever been performed. Subsequent to our inquiry, in March 2019 City personnel indicated that department heads had been advised to maintain better records of the verifications of their employees' driver's license status. Absent documented audits of the driver's licenses of City vehicle operators, there is an increased risk that employees with suspended or expired driver's licenses may operate City vehicles.
- During the audit period, the City did not require records of vehicle use be prepared and maintained. According to City personnel, except for the City Manager's vehicle, City policies<sup>100</sup> did not permit personal use of City vehicles until April 2019, when the City Personnel Manual was revised to permit such use. The revised policy requires employees with assigned vehicles to record the personal use of a City vehicle on a form provided by the Finance Department. Such forms, if properly completed, reviewed, and approved will support non-business use. However, absent vehicle usage logs timely reviewed by supervisory personnel that document the details for all travel performed, such as the driver's name, beginning and ending odometer readings, date and time, destination, and purpose for each use, City records do not demonstrate the extent of and specific public purpose for City vehicle business use.

**Recommendation: The City should enhance controls governing the assignment and use of motor vehicles by enhancing policies and procedures for the assignment and use of all City vehicles. Such policies and procedures should:**

- **Specify the individuals authorized to assign vehicles and require documentation justifying and authorizing the approval of all vehicle assignments.**
- **Ensure periodic verifications that all employees who operate City vehicles have valid driver's licenses and that documentation of the verifications is maintained.**
- **Require the preparation and maintenance of vehicle usage logs that document the details of all travel performed, whether for personal or official City business. To evidence the reasonableness and propriety of City motor vehicle use, appropriate supervisory personnel should periodically review and approve the logs and maintain documentation of such review and approval.**

#### **Finding 27: Motor Vehicle Taxable Fringe Benefits**

Pursuant to United States Treasury regulations,<sup>101</sup> gross income includes the fair market value of any fringe benefit not specifically excluded from gross income by another provision of the Internal Revenue Code (IRC). The IRC<sup>102</sup> provides that gross income will not include the value of any fringe benefit that qualifies as a working condition fringe benefit. United States Treasury regulations<sup>103</sup> further provide that

<sup>99</sup> Section 2.5, *Personnel Manual*.

<sup>100</sup> Sections 9.4 and 13.4, *Personnel Manual*.

<sup>101</sup> Title 26, Section 1.61-21(a), Code of Federal Regulations.

<sup>102</sup> Title 26, Section 132(a)(3), Code of Federal Regulations.

<sup>103</sup> Title 26, Section 1.132-5(h)(1), Code of Federal Regulations.

the use of a qualified nonpersonal use motor vehicle is a working condition fringe benefit provided the use of the vehicle conforms to the requirements of Treasury regulations.<sup>104</sup>

Because the City Manager's employment contract indicates that she may use the vehicle for personal use, City personnel reported her vehicle use fringe benefits income to the Internal Revenue Service (IRS). City personnel did not consider it necessary to track personal use for the other 39 City vehicles assigned to employees, or to report the fair value of any vehicle use fringe benefits to the IRS, because, until April 2019, City policies<sup>105</sup> prohibited City vehicles from being used for purposes other than official City business. However, absent records of vehicle use (as discussed in Finding 26), it is not apparent how City personnel determined that the take-home motor vehicles were not used for the personal benefit of City employees or that no vehicle use fringe benefits income should have been included in City employees' gross income reported to the IRS. While proper completion and review of the personal use forms required by the revised City policies should assist the City in determining the value of the personal use to be included in the employees' gross income reported to the IRS, vehicle usage logs reviewed by supervisory personnel that document all travel, both personal and City-business related, would provide additional assurance and support for the purposes for all vehicle usage.

**Recommendation: The City should continue efforts to establish policies and procedures to ensure that the value of personal use of City vehicles is appropriately included in employees' gross income reported to the IRS based on appropriately completed and approved records of City vehicle use.**

## **Finding 28: Motor Vehicle Fuel Inventory**

The City maintained a fuel pumping station for dispensing fuel for fleet motor vehicles used by City employees. During the period October 2016 through March 2018, the City paid approximately \$224,000 for fuel at the pumping station and dispensed a total of approximately 98,000 gallons of fuel. Our discussions with City personnel indicated that:

- The City uses a fuel management system to control the dispense of fuel and to record the fuel dispensed. Employees authorized to drive a fleet vehicle utilize a vehicle-specific (i.e., individually assigned) fuel key to dispense fuel and are required to enter a personal identification number before the fuel could be dispensed. The fuel management system also prompts the fuel key user to input the motor vehicle mileage (odometer) reading and, if the odometer reading entered is inconsistent with the previous odometer reading, the system would not activate the fuel pumping station.
- The fuel management system provides reports of instances of fuel dispensed, which are to be reviewed monthly by the employee's immediate supervisor and the Finance Department.

Although the City utilizes a fuel management system with tools to help prevent and assist in the detection of unauthorized fuel pumping station use, the City has not established effective policies and procedures for monitoring fuel use. For example, although we requested, City records were not provided to demonstrate that the reports of fuel dispensed are reviewed monthly by supervisors because, according to City personnel, the reports are not retained. Additionally, as the City does not require vehicle usage logs be prepared and maintained for any City vehicles, the reasonableness of the dispenses of fuel

<sup>104</sup> Title 26, Section 1.274-5(k), Code of Federal Regulations.

<sup>105</sup> Section 13.4, *Personnel Manual*.

recorded by the fuel management system was not readily apparent. Under these conditions, there is an increased risk that loss, theft, or unauthorized use of fuel could occur and not be promptly detected.

**Recommendation:** The City should establish effective policies and procedures for monitoring fuel use. Such policies and procedures should require supervisors to document periodic comparisons of fuel usage with actual vehicle mileage for reasonableness and follow up on unreasonable usage detected by the comparisons. The policies and procedures should also require retention of reviewed fuel usage reports and specify consequences for employees who use the fuel pumping station for nonbusiness purposes.

## **Finding 29: Motor Vehicle Maintenance**

Effective management of motor vehicles requires a comprehensive motor vehicle preventative maintenance plan to detect problems and reduce the risk of costly repairs and inconvenient downtime. Complete vehicle records regarding the maintenance, repair, and performance of each vehicle are essential for assisting management in making vehicle repair, disposition, and replacement decisions. At a minimum, policies and procedures for motor vehicle maintenance and repairs should:

- Prescribe routine, periodic preventative maintenance, including the specific maintenance procedures to be performed.
- Specify maintenance and repair cost thresholds for each vehicle to assist the City in making appropriate vehicle repair, disposition, and replacement decisions based on each vehicle's maintenance and repair cost record.
- Detail responsibilities for reporting vehicle operation problems.
- Provide guidelines for determining whether maintenance and repairs should be performed by City personnel or outsourced to vendors.
- Require periodic motor vehicle disposition and replacement determinations based on each motor vehicle's maintenance and repair cost record.

According to City personnel, the City outsources vehicle maintenance and repairs to local automotive service centers. In May 2017, the Public Services Department began tracking vehicle inspections for the 13 vehicles in the work order module of the City's financial management system, and in June 2018 began tracking the other 44 vehicles in the module. The work order module issued a separate work order for when maintenance for each vehicle was required; however, the work order module did not track each vehicle's maintenance and repair costs.

City personnel indicated that each department with assigned motor vehicles is responsible for taking the vehicles to an automotive service center for periodic maintenance; however, no specific guidelines or maintenance schedules had been established to help ensure the proper and periodic servicing of City vehicles. Instead, City personnel indicated that they rely on the automotive service center to notify City personnel when maintenance was required based upon the service center's records. However, City personnel do routinely inspect vehicles and note the condition of tires, battery and fluid levels, and mileage, and review the oil change stickers placed in each vehicle by the local automotive service center to determine when the next oil change is necessary.

In response to our inquiries, City personnel indicated in August 2019 that policies and procedures for motor vehicle repairs and implementation of a comprehensive Citywide motor vehicle preventative

maintenance plan had not been established because of the lack of available time. Absent effective policies and procedures and implementation of a comprehensive preventative maintenance plan, there is an increased risk that avoidable vehicle repair costs will be incurred, vehicle downtime or inefficient vehicle operations will occur or continue, and management vehicle disposition and replacement decisions will be untimely or inappropriate.

**Recommendation:** The City should establish effective policies and procedures for motor vehicle repairs and maintenance, including a comprehensive Citywide motor vehicle preventative maintenance plan that tracks each motor vehicle’s maintenance and repair records and costs. The plan should also:

- Prescribe routine, periodic preventative maintenance, including the specific maintenance procedures to be performed.
- Specify maintenance and repair cost thresholds for each vehicle to assist the City in making appropriate vehicle repair, disposition, and replacement decisions based on each motor vehicle’s maintenance and repair cost record.
- Detail responsibilities for reporting vehicle operation problems.
- Provide guidelines for determining whether maintenance and repairs should be performed by City personnel or outsourced to vendors.
- Require periodic motor vehicle disposition and replacement determinations based on each motor vehicle’s maintenance and repair cost record.

TRAVEL

State law<sup>106</sup> provides travel guidelines for public officers, employees, and other authorized persons, and establishes requirements for travel forms and mileage and subsistence rates. In addition, State law<sup>107</sup> authorizes the governing body of a municipality to provide for a per diem and travel expense policy for its travelers that varies from the provisions of State law. Pursuant to City travel policies,<sup>108</sup> employees traveling on City business are subject to the provisions of State law for mileage reimbursements and, with respect to subsistence allowance rates, may use either the State law reimbursement rate<sup>109</sup> or the actual cost of meals.

**Finding 30: Travel**

Effective policies and procedures for the administration of travel advances, travel reimbursements, and other travel-related expenses promote compliance with travel guidelines and requirements and, among other things, require supervisory approval, documented justification for travel, travel by the most economical means possible, and maintenance of documentation supporting the travel expenses incurred. Such policies and procedures provide travelers and those responsible for approving travel and related expenses a clear understanding of their responsibilities. City travel policies<sup>110</sup> require that:

<sup>106</sup> Section 112.061, Florida Statutes.

<sup>107</sup> Section 166.021(9)(b), Florida Statutes.

<sup>108</sup> Section 13.11, *City of Gulf Breeze Personnel Manual*, Travel Policy.

<sup>109</sup> Section 112.061(6)(b), Florida Statutes, provides subsistence allowances of \$6 for breakfast, \$11 for lunch, and \$19 for dinner.

<sup>110</sup> Section 13.11, *City of Gulf Breeze Personnel Manual*, Travel Policy.



- A Travel/Training Expense Report (travel report)<sup>111</sup> be completed and approved by the department head prior to the actual travel taking place.
- Advance payments, such as conference registration fees or hotel accommodations, be made directly to the vendor and listed on the travel report.
- Approved travel reports be forwarded to the Finance Department prior to travel.
- Traveling employees keep a copy of the approved travel report to be completed after travel is complete.
- Receipts be attached to the travel report for applicable travel expenses.
- Completed travel reports be approved by the traveler's department head and forwarded to the Finance Department no later than 2 weeks after travel is complete.

During the period October 2016 through March 2018, the City recorded 303 travel expenses totaling \$39,188, including \$29,520 paid by City purchasing cards (P-cards), \$4,866 for employee travel reimbursements, and \$4,802 for contractor travel reimbursements. Our examination of City records and discussions with City personnel for 28 selected travel expenses totaling \$15,103 disclosed that controls over travel expenses could be enhanced. Specifically:

- 15 travel expenses totaling \$9,327 were for travel to a conference or convention; however, these expenses were not supported by documentation such as copies of conference or convention agenda or programs. Although City policies and procedures did not require that these documents accompany the travel reports, without such documentation, City records did not support the public purpose for attending the conference or convention or demonstrate that per diem amounts paid to the travelers were reduced for any meals or lodging included in the registration fee.
- 11 travel expenses totaling \$5,942 were not supported by a travel report, contrary to City travel policies. According to City personnel, the travel reports were either not prepared or were prepared but subsequently misplaced by the department responsible for approving and forwarding the travel report to the Finance Department.
- For 10 travel expenses totaling \$6,439, we noted one or more instances of noncompliance with City travel policies or State law. For example:
  - Travel reports for 2 selected travel expenses totaling \$1,720 were not signed by the employee or supervisor.
  - P-card charges by five employees (3 selected travel expenses) totaling \$68 were not supported by receipts.
  - A \$386 receipt for three employees' lodging (1 selected travel expense) was not in sufficient detail.
  - P-card charges for two employees (3 selected travel expenses) totaling \$60 were for snacks although City travel policies do not provide for reimbursement for food other than meals.
  - Contrary to State law,<sup>112</sup> sales tax totaling \$181 was paid for 7 selected in-State travel expenses.

City personnel indicated that these instances occurred because applicable department heads did not always perform a detailed review of travel reports and because of Finance Department personnel turnover. Payment of sales tax likely occurred because there is no mention in City

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<sup>111</sup> A single travel report is used by the traveler for authorization to travel, reporting actual expenses, and requesting reimbursement.

<sup>112</sup> Section 212.08(6), Florida Statutes, provides an exemption from sales tax to governmental entities when payments are made directly to the vendor by the governmental entity.

policies regarding the statutory sales tax exemption or the need for cardholders to provide vendors with the City's sales tax exemption certificate so that the vendor does not collect sales tax.

- 4 travel expenses totaling \$1,881 were reimbursements to a golf course management company (company) for travel expenses (e.g., lodging, meals, rental car). The City contract with the company required the City to reimburse the company for travel expenses incurred upon presentation of vouchers reflecting the details of the travel (e.g., persons incurring the expense, travel dates, and travel purpose). However, documentation submitted by the company to support the 4 travel expenses did not indicate the purpose of the travel or how the expenses related to the contract-specified services. Additionally, expenses for lodging, meals, and fuel totaling \$1,678 were not supported by receipts. These travel reimbursements lacked adequate support because City personnel did not always require the company to submit sufficient supporting documentation for travel expenses.

Absent properly completed travel reports with adequate supporting documentation, such as receipts and agenda or programs for travel to conferences or conventions, and sufficiently detailed review of the travel reports and supporting documentation, there is an increased risk of unauthorized or unnecessary travel expenses.

**Recommendation: The City should enhance travel policies and procedures to ensure that:**

- **Copies of conference or convention agenda or programs are submitted for such travel and that per diem or subsistence allowances paid to the traveler are reduced for any meals or lodging included in the conference or convention registration fee.**
- **Employee-signed travel reports accompanied by supporting documentation, including detailed receipts, as applicable, that clearly evidence actual travel expenses incurred and the public purpose served, are submitted by employees for all travel expenses.**
- **The traveler's department head and Finance Department personnel sufficiently review travel reports, along with supporting documentation, for compliance with City and State requirements and document payment approval or denial based on those requirements.**
- **Cardholders are provided a copy of the City's sales tax exemption certificate and present the certificate copy to vendors so that State sales tax is not collected on purchases related to authorized City travel.**
- **Contractors provide sufficient supporting documentation, including detailed receipts, as applicable, for travel reimbursement requests. Such documentation should evidence that the contractor-incurred travel expenses related to services provided to the City.**

PROCUREMENT AND USE OF PUBLIC FUNDS

Included in City Council stewardship and fiduciary responsibilities associated with managing public resources is the responsibility to ensure that City controls provide for the effective and efficient use of resources in accordance with applicable laws, contracts, grant agreements, and City ordinances, policies, and procedures. To promote responsible spending and improved accountability, it is important that the City consistently utilize an effective and efficient process for procurement and that City records demonstrate that public funds are properly utilized in fulfilling the legally established responsibilities of the City.

## Finding 31: City Procurement Controls

The City is responsible for establishing controls to provide assurance that the process for acquiring goods and services is effective and consistently administered, and procurements are made in an equitable and economic manner. Inherent to that responsibility is the use of competitive procurement practices for the acquisition of goods and services when appropriate. Regarding procurement of goods and services, the City Charter<sup>113</sup> provides, in part, that “the city council shall provide by ordinance for the method of making contracts and incurring obligations for the current operation of the city; provided that all contracts for construction or materials, except for personal services, obligating the city in an amount in excess of five thousand dollars (\$5,000) shall be let by public bid in a manner to be provided by ordinance.”

City purchasing policies<sup>114</sup> required the City to procure materials, supplies, equipment, and services, other than professional services, at the lowest cost consistent with the quality and service rendered.<sup>115</sup> In January 2019 we requested, but were not provided, records evidencing that the City Council had adopted the purchasing policies by ordinance consistent with the City Charter requirement. In addition, City records did not demonstrate that the City Council examined and approved all components of the purchasing policies as only two policy subsections<sup>116</sup> relating to bid protests had been approved. Subsequent to our inquiries, in November 2019 the City Council adopted an ordinance<sup>117</sup> establishing a new procurement code and a resolution<sup>118</sup> establishing new purchasing policies.

Our examination of the City Charter, City ordinances, and City purchasing policies (both the former policies and the policies adopted in November 2019) disclosed provisions that were vague, inconsistent, or ambiguous. Specifically:

- The City Charter provides that acquisitions of personal services are exempt from competitive bid requirements. However, neither the City Charter, City ordinances, nor the City’s former or November 2019 purchasing policies define the term “personal services.”
- The former City purchasing policies<sup>119</sup> indicated that services, other than professional services, were to be acquired “at the lowest cost consistent with the quality and service rendered.” However, neither the City Charter, City ordinances, nor former purchasing policies specified what constituted “professional services.” While the purchasing policies adopted in November 2019 mention professional and non-professional services, the policies do not define those terms or set consistent requirements for those procurements. Specifically:
  - The policies<sup>120</sup> establish requirements for non-professional services procurements exceeding \$5,000 but do not address professional services procurement requirements exceeding that amount.
  - One section<sup>121</sup> of the policies provides that a competitive sealed request for proposals method may be used to procure professional services exceeding \$5,000 under certain circumstances;

<sup>113</sup> Part 1, Subpart A, Section 3(r), City of Gulf Breeze Charter.

<sup>114</sup> City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>115</sup> Section 1, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>116</sup> Sections 4.1.A. and 4.1.B., City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>117</sup> City of Gulf Breeze Ordinance No. 17-2019 adopted November 18, 2019.

<sup>118</sup> City of Gulf Breeze Resolution No. 58-2019 adopted November 18, 2019.

<sup>119</sup> Section 1.1, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>120</sup> Section 3, City of Gulf Breeze Purchasing Policy adopted November 18, 2019.

<sup>121</sup> Section 5.1(c), City of Gulf Breeze Purchasing Policy adopted November 18, 2019.

however, another section<sup>122</sup> provides that a competitive sealed request for proposals method must be used for those circumstances.

- The former City purchasing policies<sup>123</sup> required that all purchases be subject to competitive bid as required by law unless the City Council waives the bid requirement. However, the City Charter<sup>124</sup> only permits waiving competitive procurement for:
  - City contracts based on contracts awarded<sup>125</sup> by public bid for acquisitions of construction or materials by the State of Florida and any of its agencies, Escambia or Santa Rosa Counties and any of their agencies, or any municipality located in Escambia or Santa Rosa Counties and the City Council has determined that soliciting additional public bids would not financially benefit the City; or
  - Emergency circumstances where the time required to follow the public bid process would be detrimental to the City.

This was corrected as the purchasing policies adopted in November 2019 do not include a provision authorizing the City Council to waive the competitive selection process.

- The former City purchasing policies<sup>126</sup> were more permissive than the City Charter<sup>127</sup> as, for example, the policies authorized the City to piggyback any contract whereas the City Charter authorized piggybacking on contracts competitively procured for only construction or material procurements. The purchasing policies<sup>128</sup> adopted in November 2019 limit piggybacking to contracts that are competitively procured; however, they allow piggybacking on contracts of certain types of local governments,<sup>129</sup> and for procurements other than for construction or materials, which is not permitted by the more restrictive City Charter provisions.
- Neither the City Charter, City ordinances, nor the former City purchasing policies addressed an appropriate process for determining and documenting whether desired goods or services are only available from a sole source. The purchasing policies<sup>130</sup> adopted in November 2019 require use of a documented prescribed process for determining whether goods or services are only available from a sole source.

Procurement controls that ensure the consistent administration of an effective process for acquiring goods and services in an equitable and economic manner may have prevented the instances in which City records did not demonstrate compliance with the City Charter, the former City purchasing policies, or good business practices as noted in Findings 6, 32, and 39.

**Recommendation: The City should continue efforts to ensure that the process for acquiring goods and services is effective and consistently administered, and procurements are made in an equitable and economic manner. Such efforts should include initiating changes to the City Charter or purchasing policies to provide clear and consistent terms, provisions, and**

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<sup>122</sup> Section 5.4(a), City of Gulf Breeze Purchasing Policy adopted November 18, 2019.

<sup>123</sup> Section 4.1 City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>124</sup> Part 1, Subpart A, Section 3(r), City of Gulf Breeze Charter.

<sup>125</sup> This practice is often referred to as “piggybacking”.

<sup>126</sup> Section 4.1, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>127</sup> Part 1, Subpart A, Section 3(r)(1), City of Gulf Breeze Charter.

<sup>128</sup> Sections 5.1(f) and 5.7(a), City of Gulf Breeze Purchasing Policy adopted November 18, 2019.

<sup>129</sup> The purchasing policies adopted in November 2019 allow piggybacking on “contracts with other governmental entities such as other state agencies, municipalities, cities, counties, authorities, districts, school boards, etc., may be used” whereas the City Charter limits piggybacking to contracts awarded by the State of Florida or by “Escambia or Santa Rosa Counties and any of their agencies, or any municipality located in Escambia or Santa Rosa Counties.” Specifically, while the purchasing policies adopted in November 2019 allow piggybacking on contracts of special districts or school boards, the City Charter does not.

<sup>130</sup> Section 5.6, City of Gulf Breeze Purchasing Policy adopted November 18, 2019.

**requirements that comply with State law and the City Charter and promote good business practices.**

### **Finding 32: Competitive Procurement of Goods and Services**

The Legislature has recognized in State law<sup>131</sup> that fair and open competition is a basic tenet of public procurement and that competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and, that documentation of the acts taken is an important means of curbing any improprieties and establishing public confidence in the process by which goods and services are procured. In accordance with good business practices, the City purchasing policies<sup>132</sup> required the solicitation of sealed formal bids for purchases of more than \$5,000 and provide that, whenever feasible, at least three bids be solicited. The policies also required the solicitation of competitive quotes from at least three vendors for purchases more than \$1,000 but less than \$5,000 and provide that the quotes may be either written or obtained verbally by telephone.

Depending on the nature of the goods and services, an effective procurement process typically requires either solicitation of bids for which price is the sole factor in determining the best bid or documented requests for proposals. Utilization of requests for proposals requires consideration of the quality of the responses to the requests, consideration of the qualifications of the responding service providers, and selection of the most qualified service provider that provides the best proposal. Price is a generally a factor in determining the best proposal; however, in some circumstances, such as the procurement of legal services, price may not be the primary factor when selecting the best provider.

Our examination of City records and discussions with City personnel disclosed that, during the period October 2016 through March 2018, the City expended a total of \$11.3 million for purchases individually exceeding \$5,000, and potentially subject to a competitive solicitation process, from 150 vendors. To determine whether these purchases were made in accordance with the City Charter, City purchasing policies, and good business practices, we examined City records supporting 30 selected vendors and related purchases totaling \$5.7 million.

For the selected vendors we found that, for 13 vendors with related purchases totaling \$2.1 million, City records did not demonstrate use of competitive selection procedures in accordance with City purchasing policies or good business practices. For example, we noted:

- \$504,138 paid to three law firms (\$227,997, \$171,409, and \$104,732, respectively) for legal services provided from October 2016 through March 2018. Although we requested, City records were not provided evidencing that qualifications had been solicited from these or any other law firms or identifying the significant qualifications considered in the City Council's decision to hire the three firms. Absent the issuance of formal solicitations for qualifications and documented consideration of the responding law firms' qualifications, there is an increased risk that the City will not obtain the quality of legal services desired for the circumstances.
- \$470,964 paid to a vendor for temporary staffing services during the period October 2016 through March 2018. According to City personnel, the vendor provided better rates than other staffing services vendors when the City stipulated the individual to fill the temporary position.

<sup>131</sup> Section 287.001, Florida Statutes.

<sup>132</sup> Section 4.1, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

Notwithstanding, the formal competitive selection process provided by the purchasing policies was not followed and, as such, City records did not support this assertion.

- \$369,694 paid to a vendor for administering City traffic infraction detectors (cameras) during the period October 2017 through March 2018 based on a renewed contract with the vendor. Prior to renewing the contract, City personnel were directed by the City Council to evaluate competitive alternatives. According to City personnel, another vendor voluntarily approached the then City Manager with a higher proposal, and the decision was made that renewing the existing vendor's contract was the best option for service delivery and costs. Notwithstanding, a competitive selection process was not followed, and the City did not demonstrate that it obtained the services at the lowest cost consistent with the desired quality.
- \$82,537 paid to a utility billing service provider during the period October 2016 through March 2018, made without soliciting bids or quotes. In response to our inquiries, City personnel indicated that the City's relationship with its previous service provider had deteriorated and, therefore, City personnel initiated discussion with this service provider.

According to City records, during its November 17, 2014, meeting, the City Council accepted the service provider's proposal to provide utility billing services to the City at a price lower than that offered by the City's previous provider and under the same terms and conditions of a contract between the service provider and Collier County. In response to our inquiries, City personnel indicated they were not comfortable considering the contract with the service provider a true "piggyback" procurement and that the City Council waived the bidding requirements for this procurement as authorized by the City purchasing policies.<sup>133</sup> Notwithstanding:

- Basing the City contract on the Collier County contract is contrary to the City Charter,<sup>134</sup> which only authorizes the City to base a City contract on a contract awarded by public bid for acquisitions of construction or materials by the State of Florida and any of its agencies, Escambia or Santa Rosa Counties and any of their agencies, or any municipality located in Escambia or Santa Rosa Counties. Also, although we requested, City personnel did not provide records evidencing that Collier County awarded its contract with the service provider pursuant to a public bid or other competitive selection process.
- The City Council did not have the authority to waive bidding requirements in this circumstance, as discussed in Finding 31.

In these instances, City records did not include adequate justifications for not following the competitive procurement processes established by City purchasing policies and good business practices, thereby increasing the risk that the City did not obtain goods and services of desired quality at the most advantageous prices. As discussed in Finding 31, the City lacked effective procurement controls to ensure the consistent administration of an effective process for acquiring goods and services in an equitable and economic manner, which contributed to the instances described above.

Additionally, we found that for 8 of the 30 selected vendors the City did not maintain bid or proposal documentation supporting awarded contracts totaling \$2.8 million. Specifically:

- For seven contracts totaling \$2.6 million awarded pursuant to a bid process, although we requested, City records (e.g., date- and time-stamped envelopes) were not provided to evidence the date and time bids were received or to identify the individuals attending the bid openings and witnessing the bid tabulations. Examples of the applicable goods and services acquired included:
  - Elevated water reclamation tank (winning bid of \$1.1 million dated May 2016).

<sup>133</sup> Section 4.1 City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>134</sup> Part 1, Subpart A, Section 3(r)(1), City of Gulf Breeze Charter.

- Gazebo rehabilitation (winning bid of \$357,035 dated August 2017).
- Irrigation system retrofit project (winning bid of \$411,050 dated October 2016).
- For a \$236,405 contract for stormwater design consultant services awarded pursuant to a request for proposals process, although we requested, City records were not provided to demonstrate how specified evaluation factors were considered and applied during the ranking of the City-solicited proposals.

The competitive selection documentation was likely not maintained due to deficiencies in City public records retention controls as discussed in Finding 45. Absent such records, the City cannot demonstrate that it complied with applicable competitive selection requirements established by State law and the City Charter and purchasing policies, that all bids and proposals were timely received and opened in the presence of authorized individuals, or that evaluation factors were appropriately considered for each proposal.

**Recommendation: The City should enhance controls to ensure:**

- **Goods and services are procured in accordance with City purchasing policies and good business practices, including the use of appropriate competitive selection processes when contracts associated with prior competitive selections expire.**
- **The maintenance and retention of appropriate records supporting procurements of goods and services, including documentation submitted pursuant to bid and proposal solicitations, date- and time-stamped records (e.g., envelopes) evidencing when bids and proposals are received, documentation identifying both those in attendance at bid and proposal openings and those who prepare and witness bid tabulations, and, for proposals received, documentation evidencing consideration of the evaluation factors established within the solicitation documents.**

**Finding 33: Contract Documents**

Effective contract management for contractual services requires that services procurements be supported by written contracts embodying appropriate provisions and conditions pertaining to the procurement of such services, monitoring to ensure contract terms and conditions are met, and appropriate payment processing. Properly written contracts protect contracting party interests, establish responsibilities of the contracting parties, define the services to be performed, and provide a basis for payment. Effective contract monitoring includes procedures to evaluate contractor performance and compliance with contract terms and conditions. Documentation of the satisfactory receipt of services is necessary before payments are made.

Our examination of City records and discussions with City personnel associated with 22 selected services purchases with costs totaling \$4.3 million disclosed that:

- The City paid \$104,732 to a law firm for legal services provided during the period October 2016 through December 2017 based on a September 2016 e-mail from the firm asking that the City consider using the firm for legal representation. However, the e-mail did not:
  - Describe the roles and responsibilities of both parties.
  - Describe the services to be provided to the City, other than representation of the City in an appeal case.
  - Require documentation of services rendered prior to payment.

While the law firm provided detailed invoices of rendered services that included dates of services rendered, hours worked, and cost per hour, as well as description of reimbursable out-of-pocket costs, the City did not execute a written contract with the firm.

- The City paid \$16,738 for legal services provided by an attorney during the period January 2018 through May 2018. The attorney was initially working with a City-contracted firm but subsequently moved to another law firm. The City Council approved the continuation of legal services by the attorney subsequent to the attorney's change in firms; however, the City did not execute a written contract with the attorney's new law firm.
- As noted in Finding 32, the City paid \$470,964 to a vendor for temporary staffing services during the period October 2016 through March 2018. While vendor invoices identified the temporary employees, hourly pay rates, and hours worked, the City did not execute a written contract with the vendor.

Without contract documents that, among other things, define the services to be provided and compensation to be paid, specify deliverables, and require records to document services rendered prior to payment, there is an increased risk of overpayments and misunderstandings between the parties which, in turn, may limit the City's ability to satisfactorily resolve disputes if they occur.

**Recommendation:** The City should ensure that contracts are timely executed for contractual services with payments anticipated to exceed a threshold established in City policy. Such contracts should include, but not be limited to, the roles and responsibilities for each party, specified deliverables, agreed-upon rates for services, method of payment, required records to document services rendered prior to payment, a termination clause, penalties for nonperformance, and a process for dispute resolution.

#### **Finding 34: Conflicts of Interest**

It is essential to the proper conduct and operation of the City that no officer or employee of the City have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of their duties in the public interest. The City Charter<sup>135</sup> provides that no employee or officer of the City will enter into any commercial transaction with the City. In addition, the City purchasing policies adopted effective November 18, 2019, provide that no official or employee shall have or hold any employment or contractual relationship with any business entity or any agency that is doing business with the City, or that will create a continuing or frequently recurring conflict between the official's or employee's private interests and the performance of the official's or employee's public duties.<sup>136</sup> However, as of June 2020, the City had not established procedures delineating how City personnel are to determine whether a conflict of interest exists and how to document such determination.

According to City personnel, committees that evaluate and rank competitive proposals submitted by construction-related service providers determine whether a conflict of interest exists when evaluating providers; however, this determination is not documented. Without an established procedure or process for identifying conflicts of interest, there is an increased risk that the selection of vendors may not be conducted in an independent and impartial manner.

<sup>135</sup> Part 1, Subpart A, Section 3(q), City of Gulf Breeze Charter.

<sup>136</sup> Section 4.3, City of Gulf Breeze Purchasing Policy adopted November 18, 2019.



**Recommendation: The City should establish procedures for identifying potential and actual conflicts of interest when procuring goods and services and require documentation of the procedures performed.**

### **Finding 35: Auditor Selection**

Pursuant to State law,<sup>137</sup> the City is required to provide for annual financial audits. Financial audits performed by an independent certified public accountant (CPA) give assurance as to the reliability and completeness of City financial statements; provide a means for evaluating the effectiveness of City internal control over financial reporting; and include a determination of the extent to which the City complied with applicable laws, contracts, grant agreements, and City ordinances, policies, and procedures, noncompliance with which could have a direct and material effect on City financial statement amounts. Consequently, it is important for entities to use an effective auditor selection process to obtain the services of a qualified auditor with the applicable skills and experience necessary to ensure adequate and appropriate audits.

State law<sup>138</sup> requires each local government, prior to entering into a contract for audit services, to establish an audit committee, assign to the audit committee responsibilities for evaluating and recommending an auditor, and use specified auditor selection procedures. The City Council formed an audit committee consisting of the then Mayor and Mayor Pro Tempore and a City resident to competitively select the City's financial statement auditors for the 2013-14 through 2017-18 fiscal years. The request for proposal (RFP) for audit services stated that the auditors would be evaluated based on the location of working offices, partner and supervisory staff qualifications and experience, specific audit approach, fees, information provided by references, and the firm's current workload. In his May 15, 2014, memorandum to the City Council, the then City Manager indicated that the audit committee met, drafted an RFP, and interviewed the three responding audit firms.

The audit committee determined that each of the three audit firms were qualified, experienced, and submitted similar price proposals. Desiring "a new fresh look at the audit via a different firm," the audit committee recommended a CPA firm to the City Council. According to its May 19, 2014, meeting minutes, the City Council approved the audit committee's recommendation, but the minutes did not indicate whether the highest-ranked firm was selected.

To determine whether the three responding CPA firms were ranked according to the criteria set forth in the RFP and the highest-ranked firm was recommended by the audit committee and selected, we requested for examination City records documenting the evaluation and ranking of the firms and the factors considered in the recommendation and selection of the auditor. However, City records were not provided because, according to City personnel, the records were either not prepared or prepared but not retained.

Absent documentation evidencing that the three responding audit firms were evaluated and ranked based upon the RFP criteria and that the highest-ranked audit firm was selected, City records did not demonstrate that the audit services were obtained pursuant to State law in a fair and equitable manner.

<sup>137</sup> Section 218.39, Florida Statutes.

<sup>138</sup> Section 218.391, Florida Statutes.

**Recommendation: For future auditor selections, the City should create and retain records evidencing the evaluation and ranking of the RFP respondents to demonstrate that auditors were selected in accordance with State law.**

### **Finding 36: Beach Access Lawsuits**

To protect the best interests of a governments' citizens and residents, litigation is often necessary. However, before pursuing legal action, it is essential for a government to perform cost-benefit analyses to determine whether such action is advisable and an appropriate use of public resources.

In December 1950, before the 1961 incorporation of the City, a developer filed and recorded a plat in the public records of Santa Rosa County that included a dedication for "Sand Beach Park." Sand Beach Park was to be an approximately 15-foot easement between the waterline of the Santa Rosa Sound and the property lines of adjacent lots. The developer intended Sand Beach Park to be a public beach and provided for a 50-foot right-of-way (Catawba ROW) at the end of Catawba Street as an access point to the Park. However, Santa Rosa County did not accept the land dedication and in 1962 the developer deeded the Sand Beach Park land to the adjacent homeowners. In the 1970s, a homeowner in the vicinity of Sand Beach Park asked the court to decide the ownership of the property as the City continued to refer to the waterfront as Sand Beach Park and people were using the waterfront as a public beach. In 1980, the circuit court issued a court order that enjoined and restrained the City from pretending, claiming, or asserting any right, title, or interest in, or claim to, the property.

The City appealed the decision; however, the appellate court upheld the original decision. Contrary to the court order, in 1995, the City erected a public beach access sign at the entrance to the Catawba ROW and listed the Catawba ROW on the City Web site as a public beach access point. The two homeowners on either side of the Catawba ROW, concerned that the City was advertising their private property as public, filed a lawsuit against the City in July 2013. Subsequently, according to City records:

- In November 2013, the City purchased nearby property for \$18,000 that the City intended to use to grant public access to the beach; however, the City was unable to do so because the court subsequently nullified the deed on that property and ordered the deed to be canceled and removed from the public records.
- In December 2013, the City filed a counterclaim against the homeowners, and legal arguments and motions from both sides were presented to the circuit court.
- In July 2016, the circuit court issued a judgment in favor of the homeowners, declaring them to be the owners of the waterfront property and stating that the land was not beach access and the homeowners were allowed to post no-trespassing signs.
- In August 2016, the City appealed the judgment.
- In September 2016, the court denied the appeal, ruled in favor of the homeowners, and granted the homeowners' motion to recover the cost of their attorneys' fees from the City. In that order, the court found that "if the City would simply have recognized the 1962 Deed and the rights it conveyed to the landowners from the outset, decades of litigation and expenses associated therewith would never have come to pass." It also concluded that the City's action in erecting the beach access sign and promoting private land as public property was in clear violation of the 1980 court order.
- In August 2017, the court clarified the attorneys' fees costs the homeowners were entitled to recover from the City.

- In November 2018, the appellate court upheld the decision of the lower court in favor of the homeowners. Following that decision, the City elected not to pursue further legal action.
- Based on a memorandum from the City Attorney, in January 2019, the City Council decided to vacate and abandon the Catawba ROW to avoid potential further litigation by the homeowners for reimbursement of additional attorney fees incurred during the appellate process. In February 2019, the City Council adopted an ordinance<sup>139</sup> that vacated and abandoned the Catawba ROW.

The City incurred expenses totaling \$809,708 due to the unsuccessful attempt to allow the subject land to be used as a public beach. The \$809,708 included City legal fees of \$513,966, court-ordered homeowners' attorney fees totaling \$265,161, and \$30,581 for interest on the homeowners' attorney fees incurred from September 29, 2016, the date the court approved the homeowners' motion, until December 19, 2018, the date the fees were paid.

In response to our request for records evidencing the City Council's consideration of whether it would be cost beneficial to pursue litigation regarding the Catawba ROW matter, City personnel provided us transcripts for several meetings at which the City Attorney met privately with the City Council about the lawsuit. Such meetings are provided for in State law<sup>140</sup> and are referred to as "shade" meetings, as discussed in Finding 42. Our review of these transcripts disclosed that:

- At the August 19, 2013, and October 13, 2013, meetings, prior to the City filing the counterclaim in December 2013, the City Council was provided estimated legal costs, ranging from a low of \$35,000 to a high of \$75,000, to contest the homeowners' lawsuit. Additionally, at the September 16, 2016, and October 3, 2016, meetings, the City Council was provided estimated legal costs, ranging from a low of \$20,000 to a high of \$30,000, to appeal the circuit court's July 2016 judgment in favor of the homeowners. We noted:
  - There was no indication that the City Attorney or other legal counsel providing estimates were asked to make a formal calculation of such amounts or provide details as to how the amounts were determined, nor was there evidence, prior to filing the counterclaim in December 2013, of consideration that the City may potentially pay the homeowner's legal costs should the homeowners prevail with their lawsuit.
  - The estimated cost to appeal was provided after the City had already appealed the judgment in August 2016.
  - The combined estimated maximum legal costs of \$105,000 was significantly lower than the actual \$513,966 the City paid in legal fees to legal counsel representing the City.
- At the September 16, 2016, and October 3, 2016, meetings, City Council members inquired about litigation costs incurred to date. Differing estimated costs were provided ranging from \$181,000 to \$250,000. The City Council members also discussed the possibility of having to pay the homeowners' legal fees, which were estimated to range from \$250,000 to \$300,000. However, there was no agreement as to the actual costs incurred to date by the City and the homeowners and no indication that the City Council was ever provided actual costs incurred to date by the City prior to the City appealing the July 2016 judgment in August 2016.
- At the October 3, 2016, meeting, two City Council members expressed concerns about incurring further costs to appeal; however, no action was taken to cease the appeal process.

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<sup>139</sup> City of Gulf Breeze Ordinance No. 01-2019 adopted February 4, 2019.

<sup>140</sup> Section 286.011(8)(a), Florida Statutes.

Based on our review of these transcripts and other City records provided, the City did not, of record, perform an adequate documented cost-benefit analysis weighing the projected cost of legal action with the perceived public benefit of maintaining the beach access.

Insofar as the City has five beach access points not involved in the lawsuit, one of which is located less than one-half mile from the Catawba ROW, it is not apparent why the City expended public funds in excess of \$800,000 in an attempt to provide continued beach access at the disputed location. In addition, if the City deemed a vital public purpose would be served by establishing additional public beach access locations, the City should have, of record, considered other options, such as further attempts to purchase land from a willing seller or procuring an easement from a willing property owner, in lieu of the protracted litigation.

The lack of an objective evaluation of the costs and benefits of continued litigation and consideration of other beach access alternatives may have resulted in the City unnecessarily spending a significant amount of public funds on legal services and related actions.

Subsequently, starting in January 2019, the City Attorney began providing the Mayor and City Council members with quarterly reports of pending and recently resolved litigation, including fees and other costs incurred to date.

**Recommendation:** In the future, the City should perform and document a cost-benefit analysis that includes consideration of alternative options to achieve City objectives, prior to entering into protracted and expensive litigation.

### **Finding 37: Purchasing Card Expenditures**

The City established a purchasing card (P-card) program to expedite the purchase of certain goods and services. P-cards can provide a cost effective, convenient, and decentralized method for designated employees to make business purchases on behalf of an entity. However, as P-cards are vulnerable to fraud and misuse, it is essential that City policies and procedures provide effective controls over the accountability and use of the cards.

The City designated a Program Administrator to oversee the P-card program and designed a *City Purchasing Card Holder Agreement* (P-card agreement) that each employee issued a P-card is required to sign. By signing the P-card agreement, the cardholder acknowledges that they will:

- Not use the P-card for personal purchases.
- Not allow anyone else to use the P-card.
- Retain, document and submit to the Finance Department all receipts from purchases made with the P-card.
- Obtain supervisory approval for all purchases.
- Immediately notify the Finance Department if the P-card is lost, stolen, or declined.
- Not use the P-card for online payments unless expressly instructed to do so by their department head.

Other than the use of P-card agreements, the City had not established policies or procedures that specifically addressed the issuance, use, and deactivation of P-cards. Accordingly, during the audit

period City P-card purchases were subject to the policies and procedures that apply to other City purchases.<sup>141</sup> For example, purchase orders were required for purchases exceeding \$300,<sup>142</sup> receiving reports had to be signed by the person accepting delivery and forwarded to the Finance Department, and invoice amounts and terms and conditions had to agree with the corresponding purchase order and receiving report. Subsequent to the audit period, the City Council in November 2019 established new purchasing policies that include detailed guidance regarding use and accountability for P-cards.<sup>143</sup>

During the period October 2016 through March 2018, 70 City employees were assigned City P-cards and used the cards to make 3,703 purchases totaling \$951,781. To determine whether P-card charges were verified as appropriate by the cardholder, approved by supervisory personnel in accordance with the City purchasing policies,<sup>144</sup> and supported by receipts and applicable purchase orders, we requested for examination City records supporting 30 selected P-card charges totaling \$36,290. As shown in Table 4, our examination disclosed that City records for 14 of the charges, totaling \$17,132, did not adequately demonstrate the authority for or public purpose served by the charges, the goods or services purchased, or the City's receipt of purchased items.

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<sup>141</sup> Sections 4.3, 4.4, and 5.4, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>142</sup> Per Section 5.4, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019, expenditures not requiring a purchase order included recurring City obligations (telephone, utility service, postage, car allowance, etc.) when the amount to be charged is not known until after a service has been performed or until after a specified billing period has elapsed.

<sup>143</sup> Section 5.10, City of Gulf Breeze Purchasing Policy adopted November 18, 2019.

<sup>144</sup> Section 4, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

**Table 4  
P-Card Charges Without Adequate Support**

Description of Charge	Amount	P-Card Charges Not Supported by:			
		Evidence of Public Purpose	Invoice or Sufficiently Detailed Receipt	Documentation of Receipt of Purchased Items	Purchase Order (if over \$300)
1 Gift Cards for Employees and Volunteers During Christmas Season	\$ 5,725	X			X
2 Recycled Plastic Single Post Park Benches	2,038			X	
3 Computer and Docking Station	1,754		X	X	
4 Computer and Peripheral Devices	1,499			X	X <sup>a</sup>
5 Food for City Employee Retirement Party	1,030	X			X
6 Chest Waders for Utility Workers	963		X	X	X
7 Construction Services	950	X	X	X	X
8 Food for Middle School After School Program	832		X		
9 Recreation Center Vending Machine Supplies	805				X
10 Snacks for City After School Program	719				X
11 Two Computer Tablets	447				X
12 Gift Cards for Employee Events	200	X			
13 Auto-Bill for Satellite Radar Receiver for the Police Dispatch Center	113		X		
14 Restaurant Meal for a City Employee and Two Others	57	X	X		
<b>Total of the 14 Charges</b>	<b><u>\$17,132</u></b>				

<sup>a</sup> The purchase order provided by City personnel only included the computer at a cost of \$999.

Subsequent to our inquiries, City personnel provided a variety of explanations for the lack of adequate support for the 14 charges. For example, City personnel indicated that some cardholders were unaware that a detailed receipt or invoice and, if over \$300, a purchase order, indicating the specific goods or services purchased should have been obtained and retained, and City policies do not specifically prohibit food purchases. In addition, City personnel provided some evidence of the existence of certain purchased items (e.g., photographs of the purchased items and records showing the items being assigned to City personnel). Notwithstanding, absent detailed supporting records for charges incurred and paid using City P-cards, City records do not adequately demonstrate that such charges were authorized, reasonable, and served a public purpose.

We perused all City P-card charges during the period October 2016 through March 2018 and also found:

- Food service charges from vendors in addition to those shown in Table 4. Total P-card charges for food vendors during that 18-month period totaled \$30,730. Of those transactions, we noted \$13,940 were for charges at local restaurants. In response to our inquiries, City personnel indicated that it is the City's practice to pay for employee meals when employees are conducting City business away from their designated post of duty during lunch time or when attending training events. The City travel policy<sup>145</sup> provides for reimbursement of employees for meals while on approved City travel; however, although we requested, City personnel did not provide a City policy that authorizes payment for employee meals not associated with approved travel. Consequently, to the extent these local restaurant charges were for employees' meals while the employees were

<sup>145</sup> Section 13.11, City of Gulf Breeze Employee Manual.

not on approved City travel, City records did not demonstrate that the charges served a public purpose.

- Charges totaling \$7,644 for items such as flowers, edible arrangements, party goods, and gift cards not included in Table 4. City records indicated that, of this amount, \$5,748 was for gift cards purchased for City employees for Christmas in 2016 and \$1,489 was for flowers, party goods, and a gift card purchased to celebrate the retirement of a long-time employee. City records did not demonstrate City Council approval or that these expenditures were an appropriate use of public funds.

The various items described within this finding can be attributable, in part, to the absence of specific policies that establish requirements and procedures for P-Card purchases during the period subject to our testing. Some of these instances are also indicative of the lack of adequate review of support for P-card transactions. Specific and appropriately detailed policies and adequate review and approval of all P-card transactions reduce the risk that City P-cards will be used to make inappropriate purchases.

**Recommendation: The City should enhance its controls to ensure that P-card charges are made in accordance with the recently established policies and procedures for P-card purchases and supported by documentation evidencing the authorization, review, approval, and public purpose served by the P-card purchases.**

#### TOURIST DEVELOPMENT TAX FUNDS

State law<sup>146</sup> provides that a county may levy and impose a tourist development tax (TDT) of up to 6 percent of each dollar collected from rents of living quarters or accommodations in short-term (less than 6 months) arrangements. To administer the TDT, a county must establish a tourist development council (TDC)<sup>147</sup> that will receive, at least quarterly, expenditure reports from the county governing board or its designee and continuously review TDT expenditures from the tourist development trust fund.

During the period October 2016 through March 2018, Santa Rosa County (County) levied (in 1-percent increments) and imposed a TDT of 5 percent, which was administered by the Santa Rosa County TDC. The TDT proceeds were authorized to be spent on tourism promotion and advertisement and, with certain restrictions, on debt service payments for, or the acquisition, construction, repair, maintenance, renovation, or operation of publicly owned facilities related to tourism (e.g., convention centers, stadiums, auditoriums, museums, and zoological parks; beach re-nourishment; and funding of bureaus and information centers that promote tourism).<sup>148</sup> In addition, \$350,000 of the tax proceeds were to be contributed annually to the beach re-nourishment at Navarre Beach.<sup>149</sup>

<sup>146</sup> Section 125.0104, Florida Statutes.

<sup>147</sup> Pursuant to Section 125.0104(4)(e), Florida Statutes, the chair of the governing board of the county or any other member of the governing board as designated by the chair shall serve on the council. Two members of the council shall be elected municipal officials, at least one of whom shall be from the most populous municipality in the county or subcounty special taxing district in which the tax is levied. Six members of the council shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax. All members of the council shall be electors of the county.

<sup>148</sup> Santa Rosa County Ordinance Nos. 91-25, 94-03, 96-17, and 98-14.

<sup>149</sup> Santa Rosa County Ordinance No. 2013-23 established the additional one-cent tourist development tax, and Ordinance No. 2016-06 established the Navarre Beach Restoration Project Municipal Service Benefit Unit (MSBU). Ordinance No. 2016-06 indicates that, annually, \$350,000 of tourist development taxes levied pursuant to Ordinance No. 2013-23 will be used for Navarre Beach re-nourishment projects.

### **Finding 38: Accounting and Reporting for TDT Funds**

In March 2016, the City entered into an interlocal agreement with the County that requires the County to remit to the City 90 percent of the TDT generated by businesses located within City limits. The agreement requires the City to:

- Annually adopt a separate budget prior to October 1 of each year to govern the use of TDT funds and submit that budget to the County.
- Provide the County and the Santa Rosa TDC, at least quarterly, a report of all TDT expenditures.

During the period October 2017 through February 2018, the County monthly remitted TDT funds to the City totaling \$249,294, which the City accounted for in its Tourist Development Fund (TD Fund). In addition, the City adopted an annual budget for the TD Fund and established expenditure accounts, such as the Arts Festival, to provide accountability for TDT expenditures.

Although the City separately accounted for TDT funds received in total, City budget and accounting records did not separately identify the revenues and expenditures by each individual TDT levy comprising the 5 percent. We noted that, although the TDT was levied in 1-percent increments, with each levy having certain restrictions (e.g., a TDT levy of 1 percent cannot be used for debt service), the County provided funds monthly to the City in a lump sum amount without identifying the restrictions associated with each levy. Without such identification, the City cannot fully demonstrate that TDT proceeds received from the County were expended in accordance with State law and County ordinances.

In response to our inquiries in May 2018, City personnel indicated that the County is responsible for communicating the allowable uses of TDT proceeds and, therefore, City personnel did not request the County to clarify those uses. Notwithstanding, the lack of information from the County does not absolve the City from complying with the TDT expenditure requirements and maintaining records to demonstrate this compliance.

Our examination of City TDT records and discussions with City personnel disclosed that the City had not established policies and procedures to require and ensure the submittal of quarterly TDT expenditure reports to the County Clerk, as provided for by County ordinances.<sup>150</sup> In practice, the Finance Director submitted the quarterly expenditure reports to the County Clerk and the Assistant to the City Manager was the back-up in the Finance Director's absence. Our examination of the seven quarterly reports due to the County Clerk during the period October 2016 through March 2018 disclosed that the September 2017 and December 2017 quarterly reports were submitted to the County Clerk in May 2018, 214 and 137 days, respectively, after the end of the quarter.

In response to our inquiry, City personnel indicated that the report submittal delays occurred, in part, because the Finance Director position was vacant July 2017 through November 2017 and the Assistant to the City Manager resigned in November 2017. When TDT expenditure reports are not promptly provided, the ability to effectively monitor TDT expenditures is limited.

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<sup>150</sup> Chapter 20 Taxation, Article II, Section 20-21, Santa Rosa County Code of Ordinances.



**Recommendation:** The City should seek clarification from the County on the restrictive uses of TDT proceeds to ensure that the proceeds are appropriately accounted for and used in accordance with State law and County ordinances. In addition, the City should continue to follow established procedures for TDT funds accounting and reporting to ensure that quarterly TDT expenditure reports are promptly filed with the County Clerk. Such procedures should be amended to provide for prompt filing of TDT expenditure reports in the absence of both the Finance Director and Assistant to the City Manager.

### **Finding 39: Competitive Selection of Goods and Services - TDT Funded Projects**

State law<sup>151</sup> establishes that fair and open competition is a basic tenet of public procurement and that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. City purchasing policies<sup>152</sup> required the solicitation of sealed formal bids for purchases of more than \$5,000 and provided that, whenever feasible, at least three bids be solicited. The policies also required the solicitation of competitive quotes from at least three vendors for purchases more than \$1,000 but less than \$5,000 and provide that the quotes may be either written or obtained verbally by telephone. The City Charter<sup>153</sup> permits waiving competitive procurement for:

- City contracts based on contracts awarded by public bid for acquisitions of construction or materials by the State of Florida and any of its agencies, Escambia or Santa Rosa Counties and any of their agencies, or any municipality located in Escambia or Santa Rosa Counties and the City Council has determined that soliciting additional public bids would not financially benefit the City; or
- Emergency circumstances where the time required to follow the public bid process would be detrimental to the City.

During the period October 2016 through March 2018, the City expended TDT funds totaling \$278,319. To determine whether purchases made with TDT funds related to tourist development and complied with applicable requirements, we examined City records supporting 20 selected TDT expenditures totaling \$130,253. All 20 TDT expenditures examined related to tourist development, and our examination disclosed that:

- Bids or quotes were not solicited for three purchases ranging from \$1,680 to \$3,505 made during the period December 2016 through January 2017 for supplies or materials needed in connection with the construction of a sand volleyball court. In response to our inquiry, City personnel indicated that City purchasing policies permit the City Council to waive the competitive selection requirements and, in substance, the City Council waived the requirements when approving the purchase without solicited bids or quotes. However, City records did not evidence that the circumstances of these purchases met the City Charter prescribed waiver requirements.
- Bids were not solicited for an \$8,000 fireworks display contract awarded in February 2018. According to City records, City personnel proposed the contract as a sole source provider based on the contractor honoring a prior year festival price and the contractor's previous work

<sup>151</sup> Section 287.001, Florida Statutes.

<sup>152</sup> Section 4.1, City of Gulf Breeze Purchasing Policy revised May 2010 and in effect through November 17, 2019.

<sup>153</sup> Part 1, Subpart A, Section 3(r)(1), City of Gulf Breeze Charter.

experience. However, at the time of this purchase,<sup>154</sup> neither the City Charter nor City purchasing policies provided for sole source purchases and City records did not demonstrate that there were no other acceptable fireworks display contractors that provided fireworks display services.

Absent formal bids or quotes, as applicable, the City has limited assurance that goods and services will be acquired at the lowest cost commensurate with acceptable quality.

Findings 6 and 32 note similar deficiencies relating to other City purchases of goods and services.

**Recommendation: City procedures should be enhanced to ensure and document compliance with City Charter and City purchasing policies procurement requirements. For example, City Council decisions to waive competitive selection requirements, and the reasons for the waiver, should be in accordance with the City Charter and documented.**

## CAPITAL ASSETS

The City is responsible for establishing adequate controls relating to the acquisition, disposition, accountability, and safeguarding of capital assets. According to the City's 2017-18 fiscal year financial audit report, the City's capital assets (e.g., land, buildings, machinery, and equipment) totaled \$45.8 million (net of depreciation) as of September 30, 2018.

### Finding 40: Tangible Personal Property

According to the City's 2017-18 fiscal year financial audit report, the acquisition value of the City's tangible personal property (TPP)<sup>155</sup> totaled \$14.1 million as of September 30, 2018. A physical inventory of all TPP conducted at least annually is essential to the proper accountability for and safeguarding of TPP. Upon completion of a physical inventory, the inventory results should be compared to the property records and any noted differences should be thoroughly investigated and appropriately resolved. To ensure adequate separation of duties, the individual conducting the physical inventory of the TPP should be someone other than the custodian of the asset. In addition, effective controls over TPP include policies and procedures to ensure the accuracy and completeness of property records and schedules used for financial reporting and insurance purposes.

Our examination of City TPP records disclosed that the records included property numbers, descriptions, acquisition dates, acquisition costs, values net of depreciation, and locations of property items. However, as of June 2020, the City had not established policies and procedures to properly account for and safeguard TPP. According to City personnel, TPP policies and procedures had not been established because of Finance Department employee turnover and the heavy workload of Finance Department personnel. Absent effective policies and procedures requiring sufficient TPP controls, the City has limited assurance that TPP records are accurate and complete or that TPP is adequately safeguarded.

We also found that City procedures did not always provide effective controls over TPP as:

- According to City personnel, department heads are responsible for conducting physical inventories of TPP in their custody and no other inventories are conducted by individuals independent of the TPP custodial function. When physical inventories are not independently

<sup>154</sup> Section 5.6 of the City of Gulf Breeze Purchasing Policy adopted in November 2019 requires use of a documented prescribed process for determining whether goods or services are only available from a sole source.

<sup>155</sup> As reported on the City's 2017-18 audited financial statements, TPP includes machinery, equipment, and vehicles.

conducted, the reliability of the procedures is diminished and the risk of errors or fraud associated with the inventories is increased.

- Although we requested, City records were not provided to support the most recent physical inventory to confirm the accuracy of the TPP records. City personnel indicated in September 2019 that, although an inventory had been conducted, due to the departure of the then Assistant City Manager, documentation could not be located. Records evidencing physical inventory procedures should be maintained to support the existence of TPP.
- The City's vehicle property schedule used for insurance purposes was not accurate. Specifically, our examination of the schedule provided in response to our request in August 2018 by the then Assistant City Manager disclosed that:
  - 5 vehicle identification numbers (VINs) were listed for 2 vehicles each. Subsequent to our inquiry, City personnel determined that the duplicated VINs resulted from listing 5 vehicles twice. We also noted that 11 of the 118 listed vehicles had been disposed of between September 2012 and April 2018. City personnel indicated that the 11 disposed vehicles should have been removed from the property schedule.
  - The vehicle locations were not always identified or accurate, decreasing the usefulness of the schedule. For example, according to City personnel, a vehicle purchased in August 2013 for \$23,213, used by and located at the Parks and Recreation Department, was listed as a Public Services Department vehicle for South Santa Rosa Utilities Services activities. In response to our inquiries, City personnel indicated that they were unaware that the vehicle location was incorrect.

Accurate and complete vehicle property schedules are necessary for obtaining appropriate insurance coverage and controlling insurance costs. Identifying the correct vehicle locations on such schedules reduces the risk that vehicle losses could occur and not be timely detected.

**Recommendation: The City should establish policies and procedures to properly account for and safeguard TPP. Such policies and procedures should ensure that:**

- **An annual physical TPP inventory is timely conducted by individuals who are not custodians of the property items. The inventory should be documented and any differences between the inventory results and City property records should be thoroughly investigated and resolved. Any items determined to have been stolen should be timely referred to the appropriate law enforcement agency.**
- **Property records, including schedules used for insurance purposes, are accurate and complete.**

#### ADMINISTRATION AND MANAGEMENT

Effective administration and management policies and procedures are essential to establish sufficient internal controls to ensure City officials and employees administer their assigned responsibilities in accordance with applicable statutory<sup>156</sup> and ordinance requirements. Such policies and procedures should be designed to promote and monitor compliance with these requirements and demonstrate accountability for public resource use.

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<sup>156</sup> For example, Chapter 166, Florida Statutes, *Municipal Home Rule Powers Act*.

## Finding 41: Internal Audit Function

The Government Finance Officers Association (GFOA) recommends that governments consider the feasibility of establishing a formal internal audit function because such a function can play an important role in helping management maintain a comprehensive framework of internal controls.<sup>157</sup> A formal internal audit function is particularly valuable for those activities involving a high degree of risk (e.g., complex accounting systems, contracts with outside parties, and a rapidly changing control environment). The GFOA also recommends that, if it is not feasible to establish a separate internal audit function, a government consider either assigning internal audit responsibilities to employees or obtaining the services of an accounting firm (other than the independent auditor engaged to audit the financial statements) for this purpose.

Our examination of City organization charts and other records and discussions with City personnel disclosed that the City had not, as of June 2020, established an internal audit function, assigned internal audit responsibilities to City employees, or obtained the services of an accounting firm for this purpose.

The number and significance of the findings disclosed in this report illustrates the City's need for an internal audit function. An established internal audit function would assist City management in the maintenance of a comprehensive framework of internal controls by providing additional assurance that controls are designed properly and operating effectively and promoting compliance with applicable laws, contracts, grant agreements, and City ordinances, policies, and procedures. In response to our inquiries, City management indicated that the City will consider establishing an internal audit function if other municipalities of comparable size have already established an internal audit function. Notwithstanding, the City should also consider whether other municipalities of comparable size have responsibilities and risks associated with the administration of multi-million-dollar financing programs (as discussed in Findings 8 through 16).

**Recommendation: The City should consider establishing an internal audit function to assist management in maintaining a comprehensive framework of internal controls. If it is not feasible to establish a separate internal audit function, the City should consider either assigning internal audit responsibilities to City employees, obtaining the services of an accounting firm, or entering into agreements with other governmental agencies to audit certain aspects of City operations.**

## Finding 42: City Council Parliamentary Procedures

The State Constitution<sup>158</sup> and State law<sup>159</sup> provide municipalities with the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. The *Florida Municipal Officials' Manual*, a publication of the Florida League of Cities, recommends that every legislative body adopt parliamentary procedures. However, the City Charter and ordinances are silent regarding parliamentary procedures for the conduct of City Council

<sup>157</sup> GFOA Best Practice: *Internal Audit Function*, February 2006.

<sup>158</sup> Article VIII, Section 2(b) of the State Constitution.

<sup>159</sup> Chapter 166, Florida Statutes, *Municipal Home Rule Powers Act*.

meetings and our discussions with City Council members and City personnel disclosed that the City Council had not established parliamentary procedures for conducting City Council business.

The lack of established parliamentary procedures contributed to various instances of uncertainty during the conduct of City business that we noted during our inspection of City Council meeting minutes. For example:

- Invoices for legal services relating to an ongoing property lawsuit (as discussed in Finding 36) were placed on the City Council agenda for approval at its February 2, 2015, meeting and for several subsequent City Council meetings through April 3, 2017. According to City Council's March 29, 2017, Executive Session meeting minutes, Council members asked for an explanation relating to a time entry on an attorney's invoice. Following that meeting, the attorney's invoices were no longer presented for City Council inspection. At the City Council's October 2, 2017, meeting, a Council member made a motion, which was seconded, to place the legal bills back on the City Council meeting agenda because her constituents were concerned about rising litigation costs. In response, the Mayor indicated that a governmental entity does not have the discretion to not pay its expenses and, therefore, the ministerial function of paying expenses is not placed on the agenda of a policy making board. The Mayor also added that, if the City Council member wanted the attorney invoices to be placed on the agenda, then all invoices from all vendors would have to be placed on the agenda. The Council member withdrew the motion.
- When a lawsuit was filed in 2013, a Council member approached the City Attorney regarding a potential conflict of interest relating to property owned by his parents in proximity to the subject land and was advised that no conflict existed. According to City Council meeting minutes, the Council member voted on actions relating to the lawsuit at the February 2, 2015, meeting and at several subsequent meetings, including the City Council's Executive Session meeting of January 11, 2017, at which the Council member made a motion to negotiate a settlement with the property owners. Following that meeting, the then City Attorney advised the Council member that he did have a conflict of interest and could not vote on further actions relating to the lawsuit. Subsequently, the Council member declared a conflict of interest regarding the lawsuit at the City Council's Special Workshop meeting on January 19, 2017.
- State law<sup>160</sup> provides that legal counsel can meet in private with a governing body to discuss litigation. The City refers to such a discussion as a "shade meeting" which is closed to the public. At the City Council's November 1, 2017, Executive Session meeting, a Council member requested an update on ongoing litigation and the City Attorney offered to meet individually with City Council members to discuss the matter. Two Council members suggested that the City Council meet as a group to discuss the litigation; however, both the City Attorney and the Mayor encouraged the Council members to meet with the City Attorney individually instead of as a group. Following a subsequent request for a shade meeting in April 2018, Council members voiced their confusion about who should call for a shade meeting. The Mayor responded that, if a Council member wants a shade meeting to discuss litigation, the City Attorney should call for one.

Parliamentary procedures for the conduct of City Council business could specify the types of ministerial functions that may be placed on a Council meeting agenda and provide clarification as to whether a Council member could request that specific records, such as legal bills, be placed on the agenda. Such procedures could also clarify when a Council member should vote, or be compelled not to vote, on City Council actions and when and how motions for shade meetings should be made. Absent parliamentary procedures that establish the basis and process for conducting City Council business, City Council

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<sup>160</sup> Section 286.011(8)(a), Florida Statutes.

members may not fully understand their powers and responsibilities as City Council members, and City Council business may not be fairly and efficiently conducted.

In response to our inquiries in April and May 2018, four Council members expressed their desire to have written parliamentary procedures. In addition, in May 2018, the City Manager indicated that, when she interviewed for her position in August 2017, the need for development of parliamentary procedures was discussed. Subsequent to our inquiries, the City Council adopted parliamentary procedures<sup>161</sup> in October 2019 by resolution.<sup>162</sup>

**Recommendation: The City should periodically evaluate whether the recently implemented parliamentary procedures for conducting City Council business are sufficient and amend the procedures as appropriate.**

#### **Finding 43: Budget Preparation**

State law<sup>163</sup> requires the governing body of a municipality to adopt a budget each fiscal year and provides that the total amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total appropriations for expenditures and reserves.

Our examination of the City's approved budget resolutions<sup>164</sup> disclosed that, contrary to State law, in preparing the City's 2016-17 and 2017-18 fiscal year budgets, prior fiscal year-end balances were not included in determining the amounts available for appropriations. According to City personnel, they prepared the budgets based on guidance provided by the Florida Department of Revenue for truth-in-millage requirements. For each budget, City personnel ensured that amounts available from taxation and other sources, including balances brought forward from prior fiscal years, equaled the total expenditures and reserves. However, they brought forward prior fiscal year-end balances only if needed to balance the budget. For example, the 2016-17 fiscal year ending fund balance for the General Fund totaled \$13.4 million but was not included in that fund's beginning fund balance for the 2017-18 fiscal year budget. Similarly, the South Santa Rosa Utility Fund's 2016-17 fiscal year ending net position balance totaled \$13.3 million but was not included in that fund's beginning net position balance for the 2017-18 fiscal year budget.

Failure to consider balances brought forward in the budget does not provide for transparency of all available sources, diminishes the usefulness of the budget as a financial management tool, and limits the City's ability to determine appropriate increases and decreases in revenues or expenditures that may be needed for the fiscal year for which the budget is being adopted. In addition, this practice increases the risk that the City may unnecessarily increase taxes, fees, or other revenue sources to fund planned expenditures or to establish reserves.

**Recommendation: The City should ensure that budgets include all balances brought forward from prior fiscal years as required by State law.**

<sup>161</sup> *Orientation - Roles and Responsibilities Handbook*, adopted October 7, 2019.

<sup>162</sup> City of Gulf Breeze Resolution No. 49-2019, dated October 7, 2019.

<sup>163</sup> Section 166.241(2), Florida Statutes.

<sup>164</sup> City of Gulf Breeze Resolution No. 26-16 for the 2016-17 fiscal year and Resolution No. 24-17 for 2017-18 fiscal year.

## Finding 44: Budgetary Recording, Reporting, and Monitoring

Pursuant to State law,<sup>165</sup> the City Council adopted budget must regulate the City's expenditures and it is unlawful for any City officer to expend or contract for expenditures except pursuant to the adopted budget. The City Council may, at any time within a fiscal year or within 60 days following the end of the fiscal year, amend the City budget.<sup>166</sup>

Our examination of City records and discussions with City personnel disclosed that neither the City Charter nor ordinances define the legal level of budgetary control. Therefore, it is incumbent on the City Council to make appropriations and adopt a budget at the level of detail that it deems necessary. The resolutions<sup>167</sup> through which the City Council adopted the 2016-17 and 2017-18 fiscal year budgets did not specify the legal level of budgetary control; although the adopted budgets presented budgeted expenditure amounts for seven expenditure account categories (personnel payments, taxes and benefits, professional and contractual services, operations and repairs, supplies and fuels, debt service, and capital) for each fund.

In addition, the City did not record and report the adopted budget in a consistent manner. Specifically:

- The City Council-adopted 2016-17 and 2017-18 fiscal year budgets provided budgetary control at the category level defined in the budget, such as personnel payments and supplies and fuels, for each fund. However, note disclosures to the City's 2016-17 fiscal year audited financial statements indicate that the City's legal level of budgetary control is at the fund level and budgeted expenditures reported in the City's 2016-17 and 2017-18 fiscal year audited financial statements for the General Fund were presented at the function level (e.g., general government, public safety, and culture and recreation). Therefore, financial statement users could not readily determine whether resources were expended within budgeted amounts at the category level consistent with City Council intent.
- For the 2016-17 and 2017-18 fiscal year budgets, City accounting records show that budgeted expenditures were recorded at the account level rather than the account category level and the account code amounts were not combined and totaled for the budget categories presented in the adopted budgets. As a result, City personnel could not make direct comparisons to ensure that actual expenditures did not exceed budgeted expenditures for each account category. Effective for the 2018-19 fiscal year budget, City accounting records show budgeted expenditure totals for budget categories presented in the adopted budget.

The City's 2016-17 fiscal year adopted budget, as amended, included General Fund budgeted expenditures totaling \$8.3 million. According to the City's 2016-17 fiscal year audit report, the General Fund actual expenditures and transfers out exceeded budgeted expenditures by \$378,017 for the 2016-17 fiscal year. In addition, our comparison of the final 2016-17 fiscal year budget amounts to actual expenditures reported in the City's 2016-17 fiscal year audited financial statements disclosed, as shown in Table 5, that expenditures exceeded budgeted amounts for four proprietary funds.

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<sup>165</sup> Section 166.241(2), Florida Statutes.

<sup>166</sup> Section 166.241(4), Florida Statutes.

<sup>167</sup> City of Gulf Breeze Resolution No. 26-16, dated September 19, 2016, and Resolution No. 24-17, dated September 18, 2017.

**Table 5**  
**Proprietary Funds with Actual Expenditures**  
**in Excess of Budgeted Expenditures**  
**For the 2016-17 Fiscal Year**

Fund	Actual Expenditures	Budgeted Expenditures	Difference
Golf Course Facilities Fund	\$1,238,998	\$ 928,728	\$310,217
Solid Waste Fund	587,226	551,517	35,709
Natural Gas Fund	2,288,516	2,270,390	18,126
Financial Services Fund	423,343	415,797	7,546

Source: City of Gulf Breeze 2016-17 fiscal year audit report.

Although State law<sup>168</sup> allows the City to amend its budget up to 60 days after the end of the fiscal year, or by November 30, 2017, for the 2016-17 fiscal year, the City did not take the necessary steps to adjust the budgeted amounts to reflect the actual expenditures. According to City personnel, the last City Council meeting at which amendments to the 2016-17 budget could be presented was held on November 20, 2017. However, the Finance Director responsible for filing the 2016-17 fiscal year budget amendments resigned in July 2017 and was not replaced until November 6, 2017, and the new Finance Director did not have sufficient time to prepare and present budget amendments to the City Council by November 20, 2017. Therefore, contrary to State law, General Fund and certain proprietary fund expenditures exceeded budgeted amounts for the 2016-17 fiscal year.

For the 2017-18 fiscal year, City personnel recommended a budget amendment to reallocate the budgeted expenditures on November 14, 2018, which the City Council approved. As a result, actual expenditures did not exceed final approved budgeted expenditures.

**Recommendation: The City Council should establish the legal level of budgetary control by amending the City Charter or through City ordinance to enable financial statement users to readily determine whether resources were expended within budgeted amounts at the category level consistent with City Council intent. In addition, the City should enhance budgetary controls to:**

- **Limit actual expenditures to budgeted amounts as required by State law.**
- **Ensure that City Council-approved budgeted expenditures are properly recorded in the accounting records and reported on the financial statements.**

**Finding 45: Public Records Retention**

State law<sup>169</sup> requires the City to maintain public records in accordance with the Department of State, Division of Library and Information Services, records retention schedules. Failure to maintain records in accordance with State law could result in City officials being subjected to certain penalties.<sup>170</sup>

According to the State records retention schedules,<sup>171</sup> records documenting successful bid responses and negotiation for contracts, leases, and agreements related to capital improvement and real property

<sup>168</sup> Section 166.241(4), Florida Statutes.

<sup>169</sup> Section 119.021(2)(a) and (b), Florida Statutes.

<sup>170</sup> Section 119.10, Florida Statutes.

<sup>171</sup> *State of Florida General Records Schedule GS1-SL for State and Local Government Agencies*, Item #s 64, 70, and 71.



must be maintained for 10 fiscal years after completion or termination of the arrangements. Such records not related to capital improvement and real property must be maintained for 5 fiscal years after completion or termination of the arrangement.<sup>172</sup> In addition, information regarding the physical inventory of agency property must be maintained for 3 fiscal years after the inventory date.<sup>173</sup>

The State records retention schedules apply to records regardless of the format in which they reside. Electronic records, like records in other formats, have a variety of purposes and relate to various program functions and activities. Therefore, records created or maintained in electronic format, such as e-mail and text messages, are required to be retained in accordance with the minimum retention requirements presented in the schedules.<sup>174</sup>

According to the City Clerk job description, the City Clerk is assigned responsibility as custodian of official City records and public documents and responds to and provides public records and information timely in compliance with Florida law. However, as of June 2020, the City had not established policies and procedures for the City Clerk to follow to ensure compliance with State public records laws. Four City employees completed Florida Department of State online training on record retention, including the Finance Director who completed her training in April 2019. However, the City had not, as of June 2020, established policies and procedures for records retention duties or defined the related responsibilities for the four employees.

According to City personnel, because City department heads were advised that City records must be maintained in accordance with State law and the City designated the City Clerk to be the public records custodian, it was not necessary to implement additional procedures. Notwithstanding, absent established policies governing the assignment of records retention responsibilities and procedures that define how the assigned responsibilities should be accomplished, there is an increased risk of noncompliance with the State records retention requirements.

While performing audit procedures to evaluate City operations, we noted that City records supporting successful respondents' proposals for capital improvement and construction projects were not always retained for 10 years after the projects were completed. In addition, City records supporting non-capital improvement arrangements were not always retained for 5 years after the arrangements were completed and records associated with City property inventories were not always retained for 3 years. For example:

- City records required to be retained 10 years to support competitive construction-related procurements during the period October 2016 through March 2018 were not provided upon our request. As discussed in Finding 32, the records we requested included:
  - Date and time-stamped bid envelopes or other records evidencing the date and time bids were received or identifying individuals attending the bid openings and witnessing the bid tabulations for seven construction projects totaling \$2.6 million awarded pursuant to a competitive bid process.

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<sup>172</sup> *State of Florida General Records Schedule GS1-SL for State and Local Government Agencies*, Item #s 65 and 72.

<sup>173</sup> *State of Florida General Records Schedule GS1-SL for State and Local Government Agencies*, Item # 40.

<sup>174</sup> *State of Florida General Records Schedule GS1-SL for State and Local Government Agencies*, General Information and Instructions, Section VI. Electronic Records.

- Documentation demonstrating how evaluation factors were considered during the ranking process for a stormwater system repairs project with a contract totaling \$236,405 that was awarded pursuant to a request for qualifications.

In response to our inquiry, the City personnel indicated that the records were not available either due to a clerical error or because City personnel were unaware of the requirements to retain such records.

- As discussed in Finding 35, in May 2014, the City contracted with a CPA firm for audit services and, during the period October 2016 through March 2019, the City paid \$57,000 to the firm. In July 2018, we requested for examination City records related to the auditor selection process. While certain information was provided, such as the qualifications of the auditor selection committee members, City personnel indicated that documentation of the factors considered during the firm evaluation process and the bid tabulation for the firms considered were not retained. As the requested records were not retained for 5 years, the City did not comply with the State records retention schedules.
- The City's tangible personal property acquisition costs at September 30, 2018, totaled \$14.1 million. As discussed in Finding 40, in August 2019, we requested for examination City records supporting the City's 2017-18 fiscal year annual physical inventory of tangible personal property, which are required to be maintained for 3 fiscal years after the inventory date. However, City personnel indicated that, due to the departure of the Assistant City Manager in May 2019, the documentation could not be located.

Absent effective public records retention procedures and adequate controls to ensure compliance with minimum records retention requirements, the City lacks assurance that City personnel consistently comply with these requirements and are appropriately maintaining public records.

**Recommendation: To promote compliance with public records laws, the City should establish policies and procedures to require and ensure that records are appropriately maintained in accordance with the applicable public records retention requirements.**

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from May 2018 through December 2019 in accordance with generally accepted government auditing standards.<sup>175</sup> Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the City of Gulf Breeze focused on the City's acquisition and management of the Tiger Point Golf Club and other selected City processes and administrative activities. The overall objectives of the audit were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To determine whether management had corrected, or was in the process of correcting, all applicable deficiencies disclosed in the 2016-17 financial audit report.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management's internal controls, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings

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<sup>175</sup> *Government Auditing Standards*, 2011 Revision.

and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records for the audit period October 2016 through March 2018, and selected transactions taken prior and subsequent thereto. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, contracts, grant agreements, and City ordinances, policies, and procedures, and interviewed City personnel to gain an understanding of the City's processes and to evaluate whether the City had established effective policies and procedures for major City functions, such as procurement, finance, and human resource management.
- Examined City records to determine whether the City's methodology and actions relating to the \$2.8 million acquisition and management of the City's golf course complied with applicable laws, rules, regulations, policies and procedures, and good business practices and was in the best interests of the City.
- Determined whether the City sought legal counsel before making certain concessions and obtaining a conditional use permit for the expansion of the City's wastewater treatment plant onto the golf course property. We also compared the City's actual use of the golf course property to the proposed uses in the conditional use permit and evaluated adequacy of the City's transparency in communicating changes in usage of the property to concerned parties.
- Examined City records to determine whether the City competitively selected in compliance with applicable laws, rules, regulations, policies and procedures, and good business practices, the consultant who, in March 2015, performed an audit costing \$39,883 of the City's golf course operations.
- Evaluated City actions taken to resolve the golf course operations audit findings.
- Evaluated the qualifications of the individual initially tasked with oversight of the golf course to determine whether that individual possessed the necessary qualifications.
- Evaluated the City's process for obtaining consulting services, totaling \$216,979, relating to the operation of the City's golf course for compliance with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Examined City records for the \$100,000 golf course restrooms renovation project to determine whether the City procured the renovation contractor in compliance with applicable laws, rules, regulations, policies and procedures, and good business practices. Also, we determined whether the City's four contractor payments, totaling \$100,000, complied with the contract terms and conditions.
- Examined City records associated with west golf course renovations, totaling \$294,100, and determined whether the City conducted the renovation project in compliance with applicable laws, rules, regulations, policies and procedures, and good business practices. Also, we tested the

City's eight architect payments relating to the west golf course renovations, totaling \$139,090, for compliance with the terms and conditions of the contract.

- Examined City records to determine whether the City performed an appropriate rent-versus-purchase analysis prior to leasing or purchasing golf course equipment, totaling \$1,065,231, and to determine whether the purchases and leases were reasonable, appropriate, and made in compliance with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Examined City records to determine whether a vehicle, costing \$23,213, purchased with City golf course funds was used for non-golf activities and whether such usage violated any restrictions on the use of golf course funds. Also, we determined whether the vehicle purchase was made in compliance with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Evaluated City policies and procedures over golf tournament fees and cash collections and examined City records to determine whether cash was appropriated collected for 5 of the 37 tournaments held during the period April 2014 through May 2018.
- Evaluated City actions to address ongoing golf course operations losses totaling \$5.4 million through the 2017-18 fiscal year.
- Evaluated City policies and procedures for monitoring the golf course management company and ensuring that all fees due to the City for golf course operations are properly assessed, recorded, and deposited and that all expenses paid by the management company are appropriate and reported to the City.
- Examined City records for the sale of a golf course driving range for \$1.525 million and proposed sale of another portion of the golf course for \$1.9 million to determine compliance with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Determined whether the City had, of record, assessed that it was economically or otherwise advantageous for the City to use Gulf Breeze Financial Services, Inc. (GBFS) and Capital Trust Agency, Inc. (CTA) to administer its financing programs.
- Determined whether City had established comprehensive policies and procedures governing significant aspects of GBFS and CTA operations and otherwise exercised adequate control over GBFS and CTA activities.
- Evaluated City efforts to promote transparency of GBFS and CTA activities.
- Assessed the propriety of transfers totaling \$1 million from the GBFS (\$380,000) and CTA (\$620,000) to the City for each of the 2016-17 and 2017-18 fiscal years.
- Evaluated City actions to recover alleged overpayments to the GBFS and CTA Executive Director (ED), or alternately, to document that a valid public purpose would not be served by recovering the overpayments.
- Evaluated City efforts to establish the ED's compensation and to provide oversight and transparency regarding the ED's compensation for administering GBFS and CTA operations.
- Evaluated the relationship between the City, the GBFS, and the CTA for potential conflicts of interest.
- Determined whether the City had established a documented methodology for allocating City personnel and other City-provided support costs to the GBFS and the CTA.
- Reviewed and assessed the propriety of City loans to and from the GBFS.

- Reviewed the City's handling of investigations by the U.S. Departments of Treasury (Treasury) and Justice regarding the City's use of the Treasury's State and Local Government Series securities program to invest bond proceeds.
- Determined whether the City's processes for establishing utility service rates for customers inside and outside City limits complied with applicable laws, rules, regulations, policies and procedures, and good business practices and were conducted in a transparent manner.
- Determined whether the City followed applicable utility policies and procedures when establishing billing periods and resolving customer complaints.
- Evaluated the adequacy of the City's water meter quality control process.
- From a population of 9,613 utility customers billed \$18.4 million during the audit period, we examined 30 utility bills, totaling \$2,533, to determine whether billed amounts, including the \$2 per meter technology fee, and related collections complied with applicable City ordinances, resolutions, and policies and procedures.
- Reviewed City records supporting transfers, totaling \$1.8 million during the audit period, from the utility funds to the General Fund to determine whether the transfers were reasonable, necessary, and adequately supported.
- Determined whether the City's \$2.9 million purchase of utility smart meters complied with applicable laws, rules, regulations, policies and procedures, and good business. We also assessed whether accumulated collections of the technology fee, totaling \$528,596 for the period October 1, 2014, through March 31, 2018, when added to estimated future collections and anticipated efficiency savings, will be sufficient to recover the costs associated with the \$2.9 million purchase of the smart meters.
- From the 1,374 water and sewer utility account adjustments totaling \$206,960 made during the audit period, examined 35 account adjustments totaling \$24,055, to determine whether adjustments complied with applicable City ordinances resolutions, and policies and procedures.
- Evaluated the effectiveness of City policies and procedures to ensure that only eligible individuals participated in the City's group health insurance plan. We also examined City records for group health insurance coverage provided to 182 employees, dependents, and retirees as of March 31, 2018, to determine whether only eligible individuals participated in the group health insurance plan.
- From the \$96,213 of accumulated annual and sick leave payments to 46 employees who separated from City employment during the audit period, examined City records supporting payments, totaling \$65,949, to 8 employees to determine whether the payments complied with applicable City policies and procedures.
- Examined City records for four employees who received compensation, totaling \$27,566, for other than accumulated annual and sick leave payments upon separation from City employment during the audit period to determine whether the amounts paid did not exceed limits on severance pay established by Section 215.425(4), Florida Statutes, and did not represent extra compensation payments prohibited by Section 215.425(1), Florida Statutes.
- Examined the employment agreements for three employees to determine whether the severance pay provisions in the agreements did not exceed the limits established by Section 215.425(4), Florida Statutes.
- Examined City records to determine whether \$24,000 paid to a former Finance Director for consulting services was substantiated by documented receipt of the services.
- Evaluated City employment benefits, such as personal use of City vehicles, automobile and toll allowances, and provision of electronic devices, to determine whether all benefits were allowable

under applicable laws, rules, regulations, and City policies and procedures and served a valid public purpose.

- Evaluated City policies and procedures regarding the employment and payment of a Special Advisor during the period May 2017 through February 2020.
- From the population of 96 motor vehicles as of March 31, 2018, examined City records for 18 take-home vehicles to determine whether City vehicle policies and procedures were followed, vehicle assignments were appropriate, and personal use of City vehicles was monitored and reported in compliance with Internal Revenue Code provisions.
- Evaluated whether City controls over the fuel pumping station were adequate to prevent and detect unauthorized fuel usage.
- Evaluated City procedures for tracking and scheduling preventative maintenance of City vehicles.
- From the 303 travel expenditures totaling \$39,188 incurred during the audit period, examined City records supporting 28 travel expenditures totaling \$15,103 to determine whether such expenditures were:
  - Reasonable.
  - Correctly recorded.
  - Adequately documented.
  - Incurred for a valid public purpose.
  - Properly authorized and approved.
  - In compliance with applicable laws, City policies and procedures, and contract terms.
- Examined City Attorney contract provisions regarding City Council meeting attendance and City Council meeting minutes to determine the City Attorney's attendance at City Council meetings.
- Compared City Charter procurement requirements to City purchasing policies for consistency and determined whether the City Charter and City purchasing policies requirements were consistent with State law and promoted good business practices.
- From the population of \$11.3 million paid to 150 vendors for purchases individually exceeding \$5,000 and potentially subject to a competitive procurement selection process, we examined City records for 30 selected vendors and related purchases of \$5.7 million to determine whether the vendors were competitively selected in accordance with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Examined City records associated with 22 selected services purchases with costs totaling \$4.3 million to determine whether the City executed contracts to adequately establish the duties, expectations, and requirements of each party.
- Evaluated City policies and procedures for identifying potential conflicts of interest. For selected City officials and employees, we reviewed the Department of State, Division of Corporations records; statements of financial interests; and City records to identify any relationships that represented a potential conflict of interest.
- Determined whether the City's process for selecting auditing services for the 2013-14 through 2017-18 fiscal years complied with Section 218.391, Florida Statutes. We also examined payment documentation supporting \$57,000 paid to the audit firm for the 2016-17 fiscal year audit for compliance with contract terms.
- Examined court records and City records relating to the lawsuit between the City and homeowners regarding beach access to determine whether the City documented a cost-benefit analysis that

considered alternative options to achieve City objectives before entering into protracted litigation costing the City more than \$800,000.

- Evaluated City purchasing card (P-card) procedures. Specifically, we examined City records for 14 of the 70 employees who had P-cards during the audit period to determine whether P-card issuances were properly authorized. In addition, we examined City records for the 7 employees who separated from City employment to determine whether P-cards were promptly canceled.
- From the population of 3,703 P-card expenditures totaling \$951,781 during the audit period, examined City records supporting 30 selected expenditures totaling \$36,290 to determine whether expenditures served a valid public purpose, were preapproved, evidenced receipt of the goods or services by an appropriate party, and, for purchases exceeding \$300, were supported by purchase orders.
- From the population of 112 legal services invoices from 11 law firms paid during the period September 2014 through April 2018 and totaling \$937,508, examined 68 invoices totaling \$802,979 from 9 law firms to determine whether the City was appropriately invoiced for legal services.
- Evaluated City policies and procedures relating to \$16,000 in donations paid to 8 external organizations during the audit period to determine whether the donations served a valid public purpose and were approved as required by City policies and procedures.
- Reviewed City vendor payment records, consisting of payments totaling \$15.9 million to 1,849 vendors for the audit period, to determine whether the City paid for tickets to golf tournaments or other sporting events on behalf of City Council members or City employees.
- Evaluated City policies and procedures for accounting for Tourist Development Tax (TDT) funds, totaling \$249,294, received from Santa Rosa County (County) during the audit period.
- From a population of \$278,319 in expenditures and transfers paid from TDT funds during the audit period, examined supporting records for 20 selected expenditures and transfers, totaling \$130,253, to determine whether the expenditures were made for tourist development purposes and, where applicable, vendors were competitively selected in accordance with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Determined whether the City timely filed with the County the seven quarterly TDT expenditure reports due during the audit period in accordance with the TDT interlocal agreement between the City and the County.
- Evaluated City policies and procedures for safeguarding its tangible personal property.
- Examined City records related to land sales, totaling \$80,500 (not including golf course land sales), during the audit period to determine whether the City complied with applicable laws, rules, regulations, policies and procedures, and good business practices.
- Determined whether City had established an internal audit function or otherwise provided for internal audit activities to assist management in maintaining a comprehensive framework of internal controls.
- Determined whether the City had established anti-fraud policies and procedures to provide guidance to employees for communicating known or suspected fraud to appropriate individuals.
- Examined City Council meeting minutes during the audit period, and selected meeting minutes prior and subsequent thereto, to determine the propriety and sufficiency of actions taken relative to the topics included in the scope of this audit and to determine whether the City properly noticed the meetings, promptly recorded minutes of the meetings, promptly reviewed and approved the minutes, and promptly made the minutes readily accessible to the public.



- Evaluated City policies and parliamentary procedures relating to the development of the City Council's meeting agenda and conduct of meetings.
- Examined City records related to determine whether the City responded to public records requests within a reasonable timeframe.
- Evaluated City policies and procedures for budget preparation, adoption, recording, reporting, and monitoring.
- Examined 2016-17 and 2017-18 fiscal year budgets to determine whether the City specified a legal level of control and included balances brought forward from prior fiscal years.
- Determined whether the City adopted and amended the 2016-17 and 2017-18 fiscal year budgets in compliance with State law and City ordinances and did not expend 2016-17 and 2017-18 fiscal year moneys in excess of budgeted amounts.
- Determined whether the City's 2016-17 and 2017-18 fiscal year tentative and final adopted budgets and amendments were posted on the City's Web site in compliance with State law.
- Evaluated City policies and procedures relating to cash and investments and determined whether the policies and procedures promoted compliance with State and local laws, rules, regulations, contracts, grant agreements, and good business practices.
- Determined whether the City's investments, totaling \$12.4 million on September 30, 2017, were allowable under the City's investment policy.
- For refunded debt issues totaling \$2.65 million during the audit period, examined City records to determine whether projected savings exceeded incurred issuance costs.
- Determined whether City accounting records provided adequate accountability for the expenditure of \$2.65 million of refunded debt issue proceeds.
- Determined whether loans totaling \$7.6 million issued to the City from the 1985 bond pool program during the audit period constituted an authorized use of the bond pool program moneys.
- Reviewed the \$600,000 settlement paid by the City in June 2018 to a financial advisor associated with the 1985 bond pool for reasonableness and appropriateness.
- Evaluated the City's traffic infraction camera system associated with traffic signals at three intersections to determine whether the yellow light traffic signal interval complied with State law and Florida Department of Transportation (FDOT) standards.
- Determined whether the City exercised due diligence to maximize proceeds in selling and granting easements of public land for \$5.9 million to the FDOT for a bridge replacement project.
- Examined 14 City applications for \$2.4 million in Federal Emergency Management Act (FEMA) grants awarded during the period August 2014 through March 2018 and verified that the grant applications contained no specific requirements for flood mitigation.
- Determined whether the City met the minimum insurance coverages required by FEMA as a condition of applying for disaster relief.
- Determined whether the City's expenditure of \$295,836 of estate endowment moneys provided to the City during the period May 2013 through December 2017 were expended for beautification of certain locations within the City, in accordance with endowment requirements.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.

- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

## ***AUTHORITY***

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Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is written in a cursive style with a large, stylized initial 'S'.

Sherrill F. Norman, CPA  
Auditor General

## MANAGEMENT'S RESPONSE

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# City of Gulf Breeze

September 8, 2020

Sherrill F. Norman, CPA  
Auditor General, State of Florida  
Claude Denson Pepper Building, Suite G74  
111 West Madison Street  
Tallahassee, Florida 32399-1450  
[flaudgen\\_audrpt\\_lg@aud.state.fl.us](mailto:flaudgen_audrpt_lg@aud.state.fl.us)

Dear Ms. Norman:

In accordance with Section 11.45(4)(d), Florida Statutes, attached is the written statement of responses to the findings in the operations audit of the City of Gulf Breeze.

The City is pleased that the audit has come to an end due to the burden it has placed on our small City, which has a population of only 5,884 and, accordingly, a small administrative staff. In the 28 months of this audit, spanning from April 10, 2018 to August 7, 2020, we estimate that 2,980 City man-hours by 14 personnel have been spent researching issues and responding to questions raised by the auditors, costing the City an estimated \$108,722. These numbers do not include time spent by our City Attorney and our financial auditors, who are with firms outside the City. Part of the audit's focus was on a period from 1985-2012, well before the current City Manager was appointed and the current City Council took office, adding significantly to the challenge of responding to the auditor's inquiries. Nonetheless, the City undoubtedly took the audit seriously. City staff fully cooperated with the audit team, researching issues and providing answers to the best of their ability.

As you are aware, the audit was initiated at the request of Senator Doug Broxson in response to petitions he had received from constituents outside of the City limits regarding the City-owned Tiger Point Golf Club (TPGC) and South Santa Rosa Utilities System ("SSRUS"). As explained throughout the audit, and as set forth in the City's responses, the TPGC was purchased by the City in 2012 to ensure its continued use for effluent disposal capacity for the SSRUS, which serves the petitioners. The City's purchase of the TPGC, which despite the \$5.4 million costs incurred as a result ultimately saved the ratepayers from funding a completely new wastewater treatment plant.

As it proceeded, the audit's scope went well beyond the TPGC and the SSRUS and focused on aspects of almost all City departments and operations. The City now looks forward to addressing the concerns and to implementing improvements with the goal of achieving more transparency and accountability for its citizens. Notably, the City has already taken significant steps in this direction by adopting updated purchasing policies, a fraud prevention policy, a utility debt collection policy, and an update of its personnel

OFFICE: (850) 934-5115 • FAX: (850) 934-5114  
POST OFFICE BOX 640 • 1070 SHORELINE DRIVE • GULF BREEZE, FLORIDA 32562-0640  
[WWW.CITYOFGULFBREEZE.COM](http://WWW.CITYOFGULFBREEZE.COM)

policies. These are but a few of the steps the City has taken and as noted in our responses, the City will be taking more.

Thank you,

A handwritten signature in blue ink that reads "Cherry Fitch". The signature is written in a cursive, flowing style.

Cherry Fitch  
Mayor, City of Gulf Breeze

cc: Mayor Pro Tem Tom Naile  
Councilman Todd Torgersen  
Councilman Randy Herbert  
Councilman JB Schluter  
Samantha Abell, City Manager  
Mary Jane Bass, City Attorney

## **Tiger Point Golf Club**

**Finding 1:** City records did not demonstrate that the City's purchase of the entire 365-acre Tiger Point Golf Club (TPGC) was necessary or that the process used to acquire the property was prudent and appropriate. To help ensure that future real property acquisitions are appropriate and in the City's best interest, the City needs to establish effective policies and procedures that require formal independent appraisals, business valuations, and feasibility studies be obtained for appropriate consideration.

**City Response to Finding 1:** In acquiring the TPGC, the City followed State and local law related to the purchase of land, which under municipal home rule authority affords the City the discretion to act on the basis of multiple, sometimes competing, aspects of public purpose and interest. The primary City interest in acquiring the TPGC was to ensure that the property could continue to be used to meet the effluent disposal needs associated with the operation of the City's South Santa Rosa Utility System (SSRUS) wastewater treatment plant, which serves customers inside and outside the City limits.

At the time, the City faced decisions on whether to expand or build a new plant to meet increasing wastewater treatment demands. The City ultimately determined that building a new plant at a new location would cost ratepayers significantly more than would expansion of the existing plant. Purchase of the TPGC to maintain effluent disposal capacity for existing needs, and for future needs upon expansion, was a critical consideration that supported the decision. The costs associated with purchase, restorations and operational improvements of the TPGC (\$5.4 million from 2012 to 2018) have proven to be much less. While the profitability of the golf course operations and the value of the purchase as a real estate investment were also considered by the City Council, those interests had to be balanced against the primary need to cost-effectively maintain effluent disposal capacity for the benefit of the utility ratepayers.

The audit acknowledges the 2012 due diligence undertaken by the then-administration and City Council, including specialized golf course valuations, engineering reports, and the review of financials; yet, the audit concludes that the due diligence was insufficient. Whether expending more money to conduct additional studies and due diligence would have resulted in the City deciding against purchase of the TPGC is an unknown, but what is known is that as a result of the TPGC purchase the City was able to maintain, and maintains to this day, an FDEP-permitted site that allows for cost-effective and necessary effluent disposal capable of meeting the utility's needs today and in the future. The City acknowledges that there have been challenges in operating the golf club business, but under the City's ownership, the business and the condition of the property has improved significantly. Moreover, to mitigate the business concerns going forward, the City is marketing the golf course business and property with the mandatory condition that upon sale the property will continue to serve the City's effluent disposal needs in perpetuity.

**City Response to Recommendation:** The City concurs with the recommendation to consider adoption of policies and procedures on appraisals, appropriate due diligence, and other steps to guide future land and enterprise purchases.

**Finding 2:** The City did not seek legal counsel, prior to the TPGC acquisition, regarding the authority to make certain concessions promised by the then City Manager to property owners near the TPGC nor was the City Council informed, prior to approving the TPGC acquisition, of the concessions. Many of the concessions were subsequently determined to be not reasonable, practical, or enforceable.

**City Response to Finding 2:** As an applicant to Santa Rosa County for a conditional use permit to expand the wastewater treatment plant in the City's growing service area outside the City limits, the City relied on Santa Rosa County's guidance regarding the procedural requirements for obtaining the permit. The County Zoning Board and the County Commission adopted the conditional use permit in 2012 following the required public hearings and in doing so agreed to include a list of conditions sought by one of the 15 homeowners associations (HOAs) that represent County citizens who own property adjacent to the TPGC.

The County did not raise any concerns regarding the legal appropriateness of including the HOA's conditions in the City's conditional use permit, and in agreeing to those terms, the then City Manager had no reason to believe there were any legal impediments to carrying them out. For these reasons, there was no apparent need at the time for the City to seek legal guidance on the conditions.

After a subsequent cost analysis to assess the financial impact to ratepayers, the City engaged independent legal counsel to evaluate the conditions in the conditional use permit. The independent counsel found there was no connection between the conditions included by the County in the permit and mitigation of any negative impact of the expansion of the WWTP. Therefore, the city could not comply with the conditions. The Board of County Commissioners agreed. As a result, the County amended the conditional use permit to remove the conditions that should not have been included.

**City Response to Recommendation:** The City concurs with the recommendation to consider adoption of policies and procedures to guide future land and enterprise purchases, and will consider including in those policies and procedures guidance on consultation with appropriate legal counsel.

**Finding 3:** Notwithstanding the intent to make the TPGC a successful golf venue, the City has experienced ongoing losses from TPGC operations totaling \$5.4 million through the 2017-18 fiscal year.

**City Response to Finding 3:** For clarification, this audit finding references a six-year time period from December 2012 to September 30, 2018. The City acknowledges the \$5.4 million net cost incurred during these years, but that amount includes expenditures made for revitalization of the 335-acre waterfront golf course property, which has enhanced the value of the business and the property. The City annually publishes to the public a reader-friendly Tiger Point budget brief with operational revenues and losses, which is readily available and documents these numbers.

For the first five years of the City's ownership of the TPGC, the dilapidated condition of the neglected golf courses, driving range, and clubhouse called for a significant investment from the City's South Santa Rosa Utility Water & Sewer Fund. The capital investments and management improvements to the operating east course have resulted in increased revenues and a break-even projection for the business operations in Fiscal Year 2020. The condition of the non-operational west course is greatly improved and currently serves as a greenspace that is used by neighborhood recreation leagues and citizens.

The fully revitalized east golf course was listed for sale in March 2020. Any sale will ensure the City's right to continued use of the property for effluent disposal.

**City Response to Recommendation:** The City agrees with and is already implementing the recommendations of the auditors by listing the golf course business for sale. The City Council and the SSRUS Board have discussed the golf course operations, potential property sales, and other matters related to the TPGC in numerous public workshops and meetings over the last two years and will continue to do so moving forward.

**Finding 4:** The City's oversight of the contracted management company operating the TPGC could be enhanced to better ensure that all fees due the City for TPGC operations are properly assessed, collected, recorded, and deposited and that all expenses paid by the management company are appropriate and reported to the City.

**City Response to Finding 4:** The City has implemented steps to address the concern. As a result, improvements in management oversight and reporting have been realized. The City initially managed the golf business itself, but in 2015 engaged a third-party management company for this purpose. Upon the City's one-year evaluation of the company's performance, the contract was terminated. In 2017, the City engaged in a competitive Request for Proposals (RFP) process that led to the selection of Troon/Honours Golf, which is the largest golf course management company in the world, to manage the TPGC business, including bookkeeping and accounting services. In 2019, the City also hired an accountant who was specifically assigned to TPGC for an additional layer of financial oversight.

**City Response to Recommendation:** As noted, the City has enhanced its oversight and monitoring of the TPGC business and will continue to vigilantly watch over the operations until such time as the business is sold.

**Finding 5:** The City did not require the TPGC management company to execute, for each event at the TPGC, an agreement that specified relevant details for the event and the sponsoring entity's responsibilities.

**City Response to Finding 5:** The 2017 management contract with Troon/Honours Golf does not require the execution of an official agreement for a special event rental. However, the management company is responsible for all rentals and fee collections and reports on those to the Parks and Recreation Director and Public Services Director, who review all operations including rentals. The City's TPGC accountant provides additional oversight.

**City Response to Recommendation:** The City does not plan to amend its contract with the management company because it anticipates selling the golf course business in the near future, but the City will continue its oversight, which has been enhanced to a point that the City believes is sufficient, and will work with the management company to assure clear terms are established for events held at TPGC.

**Finding 6:** City personnel did not always verify assertions made by consultants used to solicit competitive bids or quotes on the City's behalf and written agreements were not always properly executed for consultant and other professional services.

**City Response to Finding 6:** It is difficult for the current administration to ascertain in all respects what took place in the past, but the City acknowledges that there have been instances in which better documentation could have been kept on competitive bids or quotes obtained for

goods or services.

**City Response to Recommendation:** Since this audit began, the City has taken several significant steps to implement the auditor’s recommendations. The City has improved its record keeping by purchasing new digital software named QuestCDN in 2018 to manage procurement and competitive solicitations for the purchase of goods and service over \$5,000. Additionally, the City completely overhauled its procurement procedures and in November of 2019 the Council adopted a new detailed Purchasing Policies and Procedures manual in that addresses the process and required documentation for procurement at all levels in keeping with the provisions of the City Charter and Code of Ordinances.

**Finding 7:** The City did not always obtain timely independent appraisals of property values for consideration by the City Council prior to selling surplus City-owned real property.

**City Response to Finding 7:** As acknowledged by the audit, the City has obtained appraisals for the TPGC property and the City Council considered those appraisals and the “highest and best use” values estimated therein prior to making decisions on the sale of the old driving range property, which closed in June of 2019, and on the sale of a portion of the west course to the Santa Rosa County School Board, which is set to close in September of 2020. The appraisals, however, were not the Council’s only considerations. As with the purchase of the TPGC, the City Council took into account other analyses and factors and acted in what it believed to be the public interest.

The auditors reviewed the appraisals which state that the highest and best use would be high density residential. However, this type of development may not be compatible with the City’s primary interest, which is the ongoing use of the land for effluent disposal.

**City Response to Recommendation:** The City concurs with the recommendation to consider adoption of policies and procedures for obtaining appraisals and consideration of them prior to the sale of City-owned real-property.

## **Related Organizations – Financing Programs**

**Finding 8:** The City did not, of record, assess that it was economically or otherwise advantageous for the City to use Gulf Breeze Financial Services, Inc. (GBFS), and Capital Trust Agency, Inc. (CTA), to administer its financing programs. Additionally, the use of these entities resulted in less accountability and transparency for program transactions and activities when compared to direct administration of those programs by the City, and resulted in costs that could have been avoided had City personnel been solely responsible for administering the financing programs.

**City Response:** The current City administration’s review of the history of the organizations, which were formed many years ago, revealed that administrative efficiencies were the primary reason for structuring the City’s financing programs in this manner. Since its formation in 1985, GBFS has operated under the umbrella of the City, and since 2015, has been run by City employees.<sup>1</sup>

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<sup>1</sup> It should be noted that the business of GBFS has significantly decreased due to a phase out of its programs. The City is therefore more focused on CTA in responding to this and other audit findings on the City’s financing programs.



When CTA was subsequently established in 1999, the Interlocal Agreement adopted by the City of Gulf Breeze and the City of Century documented that the agency was formed to achieve “administrative convenience” in the financing and administering of its programs. This approach and authority of the City to operate the programs through CTA has been expressly validated in multiple court proceedings over the years and is fully in line with the law, and the City believes that economic and operational advantages have been realized through this structure.

The Florida Attorney General's Office “has long recognized the authority of a municipality to use non-profit organizations to assist in carrying out municipal purposes.” AGO 2006-40. CTA exemplifies the propriety of doing so when a specialized function is involved. Here, with the separate legal structure, CTA's conduit bond financing program is overseen and managed by a City Council appointed Board of citizens, who have significant business, finance, and local government experience. Unlike the City Council, which must attend to a broad range of business, the CTA Board's is able to dedicate its attention solely to the bond financing program.

Additionally, CTA's creation as a separate entity under the Interlocal Agreement allows for a wide variety of projects (e.g., educational, housing, and senior care facilities).

**City Response to Recommendation:** The City agrees that the City should evaluate the administrative functioning of GBFS and CTA to ensure transparency and accountability. Although, CTA bonds must be approved by the City's City Council at a public meeting, the City acknowledges that it should evaluate the current operations and, with input from the CTA Board, consider whether steps can be taken to increase accountability, transparency, and public understanding of the business of CTA.

**Finding 9:** City measures to ensure that CTA operations are conducted consistent with City Council intent and in accordance with applicable laws, established policies and procedures, CTA articles of incorporation, and good business practices were not always effective.

**City Response to Finding 9:** The City recognizes that the CTA's Articles of Incorporation, By-Laws, the Interlocal Agreement should be periodically reviewed, along with CTA's policies and procedures, as a matter of routine best practices. The City plans to undertake that review, in conjunction with the CTA Board, and will consider any updates which would be beneficial for best business practices and the achievement of appropriate and effective controls.

CTA's Articles of Incorporation meet the requirements of Florida law for the formation of an entity and, like most Articles, generally describe the purpose of the entity without express detail on all aspects of operations. There is no prohibition on CTA making charitable contributions to not-for-profit organizations, and doing so serves a public purpose by providing support and benefits to the City and its residents.

The City agrees that it would be beneficial to review the Interlocal Agreement, the Articles of Incorporation, the By-Laws, and other governing documents and policies and procedures of CTA, to ensure that sufficient policies, procedures, and controls are in place and that best business practices are followed.

**City Response to Recommendation:** Following review of CTA's governing documents and policies and procedures, the City will work in conjunction with the CTA Board to consider whether amendments to the documents are appropriate and whether new policies and procedures should be adopted to implement best business practices to increase

accountability, transparency, and public understanding of the business of CTA.

**Finding 10:** The City lacked comprehensive policies and procedures governing significant aspects of GBFS and CTA operations.

**City Response to Finding 10:** As acknowledged in the City's Response to Finding 9, the City recognizes the need to review and update CTA's governing documents and policies and procedures to ensure that the interests of transparency and accountability are met, and that best business practices are followed.

**City Response to Recommendation:** The City will review GBFS policies and procedures, and, in conjunction with the CTA Board will review CTA policies and procedures, to ensure that all significant aspects of GBFS and CTA operations are covered.

**Finding 11:** Enhanced transparency of GBFS and CTA operations is needed.

**City Response to Finding 11:** The City will consider actions to enhance transparency with respect to GBFS and its operations within the City. With regard to CTA, as noted by the auditors, CTA's meetings and activities are conducted in compliance with Florida's Sunshine Law and Public Records Act. However, the City agrees that measures to improve transparency, accountability, and the public understanding of the City's finance programs should be undertaken. The City is currently working to overhaul the agency websites and establish new email domains for GBFS and CTA, and will consider other ways to increase accountability, transparency, and public understanding of the City's financing programs.

**City Response to Recommendation:** The City will work to implement steps to increase accountability, transparency, and public understanding of the business of GBFS and CTA.

**Finding 12:** The City had not executed a contract with the CTA or formally established directives regarding the amounts and frequency of GBFS and CTA transfers of resources to the City.

**City Response to Finding 12:** The City has not entered into a contract with CTA on its operations and it has not set specific directives on the amounts and frequency of GBFS and CTA transfers of resources to the City. However, there is no legal requirement that the City do so. Decisions on transfers are made by the City Council, and where applicable by the CTA Board, through the City's annual budget process.

The practice has been for the City to budget transfers in two increments annually, at the beginning and end of the year so as to ensure the availability of funds. The amount, however, is determined based on the budgetary needs of the City. During budget workshops, the City reviews its capital improvement plan and strives to assign CTA transfers to fund capital needs, such as storm water or public safety projects, rather than assigning transfers for support of recurring operating costs.

**City Response to Recommendation:** The City will consider whether to adopt guidance to document the City's practice and procedure for determining the amount and frequency of GBFS and CTA transfers to the City.

**Finding 13:** The City could have exercised more diligence in resolving questions regarding compensation paid to the GBFS and CTA Executive Director and his company, and the City needs to improve oversight and transparency regarding the Executive Director's compensation and administration of GBFS and CTA operations.

**City Response to Finding 13:** The City has taken action to address this concern and intends to continue to exercise greater diligence in reviewing compensation for the GBFS and CTA Executive Director. Beginning in 2015, the Council has placed the Executive Director's employment agreement on a City Council meeting agenda for optimal transparency in considering its compensation terms, and will continue to do so.

**City Response to Recommendation:** The City believes that improved oversight and transparency with respect to the compensation paid to the GBFS and CTA Executive Director would be beneficial. The City intends to review the structure of the Executive Director's compensation and consider revisions to ensure the compensation is reasonable and that payments are properly documented and allocated between GBFS and CTA. Any revisions to the employment agreement and compensation structure will be considered and acted upon by the City Council in a public meeting.

**Finding 14:** The City had not established a documented methodology for allocating City personnel and other City-provided support costs to the GBFS and CTA.

**City Response to Finding 14:** The City employs the personnel responsible for GBFS and CTA day-to-day operations. The purpose is to ensure accountability to the City to the greatest extent possible. However, the City recognizes that because these employees serve the two agencies, their time and expenses must be allocated to one fund or the other. In the past, the method and rationale for the allocation has not always been adequately documented. The City is working to do a better job of such documentation going forward. However, as GBFS is no longer initiating bond activity and is simply monitoring and maintaining outstanding accounts that are set to retire in a few years, this issue will resolve itself in the future.

**City Response to Recommendation:** The City will strive for better documentation of the rationale for allocating the time and expenses of the GBFS and CTA staff between the two agencies.

**Finding 15:** City records lacked documented determinations of the necessity for certain loans made to and from related organizations and the appropriateness of the assessed interest rates for those loans.

**City Response to Finding 15:** The Mayor and City Council have from time to time, determined that certain inter-fund loans are necessary and appropriate. From an accounting and legal standpoint, there is nothing to prohibit local government inter-fund loans, the terms of which may vary based on particular circumstances and budgetary considerations. For instance, the City's loan of \$600,000 to GBFS, which the auditors focused on, included an interest rate that recovered the savings interest otherwise lost to the City by drawing the money from an interest-bearing account. Yet, on another inter-fund loan noted by the auditors, the interest was set slightly lower than a quote from a conventional lender. In both these instances, the City Council's deliberation and decision on the loan terms was based on the specific circumstances and the best interest of the public at the time, but could have been better documented.

**City Response to Recommendation:** The City will consider establishing policies and procedures addressing interfund loans, including the establishment of terms and proper documentation.

**Finding 16:** City records, as of July 2020, did not document the current status of a United States Department of Justice investigation regarding the City's use of the United States Department of Treasury's State and Local Government Series securities program to invest bond proceeds.

**City Response to Finding 16:** The investigation referenced in the background for this finding dates back to 2013 and involved an investment program available to state and local governments that the City is no longer involved in. The City cooperated with the investigation, which involved multiple local governments, and hired legal counsel to guide it through the process, which has been inactive for some time.

**City Response to Recommendation:** The City will better document the status of this matter and will consult with legal counsel on any possibility for recovering legal costs, taking into consideration the time and resources that would have to be devoted to such an effort, which might very well offset any potential recovery.

## Utility Services

**Finding 17:** City records did not always evidence that utility rate studies were based on applicable cost factors and that enterprise fund transfers for internal services costs were proper and reasonable.

**City Response to Finding 17:** Prior utility rate studies were based on utility needs and cost factors, but the City does recognize that an update to the last such utility rate study was overdue. In order to address this, the City has engaged in a new rate study to ensure that utility rates both inside and outside of the City are based on applicable and documented cost factors and analysis. The City will consider adjustments to utility rates based upon the study. Additionally, to improve the support and documentation for enterprise fund transfers, in FY 2018-2019, the City implemented a true cost allocation plan so that the City's budget and supporting financial records now reflect the allocation of administrative/financial services, overhead, and payroll costs across the City's utility enterprises. Costs which can be directly tied to various programs are now being directly expensed to the proper cost centers and accounting funds. Costs that are considered to be shared costs are now the basis for operating transfers from the respective enterprise funds to the General Fund, and specifics on those transfers, the actual dollar amount and the purpose behind each transfer, are now reported in the City's year-end Comprehensive Annual Financial Report (CAFR). See, e.g, page 100, CAFR for FY September 30, 2019.

**City Response to Recommendation:** The City will consider adoption of policies and procedures to ensure that utility rates are based on appropriate rate studies that take into account applicable cost factors. The City will also consider adoption of policies and procedures to guide determinations on fund transfers.

**Finding 18:** City records did not demonstrate that the same factors were used to assess water and sewer utility rates, fees, and charges for customers inside and outside the City. In addition, the transparency of potential rate assessment increases and surcharges to South Santa Rosa Utility Services (SSRUS) customers could be enhanced by openly discussing such rate increases and surcharges at SSRUS Board meetings.

**City Response to Finding 18:** The City has provided information to ratepayers on the basis for rates, and has acted as required in public meetings to set rates over the years. However, the City acknowledges that periodic rate studies are important to ensure that utility rates are appropriately set for the benefit of the ratepayers and the financial operations of the utility. Because a new rate study was overdue, in July 2019, the City Council initiated a comprehensive rate study for water and sewer utilities, engaging Raftelis Consultants, which is a leader in this field. On June 29, 2020, representatives of Raftelis met in public video/teleconference sessions, as authorized by Florida Governor DeSantis' COVID-19 Executive Orders, with both the South Santa Rosa Utility System Board and the Gulf Breeze City Council to present the rate study findings.

The study concludes that: 1) the same rate should be charged to customers inside and outside the City; 2) the water and sewer enterprise utilities should be consolidated into one fund; and 3) the outside the City (non-City) customer surcharge should be increased to 25%, as allowed by Florida law. Currently, non-City customers pay only a 6% surcharge, while City customers pay a 10% municipal utility tax. The rate study recommendations will ensure rate parity between non-City and City customers, and surcharge parity with other non-City municipal customers.

Raftelis is now working with City staff to develop action items to bring back to the SSRUS Board and Council for implementation of the rate study finding recommendations.

**City Response to Recommendation:** The City has already responded to the recommendation by engaging in a comprehensive water and sewer rate study to ensure that rates, fees, and charges for in-City and outside-City customers are just, equitable, and set in accordance with Florida law. As with the recent presentation of the rate study findings, the SSRUS Board's and the City Council's consideration of actions to implement the recommendations of the rate study will take place in an advertised public meetings in which the public can participate either in person, or virtually, depending on COVID-19 restrictions. The City's goal is to complete implementation of the rate study sometime during the first quarter of next fiscal year.

**Finding 19:** The City could enhance procedures for recording and documenting utility billing adjustments.

**City Response to Finding 19:** In order to address the concern, over the last three years, the City has added 4 new positions (for a total of 6) within the Finance Department to strengthen internal controls.

Additionally, during the fiscal year 2018/2019, the City implemented new policies and processes for review and approval of account adjustments in its utility billing software (BS&A). These procedures restrict access to make customer account adjustments to the Utility Billing Supervisor and Assistant Supervisor only. If the Utility Billing Supervisor posts adjustments, they are reviewed by the Assistant Utility Billing Supervisor for accuracy, and vice versa, and the respective approvals are documented. Any adjustments over \$1,000 require the City Manager's approval and documentation of the approval must be scanned into the customer's account

history.

The Director of Finance is responsible for reconciling the accounts receivable accounts and reviewing the general ledger for the annual audit by the City's external financial auditors. The City plans to take additional steps in FY 2020/2021 to ensure timely reconciliation of accounts receivable and additional focus on internal control improvements.

**City Response to Recommendation:** The City has addressed, and will continue to address, this recommendation. Steps taken thus far under the new City Manager appointed in 2017 and the new Finance Director hired in 2018, include adding Finance Department staff to improve internal controls, including the review and approval of account adjustments, and to provide for better record-keeping.

## **Payroll and Personnel Administration**

**Finding 20:** The City did not verify, of record, that individuals participating in the City group insurance plans were eligible participants.

**City Response to Finding 20:** This finding relates to one individual at the city's transfer station who had previously been on the city's self-insurance plan prior to the city's change in insurance carriers. The City is not aware of and the auditors did not indicate that there were any other ineligible participants in the City's group insurance plans. However, to ensure the eligibility of all participants is verified going forward, the City has revised its procedures related to verifying the eligibility of participants. Additionally, in 2019 the City created an Administrative Services Department which is specifically assigned to handle employee benefits and other personnel matters. Previously, there was no department designated to handle human resources and the duties were shared between Finance, City Clerk, and City Manager's Offices.

**City Response to Recommendation:** The City has through the establishment of an Administrative Services Department, and the revision of procedures, taken steps to address this recommendation, including review and documentation of evidence of eligibility upon initial enrollment and monitoring of eligibility thereafter with timely removal of employees who become ineligible.

**Finding 21:** City records did not always demonstrate that accumulated leave payment calculations were verified before payments were made or that payments complied with City policies.

**City Response to Finding 21:** In order to address the concern that accumulated leave payouts at separation have not always been handled consistently, the City has implemented administrative procedures to ensure verification and documentation of accumulated leave and of accumulated leave payouts due upon separation. The new procedures will also ensure that the provisions of the City's Personnel Manual are consistently followed. The Senior Accountant is now reviewing all employee leave payouts as calculated by the payroll accounting specialist. Additionally, the Finance Director also reviews and approves accumulated leave payouts before the payroll is processed. These steps, which are set forth in clearly documented policies, have greatly improved the accuracy of reporting.

**City Response to Recommendation:** In 2020, City staff worked with the City Attorney to revise and update the City's Personnel Manual and the resulting revised manual was

adopted by the City Council on May 4, 2020. The Personnel Manual specifically addresses employee leave in section 6.2 and includes provisions on accumulation of leave time and payment of leave upon separation. As noted above, the City has also implemented administrative procedures to ensure consistent application of the manual's provisions. With regard to the suggestion that the City consider seeking recovery of separation overpayments, the City does not believe that would be worthwhile from a cost/benefit perspective.

**Finding 22:** The City made certain severance and other compensation payments that exceeded limits set by State law and made payments to a former employee for unsubstantiated consulting services.

**City Response to Finding 22:** This finding arises from two situations in which severance pay was in the view of the auditors above that allowed by law. However, both instances involved employment disputes that were resolved by the employee resigning with severance pay. It appears that the severance pay may have exceeded the allowed amount in one instance, but in the other instance, Council amended the severance agreement to ensure consistency with State law. Subsequently, a consulting agreement was entered into with the separated employment, which was in the best interest of the City to ensure continuity of services during a transition time.

The prior Finance Director left the City just two months after the appointment of the new Interim City Manager, leaving the City with only one full-time accounts payable clerk, who had no budget experience, in the Finance Department. The timing left the City without sufficient staff to handle the budget development and workshops taking place at the time. It was therefore in the best interest of the City to agree to a consulting arrangement under which the former Finance Director was on retainer and available for consultation. The City acknowledges that better records could have been kept to document the work performed under the consulting agreement.

**City Response to Recommendation:** The City will ensure that future severance payments do not exceed limits set by Florida law and will also ensure that work performed under future consulting agreements is properly documented. With regard to the suggestion that the City consider seeking recovery of any overpayments, the City does not believe that would be worthwhile from a cost/benefit perspective.

**Finding 23:** Contrary to State law, the City paid extra compensation after services were rendered.

**City Response to Finding 23:** This audit finding relates to the City's long best practice of succession planning and recognition for service. The City intends to exercise diligence to assure that compensation to employees comports with state law.

**City Response to Recommendation:** The City will consider adoption of policies and procedures to ensure that compensation paid to employees is at all times appropriate and in compliance with the law.

**Finding 24:** The City hired a Special Advisor although that position was not included on the City Council-approved Schedule of Authorized Positions. In addition, City records did not evidence that payments to the Special Advisor were supported by records evidencing hours worked, and the City made salary overpayments and excess contributions to the Special Advisor's deferred

compensation plan account.

**City Response to Finding 24:** The City agrees that prior to Fiscal Year 2019/2020, the City did not consistently approve a complete Schedule of Authorized Positions, and thus the Special Advisor's position was not included. However, with the implementation of new procedures to improve budgeting transparency, the City Council now approves such a schedule in the course of considering the budget and any changes to the schedule that might occur during the year will be brought to the Council for approval.

Regardless of whether the Special Advisor's position was in a schedule, the City Council did approve the employment agreement to retain as a Special Advisor the former City Manager, who with 25 years of experience in serving the City was a valuable resource for the City as it transitioned to a new administration. In his role as Special Advisor, the former City Manager continued to devote his time and expertise to the City. His contributions included running the City's Citizen's Academy, which educates citizens on how their City operates and how they might become involved. He also served in accordance with the City Manager succession plan to provide consultation and support for the new City Manager in her interim and permanent appointments. The Special Advisor also provided much needed and valuable support for the City as it sought to answer the multitude of historic questions raised by the auditors in the course of this audit.

**City Response to Recommendation:** With the conclusion of the audit and the end of the current Fiscal Year on September 30, 2020, the Special Advisor position that is the subject of this finding will expire and therefore there will be no need to include, as recommended, the position description and pay in the Schedule of Authorized Positions for the new Fiscal Year beginning October 1, 2020. Any additional hours worked and pay will be fully documented in the short time remaining for this position. Additionally, the City concurs that the Special Advisor and former long-serving City Manager was overpaid \$873 due to a payroll error discovered by this audit; however, this amount has now been repaid.

**Finding 25:** Contrary to City policies requiring that individuals using personal vehicles for City travel be reimbursed at rates established by State law, the City provided automobile and toll allowances to certain employees and City records did not evidence how the allowances were determined.

**City Response to Finding 25:** In certain instances, it appears the City may not have consistently reimbursed or required sufficient documentation of travel expenses involving employee personal vehicles. However, the new City Personnel Manual adopted May 4, 2020, includes detailed provisions in section 13.10 on employee use of personal vehicles for City-related travel that provide for reimbursement in accordance with state law and for submission of expense documentation prior to reimbursement.

**City Response to Recommendation:** The City has established policies and procedures, in its newly adopted Personnel Manual, on employee use of personal vehicles for City-related travel and for reimbursement and documentation of expenses related thereto. The City will ensure compliance with these policies through administrative measures and will periodically review the Personnel Manual and consider any additional updates that might be beneficial.



## Motor Vehicles

**Finding 26:** The City could enhance controls over motor vehicle assignment and use.

**City Response to Finding 26:** The City is working towards enhanced policies and controls for asset management and fuel consumption tracking systems. The City has developed a vehicle user database, which will be tied into the fuel system. In addition, fuel pumps not previously tied into the fuel system are currently being upgraded and will be tied in. It is projected that this citywide system will be fully functional in FY2021. The Finance Department will consequently be better able to track fuel usage and better monitor vehicle maintenance needs.

The City has also taken steps for better oversight of vehicle assignment. Under newly adopted policies, when employees are assigned vehicles, they must sign a form acknowledging the City's policy related to City-owned vehicle use. The City has also instituted measures for monitoring vehicle use and for independent third party verification of employee driver's licenses.

**City Response to Recommendation:** The City will continue to implement enhanced controls over the use of City vehicles as noted above. The City will consider if additional measures are warranted.

**Finding 27:** City records did not demonstrate that the value of personal use of City vehicles was appropriately included in each applicable employee's gross income reported to the Internal Revenue Service.

**City Response to Finding 27:** City employees who are assigned City vehicles are allowed to use those vehicles for commuting and incidental personal use. The Finance Department in consultation with the City Attorney, drafted Resolution 13-2019 to document the City's policies related to employees' personal use of assigned City vehicles and to ensure compliance with IRS reporting regulations on the value of such use. In keeping with the policies, the City has improved record-keeping on City vehicle use. Employees with take-home vehicles now report personal vehicle usage monthly to the Finance Department so that the benefit can be accurately calculated and added to the employee's gross income.

**City Response to Recommendation:** The City will continue to implement its new policies on employees' personal use of City vehicles and will ensure that meet all applicable laws and regulations related to reporting and monitoring of such use are met.

**Finding 28:** City efforts to monitor fuel use at the fuel pumping station need enhancement.

**City Response to Recommendation 28:** The City has improved its fuel monitoring. A new fuel system has been installed behind City Hall to account for gasoline usage. For additional monitoring, a camera system was also installed. Additionally, the Public Services field operations station is slated for automation in the near future.

**City Response to Recommendation:** The City has implemented policies and procedures for better monitoring of fuel use through the steps described above and may consider additional steps to be taken in the future.

**Finding 29:** To reduce the risk of costly repairs and inconvenient downtime, the City needs to

establish a comprehensive vehicle preventative maintenance plan.

**City Response to Finding 29:** The City does not have a mechanic on staff due to the City's small size; however, the City agrees that it could make improvements with a comprehensive vehicle preventative maintenance plan.

**City Response to Recommendation:** The City will implement policies and procedures for uniform maintenance and repair of City motor vehicles.

## **Travel**

**Finding 30:** City personnel and City contractors did not always comply with City travel policies and City records did not always evidence that travel-related expenditures were adequately reviewed and supported by appropriate documentation and signed travel reports.

**City Response to Finding 30:** The City has always strived to follow applicable state travel policies and require documentation for travel expenses, but agrees that improvements and clarifications were needed. To that end, the new Personnel Manual, adopted May 4, 2020, includes in section 13.10 detailed provisions on travel reimbursement and required documentation, all in compliance with state law. Additionally, in November of 2019, the City adopted new Purchasing Policies and Procedures on the use of City p-cards, whether for travel or otherwise.

**City Response to Recommendation:** The City will continue to implement policies and procedures to enhance controls over travel by its employees and contractors, assuring that it is approved and that reimbursement of expenses are appropriate, sufficiently documented, and in accordance with law.

## **Procurement and Use of Public Funds**

**Finding 31:** To better ensure that the process for acquiring goods and services is effective and consistently administered, and procurements are made in an equitable and economic manner, the City Charter or purchasing policies need to be revised to provide clear and consistent terms, provisions, and requirements that comply with State law and to promote good business practices.

**City Response to Finding 31:** The City acknowledges that it was operating under outdated procurement policies that were in need of revising and for that reason has made significant progress in addressing this concern. On November 18, 2019, the City Council adopted Ordinance No. 17-2019 amending the City's Code of Ordinances to provide for the adoption of a Purchasing and Procedures manual and to ensure "the uniform, fair and equitable treatment of all persons involved in public purchasing" by the City. On November 18, 2019, the City Council also adopted its new Purchasing and Procedures Manual by Resolution 58-2019, which provides detailed guidance to City staff and others on the City's procurement process. For example, the new manual addresses procedures that, although not required, may be used for procurement of professional services "such as for brokers, realtors, accountants or attorneys" (section 5.1(c)). This provision is consistent with state law.

As for amendments to the City Charter, the Council proposed updates to the Charter's provisions on procurement in 2019, but the referendum on those updates did not pass. The City Council has formed a Charter Review Committee, but its work has been suspended due to COVID-19.

Once the work resumes, the Committee will consider whether to recommend that the Council again consider updates to the Charter on procurement.

**City Response to Recommendation:** The City will continue to implement its new procurement policies and procedures to ensure effective and consistently administered procurement processes to achieve equitable treatment of those involved in the process and processes that ensure compliance with the law and sound purchasing decisions. The City will also continue to review its procurement policies and consider additional updates as warranted.

**Finding 32:** City records did not always demonstrate the use of competitive selection procedures in accordance with City purchasing policies or good business practices and the City did not always retain records supporting procurements of goods and services.

**City Response to Finding 32:** The City agrees that improvements were required to ensure consistency in competitive procurement and selection processes, and as described in response to finding 31, the City has taken action to address the concern. As stated above, the City adopted its new Purchasing and Procedures Manual on November 18, 2019. The prior manual was outdated and last amended by City Council May 17, 2010. Additionally, as stated elsewhere in this audit, the City Council created the Administrative Services Department at the start of the 2019/2020 fiscal year including an Administrative Services Director, and other positions, to oversee the procurement process throughout the City, to ensure consistency and proper documentation.

**City Response to Recommendation:** The City will continue to implement its new procurement policies and procedures to ensure effective and consistently administered procurement processes to achieve equitable treatment of those involved in the process and processes that ensure compliance with the law and sound purchasing decisions. The City will also continue to review its procurement policies and consider additional updates as warranted.

**Finding 33:** For some acquired services, the City did not execute contracts to establish the duties, expectations, and other requirements of each party.

**City Response to Finding 33:** It appears that there have been instances in the past where services were obtained without clear contracts on the terms of the services to be provided. On July 20, 2018, the City engaged a new firm for legal services, which provides an attorney to serve as the City Attorney. Since that time, the new City Attorney has been reviewing and revising the standard template contracts for construction and other services.

**City Response to Recommendation:** The City will continue to review and update contracts and take steps to ensure that contracts are entered into in a timely manner with clear terms as to the duties, expectations, and requirements of the parties.

**Finding 34:** City procedures did not provide for identifying and documenting potential and actual conflicts of interests.

**City Response to Finding 34:** In any procurement, the City does take steps to avoid conflicts

of interest prohibited by law and by its policies and procedures. As noted in the audit, the new Purchasing and Procedures manual and new Code provisions on procurement highlight the need to avoid conflicts of interest (see, e.g., section 4.3) and to follow the Florida Code of Ethics. The City will, however, implement new administrative measures to document verification that no conflicts of interest exist in procuring goods and services for the City.

**City Response to Recommendation:** The City's newly adopted procurement policies stress the importance of ethics in procurement and avoiding conflicts of interest. As noted, the City will consider and implement additional administrative measures to document the absence of conflicts of interests in procurement.

**Finding 35:** City records did not demonstrate that the City financial statement auditors were selected in accordance with State law.

**City Response to Finding 35:** The auditor's discussion on this finding acknowledges that a Request for Proposals (RFP) process was used in the selection of the City's financial auditors. However, the City agrees that documentation on the City's consideration of responses to the RFP recognizes was not retained.

**City Response to Recommendation:** The City's new records retention software and procurement software will ensure full documentation and required record retention in future auditor selections. The City will take steps to ensure compliance with Florida law when the auditing services are next competitively selected, which will be for the FY2022 audit.

**Finding 36:** The City did not document a cost-benefit analysis that considered alternative options to achieve City objectives prior to entering into protracted and expensive litigation regarding beach access.

**City Response to Finding 36:** As the auditor's lengthy discussion indicates, this was a complex matter, involving litigation that the City did not initiate. Along the way, the City Council made determinations in its informed discretion on how to proceed, taking into account the advice of its legal counsel and what it believed to be the best interests of the City and its residents. Unfortunately, the uncertainty of litigation, particularly as it unfolds, does not always lend itself to a cost-benefit analysis. However, given the value and price of waterfront property in the City even years ago, the alternative proposed by the auditors of purchasing other waterfront property for beach access would likely have been unrealistic and much more expensive than the City's efforts to maintain the public waterfront access that the public had used for years. In the end, the City accepted the rulings of the court and brought the matter to a reasonable close.

**City Response to Recommendation:** The City will continue as best it can to consider options other than litigation to resolve disputes, taking into account the costs and interests involved.

**Finding 37:** City controls over purchasing cards and related charges need improvement.

**City Response to Finding 37:** The City agrees that controls over purchasing cards were lacking. However, the City has now adopted policies and procedures in its new Purchasing

Policies and Procedures manual to enhance these controls and address this concern. For example, the City has implemented deadlines for submitting a p-card receipts and has assigned staff to track and monitor documentation related to p-card use.

**City Response to Recommendation: The City will continue to refine its controls over the use of purchasing cards and related charges.**

### **Tourist Development Tax Funds**

**Finding 38:** The City needs to seek clarification from Santa Rosa County (County) on the restrictive uses of Tourist Development Tax (TDT) proceeds and ensure that quarterly TDT reports are filed with the County Clerk, even during the absence of the individuals primarily responsible for filing the reports.

**City Response to Finding 38:** The finding relates to one event that occurred after the former Finance Director unexpectedly and abruptly left the City leaving only one other full time employee to take on duties such as the filing of the TDT reports. The City is clear on its TDT spending and reporting requirements and there have been no late filings since the hiring of a new Finance Director and additional staff within the Finance Department.

Additionally, the City last updated an interlocal with the County and verified all expenditures in 2015. The City will repeat this exercise as a best business practice.

**City Response to Recommendation: The City will continue to comply with requirements on the use of TDT monies and the reporting requirements.**

**Finding 39:** The City did not always competitively select goods and services purchased with TDT moneys in accordance with the City Charter and City purchasing policies.

**City Response to Finding 39:** This finding relates to only two instances – procurement related to a sand volleyball court and a fireworks display. Regarding the latter, the City approved a sole source contract for fireworks at the recommendation of the fire chief; yet, the city lacked a purchasing manual at the time which allowed for approval in the event of a sole source provider. In regards to the construction of a sand volleyball court, the City waived the competitive bid requirements for three purchases ranging from \$1,680 to \$3,505 made in 2016 for supplies. Procedures to ensure and document compliance with sole source purchasing requirements, which may lawfully be used when appropriate, have now been addressed with the adoption of the new Purchasing and Procedures Manual.

**City Response to Recommendation: The City will follow the procedures for sole source purchasing as set forth in its new Purchasing Policies and Procedures manual and will review and update those policies as warranted.**

### **Capital Assets**

**Finding 40:** City policies and procedures did not require and ensure that an annual physical inventory of tangible personal property (TPP) was conducted and reconciled to City TPP records or that property schedules used for insurance purposes were accurate and complete.

**City Response to Finding 40:** To address the concern, in 2019, the City created an Administrative Services Department for the purposed of centralizing responsibilities such as the

TPP, and will make improvements to better account for inventory.

**City Response to Recommendation:** The City will consider adoption of policies and procedures, and will continue to implement administrative improvements, to properly account for and safeguard TPP.

## **Administration and Management**

**Finding 41:** The City had not established an internal audit function or otherwise provided for internal audit activities to assist management in maintaining a comprehensive framework of internal controls.

**City Response to Finding 41:** The City agrees that it needs to take steps to establish better internal controls, but the City has made changes that will make improvements through the establishment of the Administrative Services Department and enhanced controls in the Finance Department. Additionally, in August 2020, the City hired an Assistant City Manager with a background as the Santa Rosa County budget manager. The roles and responsibilities of the position include oversight of the annual budget process. Internal controls and audit functions will also be assigned to this position.

**City Response to Recommendation:** The City will continue to take steps to establish an internal audit function and other actions to establish better and more comprehensive internal controls.

**Finding 42:** The City needs to periodically evaluate the sufficiency of, and amend as appropriate, its parliamentary procedures for conducting City Council business.

**City Response to Finding 42:** At a workshop held in January of 2019, the City Council reviewed a Mayor and Council Roles and Responsibilities Handbook which includes parliamentary procedures. The manual was subsequently adopted on October 7, 2019 by Resolution 49-2019. The City agrees that the Mayor and Council should periodically review the handbook on conducting City Council business and amend it as appropriate.

**City Response to Recommendation:** At least every two years, concurrent with the staggered City Council office terms, the City intends to review the Mayor and Council Roles and Responsibilities Handbook, including the parliamentary procedures therein, and amend it as warranted.

**Finding 43:** Contrary to State law, the City's 2016-17 and 2017-18 fiscal year budgets did not include balances brought forward from prior fiscal years.

**City Response to Finding 43:** The City has addressed this by increasing the Finance Department staff to a total of six full time employees over the last two years. Prior to that time, there were only two full time positions and two temporary positions, and the City's ability to comply with budget requirements was unfortunately impacted by the sudden and unexpected departure of the former Finance Director in the summer of 2017. This finding, which was noted in the City's annual financial audits, has not reoccurred. The City's recent audits have been clean, with no findings.

**City Response to Recommendation:** The City will continue to take the steps through its enhanced Finance Department to achieve clean financial audits that include all required information and result in no findings.

**Finding 44:** For the 2016-17 and 2017-18 fiscal year adopted budgets, the City did not specify the legal level of budgetary control, and record and report the budget in a consistent manner, to more easily enable City personnel and financial statement users to readily determine whether resources were expended within budgeted amounts. In addition, contrary to State law, General Fund and certain proprietary fund expenditures exceeded budgeted amounts for the 2016-17 fiscal year.

**City Response to Finding 44:** The finding arises from the same extraordinary circumstances as described by the City, and documented within this audit, regarding the former Finance Director and staffing. The legal level of budgetary control is now documented, and there are no issues related to carry-forward funds and year-end close out. The City has most recently had a clean independent financial audit, with no findings.

**City Response to Recommendation:** The City will continue to take the steps through its enhanced Finance Department to achieve clean financial audits that include all required information and result in no findings.

**Finding 45:** The City did not always maintain records in accordance with applicable public records retention requirements.

**City Response to Finding 45:** There may have been past instances where records retention requirements were not met; however, the City will work to ensure proper records retention going forward.

The City Clerk's Office has implemented a new city retention software system named Icompass. Additionally, the City has created an Administrative Services Department to oversee procurement. The issues noted in this audit relate to the City not retaining date and time-stamped bid envelopes for ten years and bid tabulation documentation for five years. Creating a new Administrative Services Department with an Administrative Services Director and a Procurement and Logistics Officer position to be filled in the future will ensure records are provided to the City Clerk's Office and maintained in accordance with the applicable public records retention requirements.

**City Response to Recommendation:** The City will continue its efforts to ensure proper records retention and consider the adoption of policies to ensure the coordination between the new Administrative Services Department and City Clerk's Office, consistent with applicable public records retention requirements.

**2 Audit Request: Palm  
Beach County Clerk &  
Comptroller's Office**





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Health Policy  
Military and Veterans Affairs, Space,  
and Domestic Security

## JOINT COMMITTEE:

Joint Legislative Auditing Committee

## SENATOR JANET CRUZ

18th District

February 3, 2021

The Honorable Dennis Baxley  
Chair, Joint Legislative Auditing Committee  
876 Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1400

Dear Chair Baxley,

I am requesting that the Joint Legislative Auditing Committee direct the Auditor General to perform an operational audit of the Palm Beach County Clerk and Comptroller's Office. Questionable activities have been reported in the media regarding actions taken by the former Clerk, Sharon Bock. Ms. Bock, who did not run for reelection, left at the end of her fourth term on January 4, 2021.

Of particular concern are severance payments made to 14 outgoing staff members in 2020, including the equivalent of six extra weeks of severance pay each to three top executives. Reportedly, the separation agreement included the statement that the recipient agreed not to "disparage or encourage or induce others to disparage the Clerk or engage in any conduct that is in any way injurious to the Clerk's reputation and interest." I believe a review of these and other expenditures and the operations of the Clerk's Office are warranted to ensure proper accountability for taxpayer funds and compliance with laws, procedures, and other guidance. The scope of the audit, at a minimum, should include the following areas:

- Compliance with Florida law and the Office's payroll and personnel policies relating to severance pay and testing of documentation for such expenditures as deemed appropriate;
- Compliance with Florida law and the Office's payroll and personnel policies relating to termination leave payments, if any, and testing of documentation for such expenditures as deemed appropriate;
- Review of the Office's internal controls over payroll and personnel, and testing as deemed appropriate;
- Review of the Office's budgetary controls, including compliance with applicable state laws, and testing as deemed appropriate; and
- An evaluation of Office procurement controls and Office ethics and fraud policies.

## REPLY TO:

- ☐ 210A S. MacDill Avenue, Tampa, Florida 33609 (813) 348-1017 FAX: (888) 263-3681
- ☐ 216 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

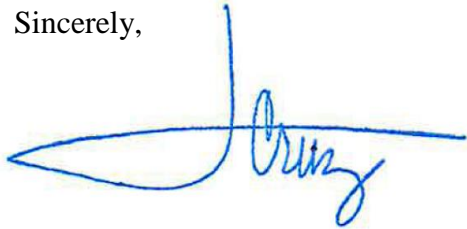
February 3, 2021

Page 2

The new Clerk, former Senator Joseph Abruzzo, began his service upon Ms. Bock's departure. To provide him with timely information to consider for any possible action he may find necessary to take as a result of any potential audit findings, I kindly request that this audit be scheduled as early as possible.

Thank you for your consideration of this audit request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet Cruz". The signature is stylized with a large, sweeping initial "J" and a cursive "Cruz".

Senator Janet Cruz – District 18

## STAFF ANALYSIS

**Date:** February 12, 2021

**Subject:** Request for an Operational Audit of the Palm Beach County Clerk and Comptroller's Office

Analyst                      Coordinator

White <sup>DW</sup>                      DuBose <sup>KD</sup>

### I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Janet Cruz to have the Committee direct the Auditor General to conduct an operational audit of the Palm Beach County Clerk and Comptroller's Office.

### II. Present Situation:

#### Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), *Florida Statutes*, provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

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### **Request for an Operational Audit of the Palm Beach County Clerk and Comptroller's Office**

Senator Cruz has requested the Committee to direct an operational audit of the Palm Beach County Clerk and Comptroller's Office (Office), with the scope of the audit to include, at a minimum, the following areas:

- Compliance with Florida law and the Office's payroll and personnel policies relating to severance pay and testing of documentation for such expenditures as deemed appropriate;
- Compliance with Florida law and the Office's payroll and personnel policies relating to termination leave payments, if any, and testing of documentation for such expenditures as deemed appropriate;
- Review of the Office's internal controls over payroll and personnel, and testing as deemed appropriate;
- Review of the Office's budgetary controls, including compliance with applicable state laws, and testing as deemed appropriate; and
- An evaluation of Office procurement controls and Office ethics and fraud policies.

### **Background**

The Clerk of the Circuit Court and Comptroller of Palm Beach County (Clerk) is a separately elected county officer pursuant to the Constitution of the State of Florida, as revised in 1968 and subsequently amended. Section 1(d) of Article VIII of the Constitution states, in part, that "[u]nless otherwise provided by special law approved by vote of the electors or pursuant to Article V, section 16, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds."

The current Clerk took office on January 5, 2021. The former Clerk did not seek reelection and left office at the end of her fourth term; she served for 16 years.

The Office's website states that the Clerk of the Circuit Court & Comptroller: (1) is the official "watchdog" of all county funds, providing the necessary checks and balances on the county's budget, revenue and spending; (2) maintains and ensures the integrity of the Official Record Books of Palm Beach County dating back to 1909; (3) supports the county's criminal, civil and juvenile courts by processing, recording and filing documents such as lawsuits, traffic tickets, divorce agreements, wills, domestic violence petitions and tenant evictions; (4) is responsible for safeguarding and protecting the integrity of all court records; (5) provides services to the Board of County Commissioners such as preparing and maintaining the records of Palm Beach County Commission meetings and other government meetings and making them available to the public; and (6) administers the Value Adjustment Board process.<sup>1</sup>

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<sup>1</sup> <https://www.mypalmbeachclerk.com/resources/about-the-office/duties-responsibilities> (last visited February 11, 2021).

The Office is divided into several divisions,<sup>2</sup> with 700 employees performing more than 1,000 different functions from various locations throughout Palm Beach County,<sup>3</sup> and its mission is to “protect, preserve and maintain the public records and public funds with integrity and accountability.”<sup>4</sup>

Palm Beach County has an estimated population of 1,466,494.<sup>5</sup>

### **Concerns and Other Information**

#### **Concerns**

The request letter states that questionable activities have been reported in the media regarding actions taken by the former Clerk. Specific concerns include:<sup>6</sup>

- Severance payments made to 14 outgoing staff members in 2020, including the equivalent of six extra weeks of severance pay each to three top executives.
- The separation agreement reportedly included the statement that the recipient agreed not to “disparage or encourage or induce others to disparage the Clerk or engage in any conduct that is in any way injurious to the Clerk’s reputation and interest.”

Regarding the severance payments, the media reported the following:<sup>7</sup>

- The former Clerk gave “five-figure payments to three top executives [in 2020] for resigning and promising never to sue or talk negatively about her or her office. The unusual payouts to the senior officials were among 14 separation agreements [the former Clerk] arranged [in 2020] for departing employees.”
- “[The former Clerk]’s administration insisted on the non-disparagement provisions despite a state law<sup>8</sup> barring government agencies from using severance pay to restrict employees’ ability to discuss the disputes that prompted their departures.”
- “The largest payouts were to three of [the former Clerk]’s most senior employees: Chief Operating Officer...received about \$17,400 in June; Chief Operating Officer of Finance...[received] \$16,000 in November; and General Counsel...received \$15,750 in May. In each case the payments were equivalent to an extra six weeks of pay.”
- “[The former Clerk] defended the payments as legal under a provision that permits severance pay to resolve an ‘employment dispute’ [and stated that] ‘we were advised that under the statute, giving

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<sup>2</sup> Communications Management, Courts & Official Records, Division of Inspector General, Finance, Human Resources, and Information Technology, per the Office’s website.

<sup>3</sup> <https://www.mypalmbeachclerk.com/resources/about-the-office/organization> (last visited February 11, 2021).

<sup>4</sup> <https://www.mypalmbeachclerk.com/resources/about-the-office/ethics-policy> (last visited February 11, 2021).

<sup>5</sup> University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population by County and City 2020 (Table 1 only)*, page 18, available at <http://edr.state.fl.us/Content/population-demographics/data/Estimates2020.pdf> (last visited February 11, 2021).

<sup>6</sup> Letter from Senator Cruz to Committee Chairman Dennis Baxley (February 3, 2021) (on file in Committee Office).

<sup>7</sup> Andrew Marra, *Clerk’s office execs got cash after vowing never to ‘disparage the Clerk,’* Palm Beach Post, December 11, 2020/updated December 14, 2020.

<sup>8</sup> Section 215.425(5), *Florida Statutes*, states “Any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.”

a separation agreement when there was a dispute was one way that we could, at minimum, save the taxpayers from obscene and egregious lawsuits.’ ”

- “In an interview, [the former Clerk] said the payments to the three senior executives were made in an effort to remove them from their positions without the risk of litigation” and ‘[w]e’ve paid out in separation agreements \$241,000...Compare that to over \$1 million (to defend a complex lawsuit) and the disruption and what it is like on everyone when a lawsuit is filed.’ ”
- “While declining to elaborate, [the former Clerk] said [the Chief Operating Officer of Finance and the General Counsel] were removed because of performance issues...But [the Chief Operating Officer of Finance] disputed [the former Clerk]’s characterization of her departure [stating] ‘I was told that [the former Clerk] was offering me an exit package to leave the office...and the reason provided to me was that it was a political decision, because the new clerk plans on bringing [the Chief Operating Officer] back and there would not be a place for me.’ ”
- “[A] private attorney who represents the clerk’s office, argued that the non-disparagement provisions complied with state law. Former employees who signed the settlements still can discuss the disputes that led to their resignations...so long as they do not speak negatively about their former supervisors. She argued prohibiting employees from criticizing their former colleagues would not meaningfully limit their ability to speak freely about workplace disputes. ‘It simply prohibits disparagement,’ she said.”
- “But...a veteran employment attorney said the restrictions were unlikely to be legally enforceable given the state’s prohibition on gagging employees receiving severance payments. Still, whether they pass legal muster may be beside the point, he said. Since the aim of such provisions often is to ‘buy your silence,’ he explained, they are often included to intimidate employees unaware of their rights under the law. ‘Most of them are going to be deterred from saying anything about this by the language of these agreements, despite the fact that there’s a statute that most employees are not going to be aware of.’ ”

### Other Information

In January 2021, the media reported that, after taking the oath of office, the new Clerk stated that ‘he was ripping up dozens of non-disparagement agreements signed by former employees and called for a state review of his predecessor’s use of public money to persuade departing employees to sign them.’”<sup>9</sup>

### Financial Audit

The Office has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). As required by Section 218.39(2), *Florida Statutes*,<sup>10</sup> each year the Office’s audit report is included as part of the audit report for Palm Beach County and has been submitted to the

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<sup>9</sup> Andrew Marra, ‘Employees...will not be muzzled’: New clerk lifts ban on ex-workers criticizing bosses, Palm Beach Post, January 5, 2021.

<sup>10</sup> Section 218.39(2), *Florida Statutes*, states “The county audit report must be a single document that includes a financial audit of the county as a whole and, for each county agency other than a board of county commissioners, an audit of its financial accounts and records, including reports on compliance and internal control, management letters, and financial statements as required by rules adopted by the Auditor General. In addition, if a board of county commissioners elects to have a separate audit of its financial accounts and records in the manner required by rules adopted by the Auditor General for other county agencies, the separate audit must be included in the county audit report.”

Auditor General's Office in accordance with Section 218.39(1), *Florida Statutes*.<sup>11</sup> The most recent financial audit report submitted to the Auditor General is for the 2018-19 fiscal year and did not include any audit findings for the Office. In addition, the audit report stated that there were no audit findings or recommendations in the prior year that required corrective action by the Office.

*Summary of Certain Financial Information Included in the Office's Audit Report:*

- For the 2018-19 fiscal year, the Office's governmental funds reported combined total revenues and other financing sources of \$43,707,364 and \$14,432,479, respectively, and reported combined total expenditures of \$58,490,433.<sup>12</sup>
- As of September 30, 2019, the Office's governmental funds reported a combined ending fund balance of \$10,441,762, a decrease of \$350,590 from the previous year.<sup>13</sup>
- As of September 30, 2019, the Office's Internal Service Fund<sup>14</sup> reported an ending net position of \$3,424,675, an increase of \$127,428 from the previous year.<sup>15</sup>
- At fiscal year-end, the Office's Agency Fund<sup>16</sup> reported \$43,826,295 in total assets and total liabilities (due to other governments and individuals).<sup>17</sup>

### **Other Considerations**

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of the Office's operations, such as the annual financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the Office's progress in addressing the findings and recommendations contained within the previous audit report.

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<sup>11</sup> Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General adopted pursuant to Section 11.45, *Florida Statutes*. The Auditor General has issued *Rules of the Auditor General, Chapter 10.550 - Local Governmental Entity Audits* and has adopted the auditing standards set forth in the publication entitled *Government Auditing Standards* (2011 Revision) as standards for auditing local governmental entities pursuant to Florida law.

<sup>12</sup> Clerk & Comptroller, *Palm Beach County, Florida Statement of Revenues, Expenditures and Changes in Fund Balances - Governmental Funds; Annual Financial Audit Report of Palm Beach County, Florida for the Fiscal Year Ended September 30, 2019*, page VIII-4.

<sup>13</sup> *Id.*

<sup>14</sup> The Self-Insurance Fund, an internal service fund, is used to account for the assessed premiums, claims, and administration of the Clerk's employee group health insurance program. (Source: Note 1.B. to the Financial Statements for the Clerk & Comptroller; *Annual Financial Report of Palm Beach County, Florida for the Year Ended September 30, 2019*, page VIII-10.)

<sup>15</sup> Clerk & Comptroller, *Palm Beach County, Florida Statement of Revenues, Expenses and Changes in Net Position - Internal Service Fund; Annual Financial Audit Report of Palm Beach County, Florida for the Fiscal Year Ended September 30, 2019*, page VIII-6.

<sup>16</sup> The Agency Fund is used to account for cash held by the Clerk as an agent for individuals, organizations, or other governments received for fines, forfeitures, filing fees, documentary stamps, and intangible tax. (Source: Note 1.B. to the Financial Statements for the Clerk & Comptroller; *Annual Financial Report of Palm Beach County, Florida for the Year Ended September 30, 2019*, page VIII-10.)

<sup>17</sup> Clerk & Comptroller, *Palm Beach County, Florida Statement of Fiduciary Net Position - Agency Fund; Annual Financial Audit Report of Palm Beach County, Florida for the Fiscal Year Ended September 30, 2019*, page VIII-8.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to the Clerk and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the Clerk and his management team, as well as the citizens of Palm Beach County. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the Clerk may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the Clerk to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the Clerk's Office until the Clerk's Office complies with the law.

### **III. Effect of Proposed Request and Committee Staff Recommendation**

If the Committee directs the Auditor General to perform an operational audit of the Palm Beach County Clerk and Comptroller's Office as addressed herein, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Senator Cruz as included in her request letter are considered.

Senator Cruz kindly requests that the audit be scheduled as early as possible, in order to provide the newly elected Clerk with timely information to consider for any possible action he may find necessary to take as a result of any potential audit findings.<sup>18</sup>

### **IV. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

### **V. Related Issues:**

None.

This staff analysis does not reflect the intent or official position of the requestor.

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<sup>18</sup> See *supra* note 6.