



Sherrill F. Norman, CPA
Auditor General

AUDITOR GENERAL STATE OF FLORIDA

Claude Denson Pepper Building, Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450



Phone: (850) 412-2722
Fax: (850) 488-6975

October 23, 2019

Honorable William Capote, Mayor
City of Palm Bay
120 Malabar Road
Palm Bay, Florida 32907

Dear Mayor Capote:

Enclosed is a list of 31 preliminary and tentative audit findings and recommendations that may be included in a report to be prepared on our operational audit of the City of Palm Bay.

Pursuant to Section 11.45(4)(d), Florida Statutes, you are required to submit within thirty (30) days after receipt of this list a written statement of explanation concerning all of the findings, including therein your actual or proposed corrective actions. If within the 30-day period you have questions or desire further discussion on any of the preliminary and tentative audit findings and recommendations, please contact this Office.

Your written explanation should be submitted electronically in source format (e.g., Word or WordPerfect) and should be accompanied by a cover letter with your digitized signature. For quality reproduction purposes, if you are not submitting your response in source format, please convert your response to PDF and not scan to PDF. If technical issues make an electronic response not possible, a hard copy (paper) response will be acceptable.

Please e-mail this Office at flaudgen_audrpt_lg@aud.state.fl.us to indicate receipt of the list of preliminary and tentative audit findings and recommendations. Absent such receipt, delivery of the enclosed list is presumed, by law, to be made when it is delivered to your office.

Sincerely,

A handwritten signature in blue ink that reads "Sherrill F. Norman".

Sherrill F. Norman

SFN/bk

Enclosure

c: City Council
Lisa Morrell, City Manager

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

SUMMARY

This operational audit of the City of Palm Bay focused on selected processes and administrative activities. Our audit disclosed the following:

Construction Administration

Finding 1: The City did not document efforts to secure contributions from other governmental entities and from developers for highway interchange and connector road projects. In addition, City personnel did not provide complete and accurate information to the City Council regarding anticipated funding needs for the projects.

Finding 2: City controls over the competitive selection of design criteria and design-build professional services need enhancement to ensure compliance with State law and the City *Procurement Manual*, and to improve transparency.

Finding 3: City personnel did not verify that the design-build firm for the St. Johns Heritage Parkway Interchange to Babcock Street Project used a competitive selection process to select subcontractors; document comparisons of the subcontractor bid awards, contract amounts, and invoices with related design-build firm payment requests; or verify that subcontractors were appropriately licensed before they commenced work on the project.

Procurement

Finding 4: The City Council's purchasing threshold of \$100,000 appeared excessive when compared to the purchasing thresholds at comparably sized municipalities, and the change in the purchasing threshold from \$25,000 to \$100,000 was not openly discussed at City Council workshops or other public meetings.

Finding 5: The City needs to enhance policies and procedures to ensure that records are maintained to justify procurement decisions that deviate from evaluation committee recommendations and that continuing professional services contracts are periodically subjected to competitive procurement.

Finding 6: The City needs to periodically negotiate group health insurance administration services with multiple potential administrators to ensure that such services are obtained at the lowest cost consistent with desired quality. In addition, the City needs to ensure that all significant decisions impacting City operations, such as decisions to exclude insurance-related services from competitive procurement, are openly discussed at City Council workshops or public meetings, and the factors considered by decision makers documented.

Finding 7: Contrary to Government Finance Officers Association best practices, the City had not competitively selected the City financial advisor and bond counsel since April 2010 and September 2012, respectively.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Finding 8: Controls over City-assigned purchasing cards (P-cards) need improvement to ensure that P-card assignments are properly approved, credit limits are periodically evaluated and appropriately adjusted, and P-cards and related accounts are promptly canceled upon a cardholder's separation from City employment.

Finding 9: The City needs to enhance controls over the acquisition, assignment, and use of wireless communication devices.

Payroll and Personnel Administration

Finding 10: The City paid extra compensation of \$18,000 to the Deputy City Attorney contrary to State law.

Finding 11: The City had not established policies and procedures to ensure that severance pay amounts do not exceed the limits specified in State law and are supported by documentation evidencing the public purpose for such pay. In addition, the City needs to take appropriate action to amend the City Attorney Emeritus employment agreement severance pay provisions to comply with State law. The City also needs to document the legal authority and public purpose for the severance payment to the Deputy City Manager or pursue recovery of the payment.

Finding 12: Supervisory approval of City employee time worked was not always appropriately documented.

Finding 13: The City did not always timely conduct employee performance evaluations required by City administrative codes.

Finding 14: City policies and procedures need enhancement to ensure that all pay increases are appropriately supported.

Finding 15: Transfers from the City Stormwater Utility Fund to reimburse salary costs in other funds were not based upon documented employee time and effort expended on stormwater management activities for the applicable period.

Accountability for Resources

Finding 16: The City had not established controls to provide adequate accountability for special events and did not document the public purpose for such events.

Finding 17: The City had not established appropriate policies and procedures for making donations to external organizations and confirming the organizations' use of such donations for a public purpose.

Capital Assets

Finding 18: City surplus land disposal procedures need enhancement to evidence compliance with City administrative codes and demonstrate City Council approval of any offers below the land parcel listing price.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Finding 19: The City needs to amend the City ordinances to assign responsibility for overall oversight of tangible personal property (TPP) records to a City employee and update the City *Accounting Manual* to ensure that appropriate accountability for TPP is achieved consistent with City ordinances and Florida Department of Financial Services rules.

Motor Vehicles

Finding 20: The City provided a motor vehicle for the Mayor's use without documenting the specific authority for providing the Mayor a take-home vehicle, reducing the Mayor's monthly incidental expense allowance amount by an amount proportional to the mileage-related expenses, or requiring the Mayor to document the official purpose for all trips made in the City-owned vehicle. In addition, the City needs to enhance budgetary controls to ensure that authorizations for new vehicle acquisitions are accomplished through the annual budget process in accordance with City procedures.

Finding 21: The City provided automobile allowances to employees without determining the cost-effectiveness of providing such allowances or the reasonableness of the allowance amounts.

Finding 22: Take-home vehicle assignments were not always supported by a properly completed *Take Home Vehicle Program Agreement* signed by the employee, applicable department head, and the City Manager or designee as required by City administrative codes.

Finding 23: The City did not always include the value of personal use of City vehicles in the gross income reported to the Internal Revenue Service for applicable City officials and employees.

Public Records

Finding 24: The City had not established procedures that required the retention of electronic communications, such as e-mails and text messages. In addition, the City did not always comply with State records retention requirements and did not archive text messages sent or received using wireless communication devices.

Finding 25: Contrary to State law, City Council meeting minutes were not always promptly prepared, reviewed, approved, and made available to the public.

Administration and Management

Finding 26: The City needs to establish policies and procedures for communicating, investigating, and reporting known or suspected fraud.

Finding 27: City controls over the budgetary process need enhancement to ensure that expenditures are limited to approved budgeted amounts.

Finding 28: The City did not always prepare and submit to the City Council sufficiently detailed monthly reports of receipts and disbursements as required by City ordinances.

Finding 29: The Mayor and another City Council member interacted with City employees without following City Charter provisions and giving reasonable notice to the City Manager.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Information Technology

Finding 30: To ensure that user information technology (IT) user access privileges are limited to those necessary for the users' assigned job responsibilities and enforce an appropriate separation of duties, the City needs to implement an effective process for documented, periodic evaluations of user access privileges and promptly remove any inappropriate or unnecessary access privileges detected.

Finding 31: The City had not established an IT disaster recovery plan detailing the procedures to be followed to recover and restore financial records and other critical City applications in the event of a major hardware or software failure.

BACKGROUND

In 1960, the City of Palm Bay (City) was incorporated as a municipality. The City is located in Brevard County and has a population of 115,322, making it the most populous city in Brevard County.¹ The City is governed by the City Council composed of four elected Council members and an elected Mayor. The City Council is responsible for enacting ordinances, resolutions, and policies governing the City, as well as appointing the City Manager. The City Manager serves as the Chief Executive Officer and is responsible for the administration and implementation of policies adopted by the Council.

The City provides citizens with a full range of services, including police and fire, public works, planning and zoning, permitting, parks and recreation, water and sewer, and general administrative services.

FINDINGS AND RECOMMENDATIONS

CONSTRUCTION ADMINISTRATION

During the period October 2016 through February 2018, the City expended \$10.6 million for 73 construction projects, including 41 construction projects each with expenditures totaling more than \$50,000 and collective expenditures totaling \$10.1 million.

As part of our audit, we requested for examination City records for the 3 construction projects with the highest expenditures during the period October 2016 through February 2018. In addition, we examined records for the St. Johns Heritage Parkway Interchange to Babcock Street Project for which there were allegations of certain contractual improprieties. Contract and contractor payment amounts for these projects were as follows:

- *St. Johns Heritage Parkway Interchange to Babcock Street project.* The original contract amount was \$9.3 million, and the final amended contract amount was \$9.6 million. As of November 2018, the project was still in progress and payments to the contractor totaled \$2 million.

¹ Florida Population Estimates for Counties and Municipalities, April 2019; Florida Office of Economic and Demographic Research.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- *North Regional Lime Softening WTP Treatment Unit #2 Rehabilitation project.* The original contract amount was \$1.2 million, and the final amended contract amount was \$1.2 million. The project was completed and payments to the contractor totaled \$1.2 million.
- *North Regional Deep Injection Well Pump Replacement Installation project.* The amounts of the original contracts totaled \$696,960 (\$227,460 for purchase of three new vertical turbine pumps and \$469,500 for installation of the pumps), and the amounts of the final amended contracts totaled \$719,852 (\$233,877 for the turbine pumps purchase and \$485,975 for the pumps' installation). The project was completed and payments to the contractors totaled \$717,652.
- *Road Reconstruction of Three Locations (Malabar at Jupiter Intersection, San Filippo at Waco Intersection, and Community College Parkway) project.* The original contract amount was \$711,145 and the final amended contract amount was \$732,306. The project was completed and payments to the contractor totaled \$732,056.

We examined records supporting the City's administration of these projects (including records of the contractor selection and monitoring of subcontractor selection and licensing) and contractor payments totaling \$4.7 million. Our examination disclosed that City records demonstrated the proper administration of these projects except as discussed in Findings 1 through 3.

Finding 1: Highway Interchange and Connector Road Funding

Each local government in Florida must prepare and adopt a comprehensive plan that guides future development and growth in accordance with State law.² The City's Comprehensive Plan (Plan) establishes general policies and objectives for development in the City. State law requires³ the City to enact land development regulations that are consistent with and implement the Plan. Such regulations must provide that, for a proposed development, public facilities and services meet or exceed the standards established in the capital improvements element of the Plan and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development.⁴

City ordinances⁵ establish land development regulations and the specific requirements for development necessary to implement the Plan. The Plan and City ordinances contain transportation provisions that address future land uses, levels of service, availability of facilities and services, correction of existing road deficiencies, and methods for meeting identified transportation needs. To mitigate the transportation-related costs incurred by the City as the result of a development project, homebuilders or developers are responsible for paying transportation impact fees⁶ or proportionate share contributions

² Chapter 163, Part II, Florida Statutes.

³ Sections 163.3194(1)(b) and 163.3202(1), Florida Statutes.

⁴ Section 163.3202(2)(g), Florida Statutes.

⁵ Chapters 169, 171, and 183, City of Palm Bay Code of Ordinances.

⁶ Section 171.29(A)(1), City of Palm Bay Code of Ordinances, provides that any person who commences any land development activity generating traffic that creates an increased demand on the major road network system shall be obligated to pay a transportation impact fee upon the commencement of such land development activity.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

(PSC),⁷ the amounts of which are calculated considering the impacts and related costs of the proposed development on City roadways. According to City personnel, a transportation impact fee is assessed for each new development and is paid (by the homebuilder) prior to issuance of the building permit, while developers pay a PSC if the developer's proposed subdivision would cause the level of service (LOS) for the road segment adjacent or in close proximity to the subdivision to fall below the adopted LOS standard.

Several years ago, the City expressed interest in the construction of a new Interstate 95 (I-95) interchange as it was believed that the new interchange would, among other things, provide opportunities for economic growth and enhance emergency response times. Additionally, City records indicated the new interchange was needed to remedy transportation capacity deficiencies caused by increased traffic congestion resulting from new development. Accordingly, the City contacted the Florida Department of Transportation (FDOT) about the possibility of the FDOT constructing a new interchange.

At its April 18, 2013, meeting, the City Council adopted a resolution⁸ authorizing the Mayor to execute a Memorandum of Agreement (MOA) with the FDOT and, in May 2013, the Mayor executed the MOA with the FDOT. The MOA provided that the FDOT would construct a new interchange on I-95 (Interchange) in Brevard County referred to as the Palm Bay Parkway Southern Interchange (Interchange Project) and the City would contribute to that construction by:

- Acquiring the right of way (ROW) necessary for the Interchange Project, including real estate property necessary for flood plain compensation, wildlife mitigation, water retention areas, and all other needs for the Interchange Project. The MOA provided that if the City failed to convey to the FDOT all of the real estate property interests necessary for the Interchange Project, the FDOT could unilaterally terminate the agreement.
- Ensuring that local roadways on each side of the Interchange are complete. This included a roadway, referred to as the St. Johns Heritage Parkway Interchange to Babcock Street project (SJHP Project) connecting Babcock Street to the Interchange.
- Acquiring all real estate property necessary to undertake and complete the local road projects. The MOA provided that if the City failed to acquire all of the real estate property interests necessary to undertake and complete the local road projects, Federal funding for the Interchange Project could be withheld.

To facilitate and obtain necessary ROW for the projects as provided by the MOA, the City, in January 2016, entered into two transportation impact fee (TIF) credit agreements with certain developers. The TIF credit agreements provided that the City would grant the developers TIF credits for specified developer contributions to the City that would benefit the building of the Interchange Project, including necessary connector roads (e.g., the SJHP Project). The TIF credit agreements provided the developers

⁷ Section 183.34, City of Palm Bay Code of Ordinances, provides that a developer may choose to satisfy transportation concurrency requirements by making a proportionate share contribution in certain specified circumstances where the developer is partially responsible for the failure of a road segment adjacent or in close proximity to the developer's proposed subdivision to meet the level of service (LOS), in which case the developer is not required to pay the full cost of road improvements necessary to maintain the adopted LOS standard.

⁸ City of Palm Bay Resolution No. 2013-17.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

could use or assign the credits in the future for the payment of TIFs assessed on new developments (i.e., "Land Development Activity Generating Traffic," as defined by City ordinances)⁹ within certain specified areas. Our examination of those two agreements disclosed that:

- The TIF credit agreement dated January 15, 2016, provided the City would grant a developer TIF credits totaling \$1.34 million for developer contributions consisting of ROW property donation (\$988,850); provision or payment of services for surveying, engineering, design, and permitting (\$100,548); funds for development agreement review costs (\$50,000); and an off-site stormwater retention easement (\$197,765).
- The other TIF credit agreement dated January 28, 2016, provided the City would grant a developer TIF credits totaling \$1.74 million for developer contributions consisting of ROW property donation (\$1.2 million); provision or payment of services for engineering, design, and permitting (\$291,051); and a donation to the City to offset the City's environmental mitigation costs (\$250,000).

In summary, the TIF credit agreements provide to the applicable developers TIF credits totaling \$3.1 million in exchange for their contributions to the Interchange and SJHP projects, including \$2.4 million for donated ROW and stormwater retention easement property¹⁰ and \$0.7 million for services or related costs incurred by the City or the developers for the benefit of the projects.

Other significant project financing for the City's share of the projects' costs occurred in February 2018, when the City issued Local Option Gas Tax Revenue Note Series 2018 for \$9 million for completion of the SJHP Project. Also, previously, in May 2015, the City issued Franchise Fee Revenue Notes Series 2015 for \$4.7 million to finance certain costs incurred in connection with the Interchange Project and a related connector road.

In March 2018, the City entered into a contract with a design-build firm to design and construct the connector road and construction began soon thereafter (as further discussed in Finding 2). According to City personnel, as of October 1, 2019, the Interchange Project had been completed by the FDOT while the SJHP Project was still in progress but was expected to be complete in another 4 to 6 weeks.

As shown in Table 1, according to City records, total estimated costs of \$30.7 million were expected to be incurred related to the Interchange and SJHP Projects, \$13 million of which the City had already incurred as of September 30, 2019.

⁹ Section 171.27, City of Palm Bay Code of Ordinances.

¹⁰ The ROW property donation values represent the average of two appraisals, one by a City appraiser and one by a developer appraiser. Both appraisers were members of the Appraisal Institute (a trade organization which monitors appraisers and holds them to a higher standard than appraisers who are merely licensed and do not belong to this organization) and the appraised fair market values were determined using Uniform Standards of Professional Appraisal Practice techniques.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

**Table 1
City Costs – Interchange and SJHP Projects
Estimated as of October 22, 2019**

	Interchange Project	SJHP Project	Total ^a
Land Acquisition Costs	\$ 458,293	\$ -	\$ 458,293
Road Construction Costs	4,682,156	9,117,694	13,799,850
Revenue Notes Debt Service Payments	5,345,555	11,050,034	16,395,589
Other Miscellaneous Costs	41,747	3,296	45,043
Totals	<u>\$10,527,751</u>	<u>\$20,171,024</u>	<u>\$30,698,775</u>

^a Amounts exclude project costs funded through TIF credits.

Source: City records.

As shown in Table 2, according to City records, total revenues and other financing sources of \$14.3 million were expected to be received related to the Interchange and SJHP Projects.

**Table 2
City Revenues and Other Financing Sources – Interchange and SJHP Projects
Estimated as of October 22, 2019**

	Interchange Project	SJHP Project	Total ^a
Revenue Notes Proceeds	\$4,744,000	\$8,977,500	\$13,721,500
Recoveries and Refunds ^b	259,923	-	259,923
Investment Earnings	41,750	252,860	294,610
Other Miscellaneous Revenues	27,504	-	27,504
Totals	<u>\$5,073,177</u>	<u>\$9,230,360</u>	<u>\$14,303,537</u>

^a Amounts exclude revenue and other financing sources received in exchange for TIF credits.

^b Represents a \$250,000 contribution from the FDOT toward construction of the Interchange and \$9,923 for a partial refund of a permit application fee paid by the City.

Source: City records.

Once both projects are complete, the City is expected to have incurred costs in excess of related revenues and other financing sources in the amount of \$16.4 million for these projects. The City may receive TIFs from current and future developments to eventually address part, if not all, of this deficit. However, although requested, City personnel did not provide us records evidencing the expected amount or periods of collection of such TIFs. Accordingly, to the extent that PSCs or other contributions from developers or other governmental entities are not obtained, the City may have to fund a significant portion of the \$16.4 million deficit from other available City resources.

Consideration of Developer Contributions. According to City records, there was an initial expectation that primarily private resources, and not City resources, would be used to construct the connector road and pay the City's assigned share of costs (ROW acquisition) for the Interchange Project. For example,

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

according to an Interchange Modification Report (IMR)¹¹ submitted by a developer to the FDOT in August 2008, the developer intended to fund all required phases of the Interchange and SJHP Projects because, absent the new interchange, the existing I-95 segment would be unable to support increased traffic demand caused by a major new development for which the developer was associated, as well as other planned developments. Additionally, in a letter to the FDOT dated December 23, 2009, the then City Manager stated that “we expect the property owners to construct the access roadway” and “the property owners are willing to work with the Department [FDOT] to commit private sector resources to ensure that the interchange project can remain on schedule.”

Also, at the April 18, 2013, City Council meeting at which the Council voted to enter into the MOA with the FDOT, the then City Manager advised the City Council that the City was working with private sector partners and generally had commitments for most of the right of way dedication as well as the construction of the access roads. The former City Manager further indicated that the City was working towards the goal of a public/private partnership for the Interchange.

Further, at the City Council’s May 15, 2014, meeting, the then City Manager presented the City Council with a legislative memorandum indicating that the City’s fiscal responsibility will be generally limited to extensive staff involvement in coordinating the project, some outside counsel expenses, and transportation impact fee credits for the development of the properties in and around the Interchange to the extent property owners have contributed resources to the project. As shown in Table 1, the City incurred significant expenses beyond the types of expenses indicated in the legislative memorandum.

To determine the extent to which the City attempted to obtain developer contributions to cover costs of the SJHP Project or the City’s share of costs (ROW acquisition) for the Interchange Project, we examined City records and made inquiries of City personnel, and found that:

- Despite the assurances by the former City Managers, the City has not received any contributions from developers through a PSC or other means to cover the estimated \$16.4 million deficit the City may incur for the Interchange and SJHP Projects. As previously discussed, developers did contribute property valued at \$2.4 million and \$0.7 million for expenses incurred in connection with these projects; however, those developers will eventually be reimbursed by the City for those contributions totaling \$3.1 million through the use or assignment of TIF credits.
- Several developments, by virtue of their size and proximity, heightened the need for the Interchange. However, in response to our inquiry, City personnel indicated that they were not aware of any City efforts to negotiate with the associated developers to pay any of the costs incurred in connection with the Interchange or SJHP Projects. Regarding contributions through TIFs or PSCs associated with these developments, City personnel indicated that:
 - For one of the developments, the City entered into a TIF credit agreement with the developer because the developer constructed a 4-lane road although the traffic study only required a 2-lane road. City personnel indicated that the development was approved approximately

¹¹ According to the IMR, the purpose of the IMR is to provide the required technical documentation for obtaining the Federal Highway Administration’s approval for constructing the Interchange at the proposed location.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- 10 years prior to the effective date of the City ordinance¹² that established PSCs and, as such, the developer would not have been required to pay a PSC in connection with the development; however, homebuilders associated with that development would have paid applicable TIFs.
- For one development, 303 single-family homes have been built and another 1,800 dwelling units were approved for construction on August 26, 2004. According to City personnel, because the approval occurred prior to the effective date of the City ordinance¹³ that established PSCs, the developer would not have been required to pay a PSC in connection with the development, although homebuilders within that development would have paid applicable TIFs.
 - On October 18, 2018, one of the developments was approved for a maximum of 3,760 residential dwelling units and up to 2.8 million square feet of non-residential uses. According to City personnel, homebuilders within that development will pay TIFs. However, in response to our inquiries, City personnel indicated that they were unable to find any records evidencing that the City had determined whether the developer should pay a PSC in connection with the development or whether the developer had actually paid a PSC.
 - Construction activity for three developments had not yet begun; consequently, the City could potentially, in the future, receive contributions through PSCs from the associated developers. In addition, homebuilders associated with those developments may ultimately pay TIFs.
 - In January 2010, the then Growth Management Department Director informed the then Deputy City Manager that, in anticipation of the Interchange and SJHP Projects, the City Council had approved several large Comprehensive Plan Future Land Use Map amendments requested by developers to allow for building specified numbers of residential units. In response to our inquiry, City personnel indicated that they were unaware whether the City Council or City management ever considered withholding such approvals in an effort to get developers to contribute towards costs related to the Interchange or SJHP Projects. City personnel and City records did not indicate why City Council or City management would not have made such efforts.

Although the Interchange will likely provide benefits to the City and its residents, through an increased tax base, opportunities for economic growth, and enhanced emergency response times, the Interchange clearly also directly benefited developers who stood to profit from various new developments, which heightened the need for the Interchange. As such, it was not apparent, of record, why the City did not make a more concerted effort to compel developers benefiting from the Interchange to contribute towards costs related to the Interchange or SJHP Projects. Additionally, developers not paying their share of costs for projects needed to remedy transportation capacity deficiencies is not consistent with the Plan and Plan Regulations' provisions intended to mitigate transportation-related costs incurred by the City resulting from development.

¹² City of Palm Bay Ordinance No. 2006-128.

¹³ Ibid.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Consideration of Other Funding Sources. To determine the extent to which the City attempted to obtain resources, other than developer contributions, to cover costs of the Interchange or SJHP Projects, we examined City records and made inquiries of City personnel, and found that:

- Although we requested, City personnel did not provide records evidencing their estimates of funding sources for the Interchange or SJHP Projects for consideration by the City Council prior to the City entering into the MOA with the FDOT in May 2013. We also noted that:
 - City personnel prepared a worksheet in June 2013 showing estimated “private contributions” of \$11.6 million. However, we were not provided records indicating what specific funding sources comprised the “private contributions” or supporting how the estimated amount was determined.
 - The City Council adopted a City ordinance¹⁴ at its January 20, 2015, meeting, amending the capital improvements element of the Plan, which includes a 5-year capital improvements schedule (CIS). According to the revised 5-year CIS, anticipated funding sources for the SJHP Project included impact fees, grants, and developer contributions. However, we were not provided records evidencing the amounts or availability of these anticipated funding sources.

City personnel did not indicate why supportable estimates of available funding sources were not provided for the City Council’s consideration prior to the City entering into the MOA with the FDOT. Notwithstanding the potential benefits to the City from the Interchange, providing supportable estimates of available funding sources for City Council consideration was essential to the Council’s ability to make an informed decision about whether the City should enter into the MOA with the FDOT, assume the responsibilities enumerated therein, and assume the related costs to fulfill those responsibilities.

- Other governmental entities stood to benefit from the Interchange, and developments located in Brevard and Indian River Counties contributed to the need for the Interchange. An Indian River County Metropolitan Planning Organization (MPO) Resolution¹⁵ adopted June 8, 2005, indicated that areas in Brevard and Indian River Counties had experienced 33 percent growth in intercounty commuter activity between 1990 and 2000, and both counties were forecasting residential and commuter growth to accelerate in coming decades, placing increased demand on the existing interchanges, regional roadways, and local streets. The resolution further indicated that a new interchange would provide traffic congestion relief, emergency evacuation, economic development, and mobility benefits to citizens throughout the region. In addition to Brevard and Indian River Counties, municipalities within Brevard County, such as the Cities of Melbourne, West Melbourne, and Melbourne Village, stood to benefit from the Interchange because of their proximity.

In response to our inquiry, City personnel provided us a copy of an agreement dated December 2, 2008, that was signed by representatives of the City, Brevard County, and the Cities of Melbourne and West Melbourne, and which indicated that there was a desire by these entities to enter into an interlocal agreement outlining responsibilities regarding the design, construction, operation, and financing of the SJHP Project. However, City personnel did not provide us records evidencing the interlocal agreement was ever prepared and executed, and City personnel

¹⁴ City of Palm Bay Ordinance No. 2015-02.

¹⁵ MPO Resolution No. 2005-001 adopted June 8, 2005.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

indicated that they were not aware of any other City attempts to negotiate with other governments about contributing towards costs related to the Interchange or SJHP Projects.

City personnel did not indicate why the City did not, subsequent to signing the December 2, 2008, memorandum of agreement, make further attempts to negotiate with other governments about contributing towards costs related to the Interchange or SJHP projects. It was not apparent, of record, why the City did not make such attempts since these governments stood to benefit from the Interchange and SJHP Projects.

Recommendation: The City should, for future transportation-related projects, ensure that:

- Every effort is made to compel developers and benefiting governments to contribute to the cost of highway or road infrastructure improvements necessitated by developmental growth, including assessing TIFs or PSCs, as appropriate.
- The City Council is provided complete and accurate information regarding the financing of the projects.

Additionally, the City should ensure that developers associated with the currently undeveloped developments that contributed to the need for the Interchange and SJHP Projects are required to pay PSCs to the extent allowable under City ordinances.

Finding 2: Design-Build Firm Selection Process

The City is required to procure design-build services in accordance with State law¹⁶ and the City *Procurement Manual*.¹⁷ On January 16, 2017, the City issued a request for proposal (RFP) for design-build services for the SJHP Project. The SJHP Project RFP provided that the City would be utilizing a two-phase process whereby an evaluation team (e-team) would evaluate respondents who submitted proposals in response to the RFP.

- Phase 1 was to include the evaluation and ranking of interested design-build firm proposals using four specified non-price factor criteria (project team, project team location, project management, and project approach), each of which was to be assigned a score that did not exceed a maximum total score ranging from 10 to 40 points. Only those firms deemed most qualified were to be “short-listed” and advanced to Phase 2 of the RFP process.
- Phase 2 was to include an evaluation of each respondent firm’s response to e-team member questions during an oral presentation, with a maximum total score of 40 points, and a calculated score for each firm’s proposed guaranteed maximum price (GMP) based on an RFP-specified formula, with a maximum total score of 60 points.

City records indicated that two firms submitted proposals. E-team members assigned a score for each of the Phase 1 criteria and a score for each respondent firm’s oral presentation. The average of the e-team member assigned scores was multiplied by an RFP-specified weighted value to arrive at the total proposal score. The GMP score was calculated using the RFP-specified formula, which was designed to result in the lowest GMP receiving the highest score, and then multiplied by the RFP-specified weighted

¹⁶ Section 287.055(9), Florida Statutes.

¹⁷ *City of Palm Bay Procurement Manual (Procurement Manual)*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

value. One respondent (Respondent A) proposed a GMP of \$9.5 million, while the other respondent (Respondent B) proposed a GMP of \$8.4 million. As shown in Table 3, Respondent A was the highest-ranked respondent with a total score of 176.56, and Respondent B received a total score of 174.34.

Table 3
SJHP Project Design-Build Services Proposals
E-Team Evaluation Scores

	Project Team	Project Team Location	Project Management	Project Approach	Oral Presentation	GMP	Total Score
Maximum Weighted Score	40.00	10.00	25.00	25.00	40.00	60.00	200.00
Respondent A Score	34.13	9.53	19.83	22.50	37.07	53.50	176.56
Respondent B Score	33.87	8.00	19.17	18.50	34.80	60.00	174.34

Source: City records.

An agenda item providing for City Council consideration of the respondents' proposals and ranking thereof was originally scheduled for the July 6, 2017, City Council meeting; however, the item was pulled from that meeting's agenda because attorneys representing Respondent B filed a *Formal Protest and Request for Hearing*. The protest alleged that "the City failed to follow its own guidelines and criteria in evaluating proposals." Subsequent to the City Chief Procurement Officer (CPO) responding to the attorneys' specific concerns in a letter dated July 27, 2017, Respondent B's attorneys sent a memorandum addressed to the City Council reiterating concerns with the project's design-build services procurement process.

At the October 17, 2017, special meeting, the City Council listened to comments by Respondent B and Respondent B's attorneys; however, the City Council opted to deny the protest and to commence contract negotiations with Respondent A. On March 2, 2018, the City executed a contract with Respondent A.

Our examination of City records and discussions with City personnel regarding the selection of the design-build firm for the SJHP Project disclosed areas in which the City's administration of the Project could have been enhanced. These areas included, for example, the use of a design criteria professional, procurement of design-build services, appointment of e-team members, RFP response scoring instructions, RFP scoring transparency, and RFP scoring methodology.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Use of a Design Criteria Professional. Pursuant to State law¹⁸ and the *Procurement Manual*,¹⁹ the City must employ or retain a design criteria professional²⁰ to prepare a design criteria package²¹ and provide sufficient information to permit design-build firms to prepare a bid or a response to the City's RFP. If the City elects to enter into a professional services contract for the preparation of the design criteria package, the design criteria professional must be selected in the manner specified by State law.²²

City personnel and City records indicated that the City initially intended for developers to construct the SJHP Project and a developer had engaged a firm to perform work in connection with the Project. However, the City later decided to assume responsibility for the SJHP Project design and construction and, according to City personnel, the City contracted with the firm previously engaged by the developer and reimbursed the developer (via an impact fee credit) for amounts the developer had already paid the firm. City personnel provided us documentation evidencing that the firm prepared the design criteria package used in connection with the City's procurement of a design-build firm for the project.

In a legislative memorandum dated June 2, 2016, the then City Manager recommended to the City Council that the City engage the firm as the design criteria professional for the SJHP Project and forgo using a competitive selection process. The memorandum indicated the City Manager considered the engagement of the design criteria professional to constitute an emergency purchase and provided the City Manager's reasons for waiving the competitive selection process, and the City Council approved his recommendation at the June 2, 2016, meeting. However, City records did not evidence that, prior to approval, the City Council was provided complete and accurate information for consideration. Specifically:

- Although the memorandum indicated that at the time the City assumed responsibility for contracting with and paying the firm a deadline had already been established for permit completion, City records did not evidence that the City Council was provided documentation evidencing the permit completion deadline.
- The memorandum indicated a concern about legal liabilities and associated costs that could result from switching to another firm; however, City records did not evidence that the City Attorney had been consulted regarding potential litigation or the basis for such litigation given that the developer, not the City, engaged the firm.
- City records did not evidence that the City Council was made aware of the State law requirement that the design criteria professional be competitively selected.

¹⁸ Section 287.055(9)(b), Florida Statutes.

¹⁹ Section U1, *Procurement Manual*, Design-Build Services – Design-Build Firm Selection Process.

²⁰ According to Section 287.055(2)(k), Florida Statutes, a design criteria professional means a firm who is employed by or under contract to provide professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

²¹ According to Section 287.055(2)(j), Florida Statutes, a design criteria package means concise, performance-oriented drawings or specifications of the public construction project.

²² Section 287.055(4) and (9)(b), Florida Statutes.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- City records did not evidence that the developer used a competitive selection process to select the firm or that the City Council was informed of the process used.

The provision of complete and accurate information for City Council consideration was essential to the Council's ability to make an informed decision regarding the City's use of the firm engaged by the developer.

The memorandum also referenced a City ordinance²³ in effect at the time that permitted the City Manager to make emergency purchases without benefit of a competitive selection process with written justification of the reasons the emergency affected the life, health, or convenience of citizens. The City did not issue an RFP for design-build services until January 16, 2017, more than 7 months after the City Council waived the competitive selection process at the June 2, 2016, meeting. The period from June 2016 through January 2017 should have provided ample time for the City to issue an RFP, receive and evaluate the resulting proposals, and select another design criteria professional. As such, it is questionable whether the circumstances described in the memorandum constituted an emergency purchase as contemplated by City ordinances.

Competitively selecting a design criteria professional in accordance with State law provides the City additional assurance that such services are procured in a fair and equitable manner and at the best price consistent with acceptable quality.

Procurement of Design-Build Services. One section of the *Procurement Manual*²⁴ prescribes general procedures to be used when the City uses a competitive sealed proposal process, while another section²⁵ prescribes additional procedures to be used when the City decides to use a competitive sealed proposal selection process for design-build services. In response to our inquiries, City personnel asserted that only the latter *Procurement Manual* section is applicable for a competitive sealed proposal process for design-build services. However, the *Procurement Manual* does not explicitly state that design-build services are exempt from the section that prescribes general competitive sealed proposal procedures and, although we requested, we were not provided records supporting City personnel's assertion. As such, it is not clear as to whether City Council intent was for procurement of design-build services to be made using a competitive sealed proposal selection process in accordance with applicable provisions within both of these sections of the *Procurement Manual* or just the latter section.

²³ City of Palm Bay Ordinance No. 2007-12, Sections 8A.2 and 9, adopted March 1, 2007, and superseded by City of Palm Bay Ordinance No. 2016-59, adopted August 16, 2016, which defines an emergency purchase as "A purchase made due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk."

²⁴ Section O, *Procurement Manual*, Competitive Sealed Proposal Process.

²⁵ Section U3, *Procurement Manual*, Design-Build Services – Design-Build Firm Selection Process.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

While the latter section²⁶ includes certain requirements that are unique to procurement of design-build services, the earlier section²⁷ includes numerous key provisions that should apply to the procurement of any services. Examples of such key provisions include:

- Instructions on establishing evaluation criteria, including several example criteria. Although the latter section refers to criteria established in State law,²⁸ that law does not establish criteria for design-build services. Rather, the law provides that the City must award design-build contracts in accordance with procurement laws, rules, and ordinances applicable to the City.
- A requirement that each e-team member complete a *Conflict of Interest Statement* and that any member with a conflict of interest be removed from the e-team.
- Provisions indicating that a primary objective in selecting e-team members is the selection of individuals who are knowledgeable of the subject matter of the solicitation, which may necessitate including a specialist who is not a City employee.
- Provisions indicating that all records of e-team meetings, including recordings, notes, and score sheets, are public records in accordance with State law;²⁹ the e-team chair is responsible for ensuring that such records are maintained; and direct discussion between e-team members and respondents is not permitted.
- A provision indicating that it is important for e-team members to enter comments on their scoring sheets to support the rationale for scores.

In addition, we noted that the *Procurement Manual* section that City personnel indicated did apply to a competitive sealed proposal process for design-build services states that an RFP will be advertised in accordance with the *Procurement Manual*. However, the *Procurement Manual* only specifies advertising requirements for an RFP selection process in the section that prescribes general competitive sealed proposal procedures, which requires that advertisements be completed in accordance with State law.³⁰ If, as City personnel asserted, that section does not apply to a competitive sealed proposal process for design-build services, then the *Procurement Manual* is not clear as how the City is to advertise RFPs for design-build services.

City personnel did not indicate why the *Procurement Manual* section prescribing general requirements for a competitive sealed proposal process should not be applied for RFP procurements of design-build services. Procuring design-build services using key provisions that should apply to the procurement of any services would provide additional assurance that design-build services are procured in an efficient, effective, and legally compliant manner consistent with City Council intent.

Appointment of E-Team Members. According to the *Procurement Manual* section that City personnel indicated applies to RFPs for design-build services,³¹ the e-team was to consist of, at a minimum, the

²⁶ Section U3, *Procurement Manual*, Design-Build Services – Design-Build Firm Selection Process.

²⁷ Section O, *Procurement Manual*, Competitive Sealed Proposal Process.

²⁸ Section 287.055, Florida Statutes.

²⁹ Chapter 119, Florida Statutes.

³⁰ Section 255.0525, Florida Statutes.

³¹ Section U3.c, *Procurement Manual*, Design-Build Services – Design-Build Firm Selection Process.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

CPO or designee (usually the Procurement Contract Administrator assigned to the RFP) as chair, and a non-voting member, a design criteria professional,³² a client department director or designee, and other persons as deemed appropriate.

The e-team (excluding the chair, who was the CPO's designated Procurement Department employee and did not evaluate the proposals) consisted of a Public Works Department employee, a Growth Management Department employee, and a Utilities Department employee. Regarding appointment of the e-team members, we noted that:

- The *Procurement Manual*³³ provides that City personnel “must avoid actual or perceived (regardless of its validity) misconduct or compromising behavior during the procurement process.” The *Procurement Manual* also provides that Procurement Department personnel must adhere to NIGP³⁴ ethical procurement standards, which state that public procurement professionals must avoid any private or professional activity that would create a conflict of interest or the appearance of impropriety.

One e-team member had a long-time previous employment relationship with one of the two engineering firms that comprised Respondent A's project team. The City hired this individual in May 2016, and he was appointed to the e-team in December 2016. In response to our request for a completed employment application for the individual, City personnel indicated that they did not have a completed employment application for him because the City did not advertise the position for which he was hired, and he was appointed to the position. However, City personnel provided us a copy of his resume, which showed that he worked for the engineering firm for over 18 years before starting work for the City and was a Vice President with the engineering firm when he applied for the City position. City personnel further stated that they did not have any records indicating whether he terminated employment with the engineering firm prior to or after being employed by the City.

This e-team member scored Respondent A higher for three of the four Phase 1 non-price criteria and scored Respondent A and Respondent B the same for the Phase 2 oral presentations. Because of this individual's recent long-time employment with a firm on Respondent A's project team, including this individual as a member of the e-team created a situation that could result in a perceived conflict of interest.

Upon inquiry, City personnel indicated that they were aware of the e-team member's prior relationship with the engineering firm, but when we inquired as to why this employee was appointed to the e-team given this prior relationship, City personnel stated they could not answer that question. To reduce the opportunity for favoritism and appearance of impropriety, it would be prudent to avoid perceived conflicts of interest consistent with the *Procurement Manual* and NIGP ethical procurement standards.

³² According to Section 287.055(2)(k), Florida Statutes, a design criteria professional means a firm who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471, Florida Statutes, to practice engineering and who is employed by or under contract to prepare the design criteria package.

³³ Section F1 and F11, *Procurement Manual*, Ethics and Vendor Relations.

³⁴ The NIGP: Institute for Public Procurement is a membership-based, nonprofit organization composed of members representing Federal, state, provincial and local government levels throughout the United States and Canada and provides support to professionals in the public sector procurement profession.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- All e-team members signed a *Conflict of Interest Statement* form. However, the form only required the e-team members to state they were free of conflict of interests regarding the respondent's companies and did not explicitly require e-team members to make a similar statement regarding the firms that comprised the respondent firms' project teams. Explicitly requiring each potential e-team member to disclose any relationships that could create a conflict of interest or the appearance of impropriety would help ensure that the affected individual disclosed the relevant facts concerning the situation for City Council consideration.
- Contrary to the *Procurement Manual*,³⁵ the e-team did not include a design criteria professional as defined by law,³⁶ which would have been the firm that the City engaged to prepare the design criteria package. In response to our inquiries, City personnel indicated that the then City Manager selected the e-team members and did not provide an explanation as to why the City Manager chose not to include the design criteria professional. Including a design criteria professional on an e-team would help ensure proper evaluation of respondent qualifications regarding the desired design-build services.

Scoring Instructions. Regarding the use of predetermined and established proposal evaluation criteria, the NIGP, in its *Global Best Practices*, recommends:

- Use of clearly defined criteria for procurement decisions.
- A clear understanding by evaluation committee members of how criteria and scoring should be applied.
- Use of a consistent approach when scoring against preannounced criteria.
- Transparency of the selection criteria and evaluation process.

Consistent with the NIGP's recommended best practices, providing e-team members with written instructions that explain how criteria and scoring should be applied would provide additional assurance that members use a consistent approach to identify the most favorable proposal. However, for the SJHP Project, e-team members were not, of record, provided such instructions. Specifically:

- Although the RFP provided detailed instructions for information to be included by the responding firms in their proposals for consideration by e-team members in scoring proposals for the four Phase I criteria (project team, project team location, project management, and project approach), the RFP did not describe how the criteria and scoring would be applied to the information provided by the respondents. For example, although the RFP required respondents to provide "an organizational chart for the project team and identify any utilization of any firms that are minority business enterprises," the RFP did not instruct e-team members on how to apply this information for scoring purposes and, thus, it was not clear as to whether a respondent should have received a higher score for utilizing minority business enterprises.

Although, in response to our inquiries, City personnel cited several ways in which e-team members were instructed regarding the proposal evaluation process, we were not provided records evidencing that e-team members were provided guidance on how the Phase 1 criteria and scoring should be applied to the information provided by the respondents.

³⁵ Section U3.c, *Procurement Manual*, Design-Build Services – Design-Build Firm Selection Process.

³⁶ Section 287.055(2)(k), Florida Statutes.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- For Phase 2, each respondent was sent a letter listing questions to be answered during an oral presentation. We inquired with City personnel as to what instructions e-team members were provided regarding how to apply the scoring to the respondents' answers and presentations. In response, City personnel described several documents provided to e-team members and stated that e-team members "were clear on the process when developing the questions, how the questions would be sent, how the responses would be received, and the format of the oral discussions." However, we were not provided records evidencing that e-team members were provided instructions on how to apply scoring to the respondents' answers provided during oral presentations.

Providing e-team members with written instructions that explain how criteria and scoring should be applied when considering information provided by respondents would provide additional assurance that e-team members use a consistent approach to identify the most favorable proposal.

Scoring Transparency. Consistent with the NIGP's recommended best practices, the City should ensure full transparency regarding the proposal evaluation process. Although the City made some efforts to be transparent as to how each e-team member scored proposals during Phase 1 and Phase 2, such efforts could be enhanced. Specifically:

- Each e-team member prepared a scoresheet showing the member's assigned scores based on the RFP-specified Phase 1 criteria. While the scoresheets indicated the total score assigned to each criterion, the scoresheets did not indicate how each e-team member arrived at the assigned score. We listened to a recording of the e-team's March 22, 2017, meeting, at which Phase 1 scoring of the proposals was discussed and noted that the e-team members made some comments regarding their evaluation of the criteria. However, it was not always readily apparent as to which of the RFP-specified criteria the comments pertained.
- For Phase 2, each e-team member prepared a scoresheet showing the member's assigned score based on their evaluation of the respondents' oral presentations. The scoresheets for two e-team members did not indicate how they arrived at the assigned scores considering the information provided by the respondents during the oral presentations. The scoresheet for the other e-team member included some comments regarding the content of the presentations; however, it was not clear to which presentation questions the comments pertained. We listened to a recording of the e-team's June 6, 2017, meeting at which scoring of the oral presentations was discussed and noted that the e-team members made some comments regarding their evaluation of the oral presentations. However, it was not always readily apparent as to which of the presentation questions or respondents the comments pertained.

Although guidelines provided to e-team members required each member to "review in-depth and rate the written proposals as outlined in the RFP," the members were not specifically required to make notes as to how they applied the criteria and scoring to the information provided by respondents to arrive at the assigned scores. Maintaining documented and sufficiently detailed e-team explanations on how criteria and scoring are applied would provide more transparency in the competitive selection process and additional assurance that e-team members considered all relevant RFP-specified factors.

Scoring Methodology. The RFP required that responses be scored using one of six possible scores ranging from 0 (when no information was provided for a criterion) to 5 (when a proposal exceeded the minimum requirements in most aspects for a criterion). Contrary to the RFP provisions, e-team members

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

did not always limit their scores to 0, 1, 2, 3, 4, or 5, as in several instances they used fractional scores. Specifically, one e-team member used fractions to score all four Phase 1 criteria, and all three e-team members used fractions to score the oral presentations. In response to our inquiry, City personnel indicated that fractional scores had been allowed in many past evaluations for other RFP procurements over the years.

Scoring proposals consistently in accordance with the RFP-specified methodology helps avoid the appearance of improprieties in the procurement process.

Recommendation: The City should:

- **Enhance procurement procedures to ensure competitive selection of design criteria professionals in accordance with State law.**
- **Maintain adequate records to justify the necessity of emergency purchases of services.**
- **Clarify in the *Procurement Manual* that all RFP procurements for services, including those for design-build services, should be made in accordance with the aforementioned key provisions prescribed in the *Procurement Manual*.**
- **Enhance proposal evaluation procedures to ensure:**
 - **Proper disclosure and consideration of potential conflicts of interest for e-team members and inclusion of a design criteria professional on the e-team in accordance with the *Procurement Manual*.**
 - **E-team members are provided written instructions on how criteria and scoring should be applied to proposals.**
 - **E-team members prepare sufficiently detailed explanations regarding how they applied the criteria and scoring to the information provided by respondents to arrive at the assigned scores.**
 - **E-team members score proposals in accordance with the RFP-specified methodology.**

Finding 3: Subcontractor Monitoring

As discussed in Finding 2, the City, in March 2018, entered into a contract with a design-build firm for the SJHP Project. Pursuant to the contract, the design-build firm was to be responsible for both the design and construction phases and generally responsible for the successful, timely, and economical completion of the Project. The contract included a GMP of \$9.3 million, including \$7.4 million for roadway construction costs, \$753,000 for design services costs, \$277,000 for preconstruction and construction mobilization costs, and \$860,000 for profit and overhead (including general conditions costs). The GMP allows for any difference between the actual cost of the Project and the GMP amount, or net cost savings, to be returned to the City. To help ensure potential savings are realized and prevent cost overruns or other impediments to successful completion of the design-build firm contract, it is important that City personnel verify that design-build firm pay requests are consistent with the terms of the contract and agree with supporting documentation such as subcontractor bid awards, contracts, and invoices.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

To evaluate City monitoring controls over design-build firm pay requests through November 2018, we inquired of City personnel and examined City records supporting the \$2 million paid to the design-build firm through November 2018. The amount paid included \$855,000 for roadway construction costs (for services provided by five subcontractors), \$574,000 for design services costs, and \$593,000 for general conditions, mobilization, and other costs.

According to City personnel, the design-build firm pay requests undergo several levels of review to ensure the propriety of the pay requests. However, because the City had not established policies and procedures to reconcile the design-build firm pay requests to subcontractor bid awards, contract terms, and invoices, City personnel did not, of record, obtain documentation supporting the subcontractor costs to ensure the amounts billed by the design-build firm for subcontractor services were valid and correct.

In addition, in response to our February 2019 inquiries, City personnel indicated that they did not attend subcontractor bid openings or maintain records evidencing that the five SJHP Project subcontractors were competitively selected because City policies and procedures did not require such. In March 2019, City personnel requested from the design-build firm records related to the selection of the subcontractors used on the Project, including bid awards, bid tabulations, and subcontractor contracts. However, as of September 2019, the design-build firm had not provided such records. Absent City policies and procedures requiring verification that (1) the design-build firm used a competitive process for selecting subcontractors and (2) subcontractor costs included in design-build firm pay request amounts agree with subcontractor bid awards, contract amounts, and related invoices before payment, there is an increased risk that the design-build firm may pay more for those services and the City may not fully realize all potential cost savings associated with the design-build firm contract.

Our discussions with City personnel also disclosed that City personnel did not verify that the five subcontractors were licensed. State law³⁷ establishes licensing requirements for persons engaged in construction contracting, such as electrical, air conditioning, plumbing, and roofing contractors. The design-build contract provides that, before entering any agreement with a subcontractor, the design-build firm will confirm that the subcontractor is properly licensed for the portion of the work to be performed on the SJHP Project and will supply such information or proof of licensing in writing to the City.³⁸ However, the design-build firm did not provide proof of licensing to the City and City personnel indicated that they did not know why the licenses were not obtained from the design-build firm. Subsequent to our request, City personnel obtained from the design-build firm and provided to us in March and May 2019 evidence confirming that all five subcontractors were appropriately licensed.

Although the design-build firm contract requires the use of properly licensed subcontractors, the City is ultimately responsible for ensuring that subcontractors working on City projects are properly licensed. Timely confirmation that subcontractors are appropriately licensed provides the City assurance that the

³⁷ Chapter 489, Florida Statutes.

³⁸ Section 5.4 of the City's March 2, 2018, contract with the design-build firm.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

subcontractors who will be working on City construction projects meet the qualifications to perform the work for which they are engaged.

Recommendation: The City should establish policies and procedures for monitoring contractor selection and use of subcontractors to include verification that:

- The design-build firm selects subcontractors using a competitive selection process and subcontractor bid awards, contract amounts, and related payments agree. Such policies and procedures should require City personnel to attend subcontractor bid openings and to document comparisons of subcontractor bid awards, contract amounts, and invoices with the related design-build firm payment requests.
- Subcontractors are appropriately licensed before they commence work and require that documentation of such verification be maintained in City records.

PROCUREMENT

Included in the City Council's 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 policies and procedures. To promote responsible spending, improved accountability, and transparency, it is important that City records demonstrate that public funds are properly utilized in fulfilling the City's legally established responsibilities.

Finding 4: Purchasing Authority

The City is responsible for establishing controls that provide assurance that the process of acquiring goods or services is effectively and consistently administered and goods and services are procured in a fair, competitive, and reasonable manner. City ordinances³⁹ and the *Procurement Manual*⁴⁰ indicate that the CPO, or designee, has purchasing authority up to \$100,000 and purchases over that amount must be approved by the City Council.

To evaluate the reasonableness of the purchasing authority delegated to the CPO, or designee, during the period October 2016 through February 2018, in September 2018 we compared that authority to the delegated purchasing authority at 14 municipalities with similar populations and taxable property values. Our comparison disclosed that the City's \$100,000 purchasing authority threshold was the same as 1 of the 14 municipalities and exceeded the thresholds of the other 13 municipalities. The thresholds for 8 of the 13 municipalities were up to \$25,000, and the average thresholds for all 14 similar municipalities were up to \$40,000.

³⁹ Chapter 38, City of Palm Bay Code of Ordinances, *Procurement Department*.

⁴⁰ Section H, *Procurement Manual*, Competition/Thresholds.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Before the City adopted the \$100,000 purchasing threshold in July 2016,⁴¹ the threshold was \$25,000. Our examination of City Council meeting minutes and inquiries with City personnel disclosed that there was no discussion regarding the need for a threshold change at any City Council workshops or public meetings prior to establishment of the \$100,000 threshold. Discussion at a City Council workshop or public meeting would have enhanced transparency, promoted public dialog, and helped establish the basis for the decision to significantly increase the purchasing threshold.

According to City personnel, the purchasing threshold was increased to \$100,000 for consistency with the Brevard County Board of County Commissioners threshold and to reduce the disparity between City ordinances and the Federal Small Dollar Purchase threshold of \$150,000 established by Federal Uniform Guidance (UG).⁴² However, as the UG specifies that non-Federal entities should follow their own procurement policies if the policies are more restrictive, and considering the City's significantly higher purchasing threshold compared to similar Florida municipalities, City records did not evidence the basis for the decision to significantly increase the purchasing threshold.

Elevated purchasing thresholds increase the risk for City resources to be used contrary to City Council intent.

Recommendation: The City should document the reasonableness of the delegated purchasing authority threshold based on an analysis that primarily considers the volume of the City's high-dollar purchases, along with consideration of the thresholds of similar Florida municipalities, and adjust the threshold as appropriate. In addition, significant topics impacting City operations, such as changes to the purchasing threshold, should be openly discussed at City Council workshops or public meetings.

Finding 5: Procurement of Services

The Legislature has recognized in State law⁴³ 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 equitable and economically. City ordinances⁴⁴ provide that the City wishes to provide for the purchase of the highest quality and best value for goods and services at the most reasonable cost, and to ensure fair and equitable treatment of persons doing

⁴¹ Ordinance No. 2016-41, adopted July 7, 2016, increased the City Manager's purchasing authority threshold to \$100,000. Ordinance No. 2016-59 and Resolution No. 2016-32, both adopted August 16, 2016, created Chapter 38, City of Palm Bay Code Ordinances, *Procurement Department*, and the *Procurement Manual, Competition/Thresholds*, which maintained the \$100,000 authority threshold but specified that such purchasing authority would be vested in the Chief Procurement Officer rather than the City Manager.

⁴² Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), Section 200.88, *Simplified Acquisition Threshold*. The threshold relates to the non-Federal entities' acquisition of property or services using funds from Federal grants or agreements.

⁴³ Section 287.001, Florida Statutes.

⁴⁴ Section 38.03, City of Palm Bay Code of Ordinances.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

business with the City. The ordinances further provide that the City's procurement function shall operate under a centralized system which will enable the City to:

- Encourage and promote fair and equal opportunity for all persons doing business with the City.
- Obtain goods and services of good quality and appropriate quantity at reasonable cost for the City.
- Foster effective broad-based competition within the free enterprise system.
- Provide safeguards for the maintenance of a purchasing system of quality and integrity.

Also, pursuant to the ordinances, the Procurement Department developed the City *Procurement Manual*⁴⁵ establishing the administrative regulations and internal processes of the Department.

State law⁴⁶ prescribes the competitive selection process to be followed for each occasion when professional services, including engineering services, must be purchased for a project in which the basic construction costs exceed \$325,000. Additionally, State law⁴⁷ provides that the City may enter into a continuing contract for professional services in which the estimated construction costs of each individual project under contract does not exceed \$2 million. City ordinances⁴⁸ provide that continuing contracts may be solicited and entered into, in accordance with State law, and as further delineated in the *Procurement Manual*. Notwithstanding, by periodically subjecting professional services procurements to a competitive selection process, the City could gain assurance that the contracts are awarded at the lowest price consistent with desired quality.

During our tests of contractual services procurements, we noted that, at the August 4, 2016, and June 15, 2017, meetings, the City Council approved annual contract renewals with a utility engineering firm. The City entered into a continuing contract with the firm in August 2005 pursuant to a request for qualifications. The contract provides that it remains in effect indefinitely until terminated and also provides that, annually, the City and the engineering firm must both agree in writing to annual engineering firm rate adjustments and that failure to reach agreement constitutes a termination of contract.⁴⁹ For the period August 2005 through February 2019, the City paid approximately \$8.5 million for projects individually not exceeding \$2 million to the engineering firm for utility project engineering services pursuant to the continuing contract.

In March 2019, we requested City records supporting and associated with the utility engineering firm's proposal for the August 2005 contract. However, City personnel indicated that, after maintaining the records for 5 years from inception of the contract, the records were destroyed. According to City personnel, the utility engineering services had not been competitively selected since August 2005

⁴⁵ City of Palm Bay *Procurement Manual (Procurement Manual)*.

⁴⁶ Section 287.055(3), Florida Statutes.

⁴⁷ Section 287.055(2)(g), Florida Statutes.

⁴⁸ Section 38.12, City of Palm Bay Code of Ordinances.

⁴⁹ Sections 5(D) and 16, Professional Services Agreement Continuing Utility Consultant (Water & Wastewater) Engineering Services.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

because current and former Utility Directors have been satisfied with the services provided by the firm. Although State law and City ordinances⁵⁰ allow the use of continuing contracts for engineering services, the use of one engineering firm for 14 years limits the City’s assurance that the services were rendered at the most economical price commensurate with acceptable quality.

In addition, while examining documentation associated with sales of land parcels (as discussed in Finding 18), we noted that the City engaged the services of a commercial real estate broker. On July 14, 2015, the City issued an RFP for commercial real estate broker services to market and sell City-owned real estate. The RFP indicated that submitted proposals would be evaluated based on four criteria.

The *City of Palm Bay Purchasing Procedure Manual*⁵¹ provides that RFPs will be evaluated using the evaluation selection committee guidelines that provide for a three-member evaluation committee including a member appointed by the department director of the department that will administer the procurement, a member appointed by the Purchasing and Contracts Manager, and a member selected at random from a pool of City employee volunteers. Four respondents submitted real estate broker service proposals and were evaluated by the evaluation committee. The evaluation criteria and evaluation committee scores assigned to each respondent are shown in Table 4.

**Table 4
Evaluation Criteria and Evaluation Committee Scores for
Proposals for Commercial Real Estate Broker Services**

	Summary of Qualifications	Technical Response	Proposed Cost	Quality of Proposal Submittal	Total Score
Maximum Weighted Score	20.00	40.00	30.00	10.00	100.00
Respondent A Score	13.67	29.67	26.00	9.06	78.40
Respondent B Score	13.00	35.33	20.67	8.17	77.17
Respondent C Score	17.50	26.67	20.00	5.00	69.17
Respondent D Score	1.67	3.33	15.00	1.11	21.11

Source: City records.

The RFP provided that the three highest-ranked respondents would present their proposals at a Special City Council meeting and provide the City Council with an opportunity to ask questions of the respondents. Afterwards, the City Council would make the final selection. At the September 15, 2015, Special City Council meeting, the three highest-ranked respondents (Respondents A, B, and C) presented their proposals and the City Council members ranked the respondents as 1, 2, and 3 based solely upon the presentations.

⁵⁰ Section 38.12, City of Palm Bay Code of Ordinances.

⁵¹ Section 19, *City of Palm Bay Purchasing Procedure Manual*, Request for Information and Request for Proposals.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Although Respondent C was ranked third by the evaluation committee using the RFP-established criteria, the City Council ranked Respondent C as number 1 and entered into a written agreement with Respondent C on October 1, 2015. Although we requested, City personnel did not provide documentation, of record, to explain how the City Council ranked the respondents or why the Council selected Respondent C. As a result, the City Council selected Respondent C without evidencing that such selection was the most advantageous to the City.⁵²

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

- **Continuing professional services contracts are periodically subjected to competitive procurement.**
- **Records are maintained to justify procurement decisions that deviate from evaluation committee recommendations.**

Finding 6: Insurance Procurement

Pursuant to State law,⁵³ the City is authorized to self-insure any plan for health, accident, and hospitalization coverage, subject to approval based on actuarial soundness by the Florida Office of Insurance Regulation (OIR). In such circumstances, the City must contract with an insurance company or professional administrator qualified and approved by the OIR or with a corporation not for profit whose membership consists entirely of local governmental units authorized to enter into a risk management consortium under this subsection to administer such a plan. While State law provides that the City may award such contracts pursuant to advertised competitive bids or by direct negotiations, City ordinances⁵⁴ exempt insurance services from competitive selection.

On January 1, 2018, the City implemented a self-funded health insurance program and, after direct negotiations, entered into an administrative services only (ASO) agreement⁵⁵ with an administrator, approved by the OIR, to administer the City health self-insurance program. According to City personnel, the City elected not to competitively procure the ASO services based on discussions with upper management, Purchasing Department personnel, and personnel from other departments who purchase goods and services through the Purchasing Department. However, although we requested:

- City personnel did not provide records to support the decision not to competitively procure the ASO services. Appropriate documentation supporting the decision would explain how the benefits for direct negotiations outweighed applicable risks and assign accountability for future reference. Further, discussion at a City Council workshop or public meeting would have enhanced

⁵² Section 2, III. *City of Palm Bay Purchasing Procedure Manual*, Award of Contract, specifies that contracts will be awarded to the lowest, most responsive and responsible proposer whose proposal conforms to the RFP, and is most advantageous to the City in terms of price, delivery, and other factors considered relevant.

⁵³ Section 112.08(2)(a), Florida Statutes.

⁵⁴ Section 38.06(E)(25), City of Palm Bay Code of Ordinances.

⁵⁵ Administrative services only (ASO) agreements are arrangements in which an employer hires a third party to deliver administrative services for the employer, such as processing claims and paying providers.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

transparency and promoted public dialog regarding the significant decision to exempt the services from the competitive solicitation and selection processes.

- City records were not provided evidencing the nature of the negotiations with the ASO administrator. In addition, the City did not provide records evidencing that the City negotiated with potential administrators in addition to the administrator selected. City personnel asserted that, in lieu of formal direct negotiations with multiple administrators, they performed informal procedures to determine whether the City was being charged a competitive rate for ASO services. City personnel provided a comparison of the City ASO fees per employee per month with the fees for three other municipalities, four counties, and two water management districts in South and Central Florida. Notwithstanding this comparison, use of a documented negotiation process with multiple administrators would reduce the appearance and opportunity for favoritism and provide the City with greater assurance that its health insurance ASO services were obtained at the lowest cost consistent with desired quality.

Recommendation: The City should periodically negotiate ASO services with multiple potential administrators to ensure that such services are obtained at the lowest cost consistent with desired quality. In addition, all significant decisions impacting City operations, such as decisions to exclude insurance-related services from competitive procurement, should be openly discussed at City Council workshops or public meetings, and the factors considered by decision makers should be documented.

Finding 7: Selection of Debt Professionals

During the period October 2016 through February 2018, the City issued \$15.1 million in debt:

- Special Assessment Revenue Refunding Note, Series 2016, to refund the Special Assessment Bond, Series 2009A, in the amount \$2.1 million.⁵⁶
- Taxable Franchise Fee Revenue Refunding Note, Series 2016, to refund a portion of the City's Taxable Special Obligation Bonds, Series 2004, in the amount of \$4 million.⁵⁷
- Series 2018 Local Option Gas Tax Revenue Note in the amount of \$9 million⁵⁸ to finance the acquisition and construction of a connector road to a highway interchange.

Governments typically employ professionals, such as a financial advisor, an underwriter,⁵⁹ and legal counsel, to assist in the debt issuance process. Financial advisors can assist in determining the note sale method and may have various other responsibilities depending on which sale method is selected. Legal counsel renders an opinion on the validity of the note offering; the security for the offering; and whether, and to what extent, interest on the notes is exempt from income and other taxation. According to the Government Finance Officers Association (GFOA), the opinion of legal counsel provides, both to

⁵⁶ City of Palm Bay Resolution 2016-55, December 15, 2016.

⁵⁷ City of Palm Bay Resolution 2016-54, December 15, 2016.

⁵⁸ City of Palm Bay Resolution 2018-04, February 15, 2018.

⁵⁹ Underwriters purchase debt securities, such as government, corporate, or municipal debt, from an issuing body (like a government agency) to resell them either directly to the marketplace or to dealers, who will sell them to other buyers.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

issuers and to investors who purchase the notes, assurance that all legal and tax requirements relevant to the matters covered by the opinion are met.⁶⁰

The GFOA recommends that issuers selecting financial advisors, underwriters, and legal counsel to assist with the debt issuance process employ a competitive process using an RFP or Request for Qualifications (RFQ). A competitive process:

- Allows the issuer to compare the qualifications of proposers and to select the most qualified firm based on the scope of services and evaluation criteria outlined in the RFP or RFQ.
- Provides objective assurance that the best services and interest rates are obtained at the lowest cost possible.
- Demonstrates that marketing and procurement decisions are free of self-interest and personal or political influences, reducing the opportunity for fraud and abuse and providing fairness to competing professionals.

The GFOA further recommends that debt issuers review their relationships with debt professionals periodically. Notwithstanding GFOA's best practices, the City did not competitively select certain professionals who assisted in the note issuance process during the period October 2016 through February 2018. Specifically, the City did not competitively select:

- The financial advisor who was paid a total of \$52,500. Our examination of City records disclosed that in April 2010 the City contracted with the financial advisor for 12 months with 12 annual renewal options and, as of February 2018, continued to use the advisor. In response to our inquiry, City personnel indicated that, because the financial advisor had extensive history in the region and had provided 5 years of contracted financial advisor services for the City prior to April 2010, the City contracted with the financial advisor absent a competitive selection process.
- The legal counsel who was paid a total of \$54,000. Our examination of City records disclosed that in September 2012 the City contracted with the legal counsel and, because the contract lacked an established term, the City continued to use the legal counsel through February 2018. In response to our inquiry, City personnel indicated that City ordinances⁶¹ exempt legal services from competitive solicitation; therefore, the legal counsel was not competitively selected.

Without employing a competitive selection process to select professionals to assist in the debt issuance process, the City cannot demonstrate that it contracted with the most qualified professionals, received the best services and interest rates at the lowest cost possible, or that the selection process was free from self-interest and personal or political influences.

Recommendation: When selecting professionals to assist in the debt issuance process, the City should employ a competitive selection process whereby RFPs or RFQs are solicited from a reasonable number of professionals.

⁶⁰ GFOA Best Practice: *Selecting Bond Counsel*.

⁶¹ Section 38.06, City of Palm Bay Code of Ordinances

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Finding 8: Purchasing Cards

The City's *Procurement Manual*⁶² provides that purchasing cards (P-cards) may be used to simplify the process for obtaining supplies, materials, services, travel, and equipment by making available to certain City employees the authority to make purchases directly with a P-card. P-cards are an efficient and effective method of purchasing and paying for supplies and services; however, as P-cards are vulnerable to fraud and misuse, it is essential that City policies and procedures provide effective controls over the safeguard, accountability, and use of P-cards.

City P-card procedures are established in the *Procurement Manual*, which requires that:

- Department heads request P-cards for new cardholders or request changes to existing cardholder purchasing limits for authorized employees by completing a Purchasing Card Request Form (P-card request form). The P-card request form requires both the approval of the applicable department head and the Chief Procurement Officer to authorize issuance of a P-card or to change cardholder purchasing limits.
- Before the cardholder receives the P-card, the cardholder must complete P-card training and sign the P-card Acceptance Agreement Form (acceptance agreement form). In addition to documenting that the cardholder received the card, the acceptance agreement form defines acceptable and unacceptable P-card usage and, by signing the form, the cardholder agrees to abide by those terms.
- When an employee separates from City employment or is transferred to another department, the applicable department P-card representative must collect the P-card, cut it in half, and submit it to their department director, who will send it to the P-Card Administrator. If unable to collect a P-card when a cardholder separates from City employment, the department P-card representative must immediately notify the P-Card Administrator, who will ensure that the P-card account is immediately canceled.
- If a P-card is lost or stolen, the cardholder must immediately notify the financial service provider and the department P-card representative, who will immediately confirm that the financial service provider has taken appropriate action and notify the P-Card Administrator.

During the period October 2016 through February 2018, City personnel used 224 P-cards and incurred 13,845 P-card expenditures totaling \$2.2 million. As of February 2018, there were 180 active P-card accounts in use. As part of our audit, we examined City records to evaluate City P-card procedures and found that the procedures needed improvement to better ensure the appropriate safeguard, accountability, and use of P-cards. Specifically:

- To determine whether P-cards, and related cardholder purchasing limits, were authorized and issued in compliance with the *Procurement Manual*, we requested for examination City records supporting 28 P-cards as of February 2018, and 2 additional P-cards issued in March 2018 and April 2018, respectively. Our examination of the records provided found that:
 - 6 P-cards were not supported by P-card request forms to demonstrate that the applicable department head and Chief Procurement Officer approved issuance of the cards. In response

⁶² Section I, *Procurement Manual*, Purchasing Cards.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

to our inquiries, City personnel indicated that the P-cards would not have been issued without an authorized P-card request form but did not know what happened to these forms. For another P-card, the P-card request form was signed by the appropriate department head but lacked the Chief Procurement Officer's signature. Absent properly completed P-card request forms, the City cannot demonstrate that P-cards were appropriately authorized before issuance, increasing the risk that cards may be issued to unauthorized employees.

- 2 other P-cards were not supported by an acceptance agreement form to demonstrate that the applicable cardholder received the P-card and agreed to follow the P-card terms of use. According to City personnel, the 2 agreement forms were misplaced. Without the acceptance agreement forms, the City cannot demonstrate that the employees acknowledged acceptable and unacceptable P-card usage and agreed to comply with the P-card terms of use, and the risk of P-card misuse is increased.
- For 2 P-cards, the cardholder's purchasing limits approved on the P-card request forms differed from the purchasing limits shown on the bank's online profile as of May 2018. For 1 cardholder, the purchasing limit on the P-card request form was \$20,000, or \$10,000 more than the bank's limit of \$10,000. For the other cardholder, the bank's limit was \$2,500, or \$1,500 more than the P-card request form limit of \$1,000. According to City personnel, the cardholders' purchasing limits would not have been increased unless a new P-card request form was completed to evidence and authorize the change; however, the forms were not available for our examination and City personnel did not know what happened to them.
- Our discussions with City personnel and examination of City records, such as P-card bank statements for the 224 P-cards used during the period October 2016 through February 2018, disclosed that the cardholders for 20 of the 224 P-cards did not use their P-card during that period. In addition, the City did not perform periodic reviews and evaluations of P-card use and the reasonableness of cardholder purchasing limits relative to the frequency and dollar amounts of actual P-card usage during that period as neither the *Procurement Manual* nor other City policies and procedures required such reviews and evaluations. Without periodic reviews and evaluations of P-card use and cardholder purchasing limits there is an increased risk that P-card errors, fraud, or misuse could occur and not be timely detected and resolved and that P-card purchasing limits may exceed the amounts needed relative to the cardholder's responsibilities, resulting in purchases that exceed City budget constraints.
- We requested for examination City records for the 36 cardholders who separated from City employment during the period October 2016 through February 2018 to determine whether the cardholders' P-cards were timely canceled. Our examination disclosed that 5 of the 36 cardholders' P-cards were not canceled until 14 to 63 days, an average of 35 days, after the employees' separation dates and that City records did not evidence that the cardholders submitted the P-cards to the P-Card Administrator as required by the *Procurement Manual*.

According to City personnel, when a cardholder separates from City employment, his or her P-card is immediately canceled if the cardholder's P-card account does not have balance. However, if the P-card account has a balance, the P-Card Administrator does not cancel the P-card until charges are reconciled to supporting records. Although the P-Card Administrator requested the department heads to acknowledge when the charges were reconciled, that did not always happen. While delaying P-card cancellations until the final reconciliation of charges may be convenient for City personnel, such delays expose the City to P-card misuse after the cardholder's separation date. While our examination of City records disclosed that the individuals did not use the P-cards after separating from City employment, without prompt cancellation and

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

collection of assigned P-cards upon the cardholder's separation from employment, there is an increased risk that unauthorized P-card use may occur.

Recommendation: The City should enhance controls over P-cards to require:

- **City records demonstrating that all P-cards, and related cardholder purchasing limits, are properly authorized and that cardholders took possession of the P-cards and agreed to the terms of use.**
- **Periodic reviews and evaluations of P-card use and cardholder purchasing limits. Based on the evaluation results, appropriate actions, such as adjustments to purchasing limits and canceling unused P-cards, should be promptly taken.**
- **Prompt collection of P-cards and cancellation of P-card accounts upon a cardholder's separation from City employment.**

Finding 9: Wireless Communication Devices and Services

The City provides certain City officials and employees wireless communication devices, such as cellular and smart telephones (cell phones) and air cards,⁶³ to facilitate City business communication needs. Our examination of wireless service provider billing statements, consisting of both cell phone and air card service billing statements, disclosed that, as of May 2018, 721 devices (398 cell phones, including 214 smart phones, and 323 air cards) were available for use by City officials and employees and, according to City records, charges for the use of these devices totaled approximately \$301,500 during the period October 2016 through February 2018.

The City established controls over the acquisition, assignment, and use of wireless communication devices. For example, City administrative codes⁶⁴ provide that:

- City-assigned phone equipment is for official use only.
- Personal use of City phone equipment must be closely monitored by employees.
- Unauthorized use or abuse of City phone equipment will not be tolerated.

However, our examination of City records, including selected cell phone and air card service billing statements for the period October 2016 through February 2018, and discussions with City personnel disclosed that the City's wireless communication device controls could be improved. Specifically, we noted that:

- The City's established policies and procedures, as of July 2019, did not require:
 - Records justifying the need for devices be maintained. Such records could include justifications for device acquisitions and evidence of periodic evaluations to determine whether the nature and level of activity of each City device continued to justify the need.
 - A master list of all devices and related assignments be maintained.

⁶³ Air cards are wireless modems used for connecting mobile devices to the Internet.

⁶⁴ Section 31.1.8, City of Palm Bay Administrative Code, *Use of City Phone Equipment*.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

- Documented comparisons of a master list of City devices to billing statements to verify that the City is only billed for City devices.
- Documentation that billing statements were reviewed to:
 - Evaluate whether charges were consistent with the City's wireless device plans and any additional charges were justified.
 - Identify any non-business use and that employee reimbursements were obtained for any such use that resulted in charges.
- During the period October 2016 through February 2018, the City received 17 monthly air card service billing statements totaling \$170,226. Our examination of 4 of the billing statements totaling \$40,379 disclosed that the statements included charges totaling approximately \$7,000 for numerous air cards (ranging from 57 to 66) with no associated activity. In response to our inquiry, City personnel indicated that some air cards do not have usage every month but are available when the user needs them. Notwithstanding this explanation, it is not apparent why the air cards were necessary given the documented lack of usage.
- One of the 4 monthly cell phone service billing statements we examined, with charges totaling \$16,409, included international charges totaling \$163 for calls from Jamaica to New York and from New Jersey to Jamaica. In response to our inquiry about these charges, City personnel indicated that an employee went on vacation and did not inform the Communication and Information Technology Department beforehand so that the employee could be put on an international plan. City personnel also indicated that they made no attempt to determine whether any of the calls were for personal reasons. However, insofar as the billing statements list all wireless device activity, including telephone numbers and locations from where calls were made or received, it is not apparent why City personnel could not perform procedures to verify the nature and purpose of the wireless device use, especially use that resulted in additional charges.

According to City personnel, certain employees were assigned to monitor their department's use of wireless communications devices and to review monthly cell phone and air card service billing statements for anomalies such as call volume, length, and location of calls. City personnel also indicated that employees generally adhere to administrative code provisions and it is assumed that employees have not used City wireless devices for non-business purposes and, therefore, there has been no need for employees to reimburse the City for personal use of wireless devices. However, it is not apparent how the City obtained such assurance and, absent effective policies and procedures for the acquisition, assignment, and use of devices communicated to City personnel in writing, there is an increased risk that devices may be obtained or assigned to City officials or employees without a documented need, devices may be used for unauthorized purposes, and overcharges may not be timely detected and resolved.

Recommendation: The City should enhance its policies and procedures for the acquisition, assignment, and use of wireless communication devices to require:

- **Records justifying the need for the devices.**
- **A master list of all devices and related assignments be maintained.**
- **Documented comparisons of a master list of City devices to billing statements to verify that the City is only billed for City devices.**

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

- **Documentation that billing statements were reviewed to:**
 - **Evaluate whether charges were consistent with the City's wireless device plans and any additional charges were justified.**
 - **Identify any non-business use and that employee reimbursements were obtained for any such use that resulted in additional charges.**

PAYROLL AND PERSONNEL ADMINISTRATION

Effective payroll policies and procedures ensure payroll transactions are handled accurately and consistently in accordance with applicable laws and the directives of the City Council and City management. Such policies and procedures should address, among other things, the calculation of salary payments, including terminal leave payments and severance payments to employees upon separation from City employment; required payroll reporting to the Internal Revenue Service and applicable State agencies; and preparation and approval of documentation, including time records, to support salary payments.

Effective personnel administration policies and procedures communicate management's expectations, employment guidelines, and benefits information to employees and promote the consistent administration of City personnel practices. Such policies and procedures should address, among other things, hiring guidelines, including verification of education credentials and prior work experience; employee background screenings; maintenance of leave balances; administration of retirement programs; employee performance evaluations; employee and dependent benefits eligibility determinations; and the maintenance of personnel records to support personnel actions.

Finding 10: Extra Compensation

Pursuant to State law,⁶⁵ no City employee may be paid extra compensation after the service has been rendered or the contract made. However, our procedures disclosed that, during the period October 2016 to February 2018, the City made an extra compensation payment of \$18,000 to a Deputy City Attorney.

Our examination of City records disclosed that the payment was approved at the City Council December 15, 2016, meeting. According to a memorandum from the City Attorney to the Mayor and City Council, the payment was for "extraordinary" work completed in the 2015-16 fiscal year and "as motivation" to meet goals in the 2016-17 fiscal year.

In response to our inquiry, City personnel indicated that the City Council was authorized to approve the extra compensation because the payment was a form of remuneration and the City Charter⁶⁶ provides that the City Council shall determine the remuneration to be paid to the City Attorney and assistant attorneys. Notwithstanding this response, insofar as the payment was in addition to the Deputy City

⁶⁵ Section 215.425(1), Florida Statutes.

⁶⁶ Section 3.114, City of Palm Bay Charter

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Attorney's salary already paid for his rendered services, the payment represented extra compensation prohibited by State law.

Recommendation: The City should ensure that payments to employees are only made pursuant to State law. In addition, the City should take appropriate action to recover the \$18,000 extra compensation payment from the Deputy City Attorney.

Finding 11: Severance Pay

State law⁶⁷ requires that employment agreements entered on or after July 1, 2011, containing a provision for severance pay must include provisions requiring that such pay not exceed an amount greater than 20 weeks of compensation and prohibiting severance pay when the employee has been fired for misconduct as defined by State law. In addition, State law⁶⁸ authorizes employees to 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 and does not exceed an amount greater than 6 weeks of compensation. State law⁶⁹ does not create an entitlement to severance pay in the absence of its authorization.

During the period October 2016 through February 2018, the City had five employment agreements with severance pay provisions. Our examination of the agreements disclosed that the City Attorney Emeritus's agreement, effective December 18, 2015, included a severance pay provision that states, "In the event the City terminates [the employee] without cause, the City agrees for a period of eighteen (18) months from the date of separation to (1) retain [the employee] and his eligible family members on the City's insurance plan or (2) pay the full amount of COBRA coverage for [the employee] and his dependents."⁷⁰ However, since State law limits severance pay to 20 weeks of compensation, which includes benefits, the City's authority for including in the Attorney Emeritus's employment agreement 18 months of insurance benefits upon separation was not readily apparent.

In response to our inquiry, the City Attorney acknowledged that the employment agreement's severance pay provision did not comply with State law but also pointed out that the employment agreement includes a severability clause that states, "In the event that any provision of this Agreement should be found to be invalid, unlawful, or unenforceable by reason of any existing or subsequently enacted legislation or judicial decision, all other provisions of this Agreement shall remain in full force and effect." Notwithstanding, agreements that contain pay provisions contrary to State law increase the risk for overpayments to occur.

⁶⁷ Section 215.425(4)(a), Florida Statutes.

⁶⁸ Section 215.425(4)(b), Florida Statutes.

⁶⁹ Section 215.425(4)(c), Florida Statutes.

⁷⁰ COBRA (the Consolidated Omnibus Budget Reconciliation Act) gives employees and their families the right to choose to continue group health insurance benefits for limited periods of time under certain circumstances. Under COBRA, qualified individuals may be required to pay the entire premium for coverage up to 102 percent of the cost to the group plan.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

In addition, our examination of City payroll records for the period October 2016 through February 2018 disclosed a severance payment of \$12,488 to a Deputy City Manager who separated from City employment in September 2017. The Deputy City Manager did not have an employment agreement with the City, and the severance payment was equivalent to 6 weeks of compensation. City records supporting the payment included a resignation letter, written and signed by the Deputy City Manager and signed by the Human Resources (HR) Director, that stated the Deputy City Manager was resigning with the understanding that he would receive 6 weeks (240 hours) of separation pay. Although State law permits severance pay of up to 6 weeks for the settlement of employment disputes, there was no severance agreement or other City records evidencing the existence of an employment dispute, the City did not have any policies providing for the payment of severance pay absent an agreement, and State law does not create an entitlement to severance pay in the absence of its authorization. Consequently, City records did not evidence the authority for the Deputy City Manager's severance payment, or the public purpose served by the payment.

Recommendation: The City should establish policies and procedures for severance pay that ensure compliance with State law. Such policies and procedures should require that severance pay provisions in employment agreements limit amounts to no more than 20 weeks of compensation and prohibit severance pay when the employee has been fired for misconduct. The policies and procedures should also require appropriate documentation, including documentation demonstrating the basis for the severance payment amount and the necessity for and public purpose served by severance payments. In addition, the City should take appropriate action to amend the City Attorney Emeritus employment agreement severance pay provisions to comply with State law. We also recommend that the City document the legal authority and public purpose for the severance payment to the Deputy City Manager or pursue recovery of the payment.

Finding 12: Employee Time Records

City administrative codes⁷¹ state that the proper completion of time records is a critical part of the City's pay rules and require that time records be completed by each employee and approved by both the employee and the employee's supervisor. In addition, City personnel indicated that, when time records initially lack evidence of supervisory approval, the HR Department e-mails applicable supervisors to follow through and document approval.

To determine whether time records properly supported salary payments totaling \$58.9 million during the period October 2016 through February 2018, we requested for examination time records supporting 30 selected salary payments totaling \$87,353. We found that the time records for 2 payments totaling \$7,149 were not approved by the employee's supervisor. In response to our inquiry, City personnel indicated that they could not explain why supervisory approval was not documented. The lack of documented supervisory approval of employee time worked increases the risk that City personnel may

⁷¹ Section 31.2.6, City of Palm Bay Administrative Code, *Time Records*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

be incorrectly compensated, leave balances may not be accurate, and City records may not be sufficiently detailed in the event of a salary or leave dispute.

Recommendation: The HR Department should continue efforts to ensure supervisory approval of employee time worked is appropriately documented. Such efforts should include communication with City management to remind applicable supervisors of their employee time record approval responsibilities.

Finding 13: Employee Evaluations

City administrative codes⁷² provide that the primary purpose of the performance evaluation is to assist the employee in assessing their job performance through well-defined directions in order to achieve the desired goals and objectives of the department. Newly hired and recently promoted employees are required to receive a performance evaluation every 3 months during their designated probationary period. All other employees are to receive a performance evaluation within 5 working days prior to their anniversary date.⁷³ The HR Director is to advise departments at least 30 days in advance of when evaluations are due, and each department is responsible for establishing a tracking system to ensure timely completion of evaluations.⁷⁴ After completion and review of the evaluation, the evaluation is to be signed, a copy provided to the employee, and the original forwarded to the HR Department and placed in the employee's personnel file.

In September 2018, we requested for examination City records supporting performance evaluations for 28 employees selected from the 1,002 City employees during the period October 2016 through February 2018. Our examination found that:

- 1 employee, hired in May 2015, had not received a performance evaluation as of September 2018.
- 6 employees with anniversary dates during the period October 2016 through February 2018 did not receive evaluations during that period. The most recent evaluations for these employees were dated June 2014 through March 2016.
- 11 employees with anniversary dates during the period October 2016 through February 2018 received evaluations 17 to 220 work days after their anniversary dates, or an average of 93 work days late.

In response to our inquiries, in October 2018 the HR Director agreed that the required evaluations were not always conducted or not always timely conducted. The HR Director also indicated that the HR Department had notified the applicable department heads in advance of the performance evaluation due dates and could not explain why the departments did not always comply with the evaluation requirements. Timely conducted performance evaluations are an important management tool to inform

⁷² Section 31.7, City of Palm Bay Administrative Code, *Employee Performance Evaluations*.

⁷³ Section 31.7.2, City of Palm Bay Administrative Code, *Types of Performance Evaluations*, indicates that the anniversary date is typically the date that an employee assumed his or her current position.

⁷⁴ Section 31.7.3, City of Palm Bay Administrative Code, *Procedures for Scheduling Performance Evaluations*.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

employees of their accomplishments, training needs, and areas for improvement, and to assist management in making and supporting personnel decisions.

Recommendation: To ensure that employee performance evaluations are timely conducted, we recommend that:

- Each City department head establish a tracking system to monitor each employee's evaluation due date and the dates the evaluations were completed and submitted to the HR Department.
- The City's HR Department maintain a log of evaluations due and received and notify the applicable department heads when an evaluation is not timely received.

Finding 14: Pay Increases

City administrative codes⁷⁵ provide that an employee may receive a pay increase for a satisfactory or better evaluation or economy performance. The codes also provide that, should unusual conditions arise, as defined by the City Manager, the HR Director is authorized to pay the increase.

During the period October 2016 through February 2018, 873 City employees received pay increases totaling \$2.7 million. To determine whether City records documented justification for the pay increases, we requested for examination City records supporting 72 pay increases totaling \$140,000 for 30 selected employees. The records provided disclosed factors, such as supervisor-recommended promotions and documented determinations that employees met the minimum education and work experience requirements for promotion, to justify most of the pay increases. However, City records were not provided to justify 2 pay increases: \$3,201 (5 percent) for the Assistant Growth Management Director and \$1,523 (3 percent) for an HR Analyst II.

In response to our inquiries, City personnel indicated that they could not explain why the 2 pay increases were provided and that the City Manager authorized the increases. On November 13, 2018, we requested clarification from the City Manager regarding the unusual conditions necessitating the pay increases; however, the City Council voted to terminate the City Manager's employment on November 21, 2018, and a response to our request was not provided. Without City records justifying employee pay increases, the City has limited assurance that the increases are appropriate and that employees are being equitably compensated.

Recommendation: The City should establish policies and procedures to require and ensure that City records are maintained to justify all pay increases and demonstrate compliance with City administrative codes.

⁷⁵ Section 31.15.3, City of Palm Bay Administrative Code, *Salary Increases*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Finding 15: Salary Cost Allocations

City ordinances⁷⁶ establish the stormwater management utility to provide for the general welfare of the City and its residents by providing for the operation, maintenance, regulation, and future improvements to the stormwater management system. In addition, City ordinances⁷⁷ provide that the City Council is responsible for establishing monthly utility rates by resolution. The City accounts for the stormwater management utility activities in the Stormwater Utility Fund, an enterprise fund.⁷⁸ For the period October 2016 through February 2018, the Stormwater Utility Fund reported revenues of \$14,267,726, expenses of \$8,850,306, and transfers out of \$458,377.

Our examination of City records and discussions with City personnel disclosed that the City transferred \$458,377 from the Stormwater Utility Fund to the General Fund, including \$134,125 for reimbursements to the General Fund for portions⁷⁹ of the salaries for the Public Works Assistant Director, Public Works Administrative Division Manager, and Public Works Part-Time Administrative Secretary. Although we requested, City records, such as personnel activity reports detailing the amount of time and effort spent by these employees on stormwater management activities, were not provided to justify the salary allocations and related reimbursements.

In response to our inquiries, City personnel indicated that the allocations were based upon an estimate of the percentage of time spent by the three employees on stormwater management activities prepared and approved by the City Manager in June 2014. In addition, although the City Council approved a resolution⁸⁰ in 2017 that significantly impacted the methodology for assessing stormwater fees, City personnel indicated that, as of July 2019, no City records had been prepared subsequent to June 2014 to evidence the amount of time and effort expended by the three employees on stormwater management activities.

Absent records to document the time and effort spent by the three employees, the City cannot demonstrate that the transfers from the Stormwater Utility Fund to the General Fund for salary cost reimbursements were reasonable and necessary. In addition, since the Stormwater Utility Fund recovers expenses through the annual stormwater fee assessments, absent the periodic evaluation of time and effort percentages, the unsupported salary allocation amounts may contribute to higher property owner stormwater utility assessment rates.

⁷⁶ Section 174.089, City of Palm Bay Code of Ordinances.

⁷⁷ Section 174.092(B), City of Palm Bay Code of Ordinances.

⁷⁸ Enterprise funds are used to account for activities for which a fee is charged to external users for goods or services and should be self-supporting through user rates and fees.

⁷⁹ Specifically, one-fourth of the salary for the Public Works Assistant Director and one-third of the salaries of the Public Works Administrative Division Manager and Public Works Part-Time Administrative Secretary were allocated to the Stormwater Utility Fund.

⁸⁰ Resolution No. 2017-19, dated May 18, 2017.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Recommendation: The City should enhance procedures to ensure that transfers from the Stormwater Utility Fund to reimburse salary costs in other funds is based upon documented employee time and effort expended on stormwater management activities for the applicable period.

ACCOUNTABILITY FOR RESOURCES

The City receives various Federal, State, and local resources and is responsible for implementing control procedures and processes to ensure compliance with requirements to receive and use the resources. Additionally, the City must properly account for financial transactions to provide for accurate internal and external financial reporting and ensure compliance with requirements related to that reporting.

Finding 16: Special Events

Authority for City officials to expend moneys is set forth in various provisions of general or special law and in ordinances enacted by the City Council. To qualify as authorized expenditures, expenditures of public funds must be shown to be authorized by applicable law or ordinance; reasonable in the circumstances and necessary to the accomplishment of authorized purposes of the governmental entity; and in pursuit of a public, rather than a private, purpose. Additionally, the Florida Attorney General has opined on numerous occasions⁸¹ that documentation of an expenditure in sufficient detail to establish the authorized public purpose served, and how that particular expenditure serves to further the identified public purpose, should be present when the voucher is presented for payment of funds. Unless such documentation is present, the request for payment should be denied.

Our examination of City records and discussions with City personnel disclosed that, as of June 2019, the City had not established policies and procedures regarding special events. Among other things, effective policies and procedures for special events prescribe methods for determining the feasibility of the events, require City Council approval for each event, provide guidelines for soliciting contributions to defray event costs and for providing receipts to contributors, require separate accounting for contributions received and expenditures made for each event, and ensure City records document the public purpose served by the events.

We also noted that the City established "Aids to Private Organizations" accounts in the City accounting records for expenditures associated with donations to nonprofit organizations and other miscellaneous organizations, local grant expenditures, and special events. During the period October 2016 through February 2018, the City incurred and recorded expenditures totaling \$214,464 in these accounts. During the months of December 2016 and December 2017, expenditures totaling \$10,500 related to the City-sponsored 2016 and 2017 annual "Cops & Friends Reindeer Run" events. In addition to the \$10,500 provided by the City, private contributions of \$4,725 were used to purchase gift cards with values totaling \$15,225 for the events. For the 2016 event, we were provided records supporting the purchase

⁸¹ Florida Attorney General Opinion Nos. 68-12, 75-07, 79-14, and 94-89.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

of 97 gift cards (96 \$75 gift cards and 1 \$25 gift card) with values totaling \$7,225. For the 2017 event, although we requested, we were not provided records supporting the exact number of gift cards purchased with the \$8,000 expended; however, City personnel estimated that 107 gift cards (106 \$75 gift cards and 1 \$50 gift card) were purchased for the event.

According to the Police Department Budget Officer, on the Cops & Friends Reindeer Run event days, City police officers were to use the gift cards to take underprivileged children attending elementary schools located within the City limits shopping. In response to our inquiries, City personnel indicated that the term “underprivileged” had not been defined and that no specific criteria for eligibility to receive the gift cards were established. Rather, the City relied on elementary school guidance counselors to select which students were to be gift card recipients since the guidance counselors knew the students who were “in need.” However, absent clearly established criteria for identifying underprivileged children, it is not apparent how the City determined that the gift cards were fairly and equitably distributed in accordance with the City Council’s intent.

In addition, the Police Department Budget Officer indicated that some purchases exceeded the gift card amount and some purchases did not fully use the gift card amount. Any balances remaining on gift cards, and any gift cards unused because a student did not attend the event, were used to offset overages or retained for use in the subsequent year’s event. Also, City personnel indicated that some gift cards were used for siblings of participating students who City personnel were not aware of prior to the event. Although the City provided us lists of students selected by elementary school guidance counselors for participation in the Cops & Friends Reindeer Run events, the City did not obtain a list of the children who actually participated in the 2016 event. Absent such a list, the City has limited assurance that the gift cards were redeemed on behalf of the intended participants.

In response to our inquiries, City personnel indicated that, historically, the City received minimal contributions for City-run events. However, because the City is participating in more frequent City-run events with larger contributions, City personnel agreed that it is necessary to establish effective policies that address appropriate procedures for special events.

Recommendation: The City should establish policies and procedures to require, for each special event, City Council approval; periodic evaluations of the economic viability of the event, including determinations of the amount of public funds and contributions needed to fund the event; specific guidelines for soliciting contributions and providing receipts to contributors; separate accountability; and establishment of criteria for determining event participant eligibility. In addition, the City should document in its records the public purpose for each special event.

Finding 17: Accountability for Donations to Organizations

The Attorney General has opined that a public purpose may be carried out through donations provided the local governmental entity determines that an entity purpose is served by such donation and proper

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

safeguards are implemented to assure the accomplishment of that purpose.⁸² During the period October 2016 through February 2018, the City made 19 donations totaling \$31,310 to 13 different external organizations. These organizations included, for example, the Brevard Police Testing and Selection Center and the Brevard County Association for Women Lawyers, Inc.

To help ensure and demonstrate that donations to external organizations accomplish an authorized public purpose, it is important for established policies and procedures to:

- Define the criteria for making donations to the organizations.
- Specify the methodology for calculating donation amounts.
- Require agreements with the organizations specifying how the donations will serve a City purpose and what records, such as periodic financial reports and related support, the organizations must provide to the City to properly account for use of the donations.

In response to our inquiries in April 2019, City personnel indicated that the City had not established policies and procedures for making donations because, historically, only small dollar donations were made. However, due to recent larger dollar donations, City personnel agreed that such policies and procedures are necessary. Establishing effective policies and procedures to properly account for donations would provide additional assurance that City moneys are used for their intended public purpose.

As part of our audit, we requested for examination City records supporting donations totaling \$13,000 made to two external organizations during the period October 2016 to February 2018. Our examination disclosed that:

- The City approved donations totaling \$10,000 to the Brevard Police Testing and Selection Center for the prescreening of candidates for the City Police Department. However, according to City personnel, the City did not enter into an agreement with the Center to restrict use of the donation to the prescreening services or obtain documentation to verify that the moneys donated were used for the services. Without an agreement and documented verification procedures, the authority for the donations to the Center is not readily apparent.
- The City donated \$3,000 to the Brevard County Association for Women Lawyers, Inc. without an agreement with the Association, City Council approval, or other records to establish the public purpose for the donation at the time of donation. In addition, City records were not available to evidence how the Association used the \$3,000 donation. In response to our inquiries in February 2019, the City Attorney indicated that the City sponsored the Association to recognize members of the judiciary and their assistants' distinguished service for providing legal services to the community. According to the City Attorney, the recognition provided by the Association included, for example, complementary lunches to judicial assistants and sponsorship of a judicial reception for judges. Notwithstanding, absent documentation of the purpose, approval, and use of the donation, the City has limited assurance that the Association used the donated funds consistent with the City's intended public purpose.

⁸² Attorney General Opinion No. 2002-18.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

Recommendation: The City should establish appropriate policies and procedures for making donations to external organizations. Such policies and procedures should:

- Define the criteria for making donations to the organizations.
- Specify the methodology for calculating donation amounts.
- Require agreements with the organizations specifying how the donations will serve a City purpose and what records, such as periodic financial reports and related support, the organizations must provide to the City to properly account for use of the donations.

CAPITAL ASSETS

The City is responsible for establishing adequate controls relating to the acquisition, disposal, accountability, and safeguard of capital assets. According to the City's 2017-18 fiscal year financial audit report, the City's capital assets totaled \$229.1 million (net of depreciation) as of September 30, 2018.

Finding 18: Land Disposition

According to City records, during the period October 2016 through February 2018, the City sold 16 land parcels for a total of \$719,507. Our discussions with City personnel and examination of City records for the five land sales with the greatest proceeds (the proceeds totaled \$364,036) and listed for sale during the period January 2016 to May 2017 disclosed that:

- Although the City obtained an appraisal for an 11.53-acre land parcel, the largest of the 5 land parcels, City records did not evidence how the listing prices were established for the other 4 parcels, each less than 5 acres. According to City personnel, the City's contracted real estate broker used the comparable sales method⁸³ to establish the listing prices, totaling \$399,800, for the 4 land parcels. However, the real estate broker did not provide records of the listing price analyses to the City. Absent records evidencing how the real estate broker established the listing prices for the 4 land parcels, the City cannot demonstrate that the listing prices were reasonable or that the City disposed of the 4 land parcels in the most advantageous and economical manner.
- 2 land parcels, each less than 5 acres and without appraisals to justify the listing prices totaling \$327,800, were sold for a total of \$146,992, or \$180,808 below the listing prices. The individual parcels were listed for \$175,000 and \$152,800 and were sold for \$63,808 and \$83,184, respectively, absent City Council approval of the significantly lower prices. In response to our inquiry, City personnel indicated that City Council approval of the land sale prices was not required. However, the lack of City Council-approved sale prices increases the risk that the amount of land sale proceeds will be inconsistent with City Council intent.

According to City personnel, the City did not establish policies and procedures for the sale of City-owned real property designated as surplus until August 2017, after the five land parcels included in our examination were listed. In August 2017, the City updated the City administrative codes⁸⁴ to establish

⁸³ The comparable sales method compares prices paid for recently sold properties that are similar in size, characteristics, and location of the subject property to be sold.

⁸⁴ Section 77, City of Palm Bay Administrative Code, *Sale of City Surplus Real Estate*, August 15, 2017.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

procedures for the sale of City-owned real property designated as surplus, including the use of appraisals to determine the value for land parcels of 10 acres or more and a requirement that the City Council approve any offers below the appraised value.

Our evaluation of the updated City administrative codes disclosed that, although the codes contained several useful elements, the codes could be further enhanced by:

- Requiring City Council approval of offers below the listing prices for all land parcels, regardless of acreage. The sale of surplus land parcels, including those with fewer than 10 acres, can still involve significant dollar amounts, and documented City Council approval would demonstrate that offer acceptance was consistent with City Council intent.
- Prohibiting real estate professionals, and the family members of those professionals, involved in the valuation of City-owned property from purchasing or having an interest in acquiring land parcels being offered by the City for sale. Land sales price proposals and appraisals performed by individuals independent of the land sale process would provide the City with assurance that the prices and appraisal are the most advantageous for the City. Our examination of City records associated with the five land parcel sales did not disclose any evidence that the applicable real estate professionals or their family members acquired any of the land parcels.

Recommendation: The City should obtain records from real estate brokers to evidence compliance with the City administrative codes requiring use of the comparable sales method. In addition, we recommend that the City further enhance policies and procedures by:

- **Requiring City Council approval of offers below the listing prices for all land parcels, regardless of acreage.**
- **Prohibiting real estate professionals, and the family members of those professionals, involved in the valuation of City-owned property from purchasing or having an interest in acquiring land parcels being offered by the City for sale.**

Finding 19: 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) totaled \$31.1 million as of September 30, 2018. The City is responsible for maintaining complete and accurate records of TPP and establishing adequate internal controls over the acquisition and disposal of TPP.⁸⁵ Additionally, to promote the proper accountability for and safeguarding of TPP, the City should complete a physical inventory of all TPP at least once each fiscal year and, upon completion of a physical inventory, City personnel should compare the inventory results to the property records and, for any noted differences, investigate the differences and correct the property records, as appropriate.

⁸⁵ As reported on the City's 2017-18 audited financial statements, TPP includes machinery, equipment, and vehicles.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

City ordinances⁸⁶ and the *City Accounting Manual*⁸⁷ prescribe TPP accountability requirements. In addition, the *City Procurement Manual*⁸⁸ prescribes procedures for disposing of TPP and for reporting missing or stolen TPP.

Our examination of TPP records and discussions with City personnel disclosed that controls over TPP could be enhanced. Specifically, we found that:

- While City ordinances⁸⁹ provide that the Administrative Services Director is responsible for overall development and administration of TPP records, according to City personnel, the Administrative Services Director position was eliminated effective October 11, 2002, and the responsibilities of that position have not been reassigned. Although we requested, City personnel did not provide an explanation why City ordinances had not been updated to reflect the position elimination or why the position's associated responsibilities had not been reassigned. The lack of assigned TPP responsibilities to specific employees may have contributed to the control deficiencies discussed below.
- Certain provisions of the *Accounting Manual* were inaccurate or inconsistent with City ordinance provisions. Specifically:
 - The *Accounting Manual*, in addressing the City's capitalization policy (i.e., the policy for determining which purchased TPP items must be reported as capital assets on the City's financial statements), states that such policy is "based on Florida Statutes, Chapter 274 and Rules of the State of Florida Auditor General, Chapter 10.400." However:
 - The statutory reference cited establishes accountability requirements (i.e., recordkeeping and physical inventory requirements) for TPP and does not address capitalization of TPP for financial statement purposes.
 - The Auditor General rule cited has not existed for many years as the Florida Department of Financial Services (DFS) became responsible for promulgating TPP accountability requirements by rule⁹⁰ pursuant to State law in 2006.⁹¹
 - The *Accounting Manual* defines capital equipment as any readily identifiable items such as furniture, fixtures, office machines, communication equipment, vehicles, tools, and like items having a useful life of more than 1 year and a cost of \$1,000 or more. However, this definition is inconsistent with the definition of capital equipment in City ordinances,⁹² which state that capital equipment has a useful life of more than 2 years.

City personnel indicated that the City is in the process of updating the *Accounting Manual*. Until the update is complete, there is an increased risk that City personnel will not properly administer TPP activities.

⁸⁶ Section 24, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

⁸⁷ *Resource Management* section, *Accounting Manual*.

⁸⁸ Section EE, *Procurement Manual*, Disposal of City Property.

⁸⁹ Section 24.4A, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

⁹⁰ DFS Rule 69I-73, Florida Administrative Code.

⁹¹ Chapter 274, Florida Statutes, and Section 41, Chapter 2006-122, Laws of Florida.

⁹² Section 24.3A, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- The City did not always maintain appropriate TPP records in accordance with City ordinances. City ordinances⁹³ require that each department maintain a record for each TPP item valued⁹⁴ at or costing \$1,000 or more. The property record must include certain details to support the item, such as the last physical inventory date and condition of the item, acquisition date, acquisition cost or value, vendor or manufacturer information, and identification numbers. However:
 - Although we requested property records to support the City's reported TPP, we were only provided records for 8 of the 16 City departments and City personnel provided no explanation why records for the other 8 departments were unavailable. The property records provided included recorded TPP acquisition values totaling \$6.2 million, or approximately 20 percent of the total TPP reported by the City.
 - The property records provided for the 8 departments included 4,519 TPP items. We selected 41 items with total recorded values of \$143,950 from the property records and evaluated whether the property records included the required information. We found numerous instances in which the property records lacked one or more required details as, for example, the records for 33 items did not identify the last physical inventory date or condition of the item, the records for 10 items did not identify acquisition dates, the records for 9 items lacked the acquisition cost or value, the records for 10 items lacked vendor or manufacturer information, and the records for 4 items did not include identification numbers.
 - For one of the departments with property records, we identified 17 instances in which the records showed an identification number assigned to more than one item contrary to City ordinances,⁹⁵ which require a unique number be assigned for each TPP item. For example, we noted that the same identification number was assigned to 8 different TPP items.

Although we requested, City personnel did not explain why 8 departments did not maintain the required property records or why the property records maintained by the other 8 departments did not always include required information. City personnel indicated that the instances of assigning the same identification number to multiple TPP items occurred because City personnel have had difficulty keeping the property records updated to reflect new or reassigned TPP.

- Pursuant to GFOA guidelines,⁹⁶ governmental entities should ensure that adequate control is maintained over property items with a cost or value of less than \$1,000 when those items require special attention to ensure legal compliance, protect public safety and avoid potential liability, or compensate for a heightened risk of theft. This includes TPP items that, by nature of their portability and adaptability for personal use, are more susceptible to loss or theft, such as electronic or motorized equipment, technology equipment, handguns, and tools. City ordinances⁹⁷ recommend, but do not require, that departments "use an internal property control accounting system" for TPP items with a cost or value of less than \$1,000.

Of the 8 departments with property records, only 1 department's property records included TPP items with a cost or value of less than \$1,000. Although we requested, City personnel did not provide records evidencing that the other 7 departments had determined whether those

⁹³ Sections 24.2, 24.4C, and 24.5, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

⁹⁴ According to note 1.J to the City's 2017-18 audited financial statements, donated capital assets are recorded at acquisition value at the date of donation.

⁹⁵ Sections 24.3E and 24.6A.1, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

⁹⁶ GFOA publication, *Control Over Items That Are Not Capitalized*.

⁹⁷ Section 24.6, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

departments' TPP items with a cost or value of less than \$1,000 required special attention to ensure legal compliance, protect public safety and avoid potential liability, or compensate for a heightened risk of theft.

- City ordinances⁹⁸ require that a physical inventory of TPP items with a cost or value of \$1,000 or more be made at least annually and whenever there is a change in custodian. City ordinances⁹⁹ also indicate that City department directors are responsible for ensuring that physical inventories of TPP items assigned to their departments are made and reconciled to property records.

To determine whether physical inventories of TPP items were being performed, we requested records evidencing physical inventories of TPP with a cost or value of \$1,000 or more, and reconciliation of the physical inventory results to the property records, for the 2016-17 and 2017-18 fiscal years. City personnel provided records for only 1 department, the Fire Department. In response to our inquiries, City personnel indicated that physical inventories for the other departments were conducted; however, records evidencing the physical inventories were not maintained.

Absent adequate TPP controls, there is an increased risk that the City will lack appropriate accountability for TPP, City records will not accurately reflect the value of TPP, and that TPP may be lost, stolen, or inappropriately used.

Recommendation: The City should ensure that:

- **City ordinances are amended to assign responsibility for overall oversight of the property records to a City employee and update the *City Accounting Manual* to ensure that appropriate accountability for TPP is achieved consistent with City ordinances.**
- **City departments maintain property records for all TPP valued or costing \$1,000 or more.**
- **Property records include, for each TPP item, the information required by City ordinances, including a unique identification number.**
- **City departments identify all TPP items valued or costing less than \$1,000 that are not recorded in the property records, make a documented determination of whether any of those items require special attention as contemplated by GFOA guidelines, and maintain appropriate accountability for such items.**
- **An annual complete physical inventory of all TPP is conducted, documented, and reconciled to the property records. Any differences noted between the inventory and property records should be investigated and errors should be corrected.**

MOTOR VEHICLES

As of June 2018, the City motor vehicle fleet was composed of 588 owned or leased vehicles (215 police vehicles and 373 other vehicles) for use by City employees while conducting official business. According

⁹⁸ Section 24.6C.1, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

⁹⁹ Section 24.4B, City of Palm Bay Code of Ordinances, *Accountability for City Property*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

to City administrative codes,¹⁰⁰ each department head is responsible for monitoring the compliance of departmental employees with respective code provisions.

To appropriately safeguard and manage the use of City vehicles, effective controls, including established procedures requiring records of vehicle assignment and use, and appropriate monitoring and evaluation of such use, are essential. Our audit procedures disclosed certain control deficiencies in the City's assignment and use of vehicles.

Finding 20: Mayor's Assigned Vehicle and Incidental Expense Allowance

The City Charter¹⁰¹ prescribes compensation for the Mayor and states that effective November 9, 2016, the salary for the Office of Mayor shall be at the rate of 20 cents per capita. While the City Charter does not provide for any other Mayoral compensation, pursuant to City policies and procedures,¹⁰² the Mayor receives a \$200 per month allowance for incidental expenses incurred in performing his official City duties, such as attending local meetings. Pursuant to those policies and procedures that allowance may be used, for example, to pay for meals, mileage, and expenses related to City Council meetings. In addition, City procedures¹⁰³ require authorization to acquire new vehicles be accomplished through the annual budget process. Lastly, City procedures¹⁰⁴ provide that any vehicle dedicated to the Legislative Department (includes the Mayor and City Council) may not be utilized for personal use or as a "take-home" and the City Clerk "shall create a detailed tracking protocol whereby documentation of said vehicle(s), and fueling thereof, is conspicuously placed in the department lobby and available for inspection by the general public."

On December 16, 2016, the City paid \$22,599 for a vehicle for the Mayor's use. Based on our discussions with applicable City management, the vehicle was assigned only to the Mayor and was not intended to be used by other City Council members or City employees. City management also indicated it was their understanding that no specific provisions or restrictions were provided in connection with that assignment, and they were not aware of any prohibitions precluding the Mayor from taking the vehicle home (i.e., using the vehicle as a "take-home"). In addition to that vehicle assignment, City records show that during the period October 2016 through February 2018, the City paid the Mayor a total of \$3,400 for the monthly incidental expense allowance. Our examination of City records and inquiries of City personnel regarding the vehicle purchased for the Mayor's use and the expense allowance disclosed that:

¹⁰⁰ Section 50.5, A., City of Palm Bay Administrative Code, *Personal Usage of City-Owned Motor Vehicles*.

¹⁰¹ Section 3.03, City of Palm Bay Charter, *Compensation*.

¹⁰² Chapter 3.3, City Council Policies and Procedures, *Salary*.

¹⁰³ Section 17.07, Public Works Standard Operation Procedures, *Replacement Policy*.

¹⁰⁴ Section 17.07, Public Works Standard Operation Procedures, *Replacement Policy*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- City policies and procedures¹⁰⁵ provide that “notwithstanding a provision of a contract agreement with the City Clerk, a Charter Officer, the vehicle(s) dedicated to the Legislative Department may not be utilized for personal use or as a ‘take-home’” vehicle; thereby restricting the use of City vehicles by Legislative Department employees, including the Mayor. Although we requested, City records were not provided to evidence the authority for the Mayor’s vehicle assignment. Absent authority for the vehicle assignment, the value of any personal use of the vehicle by the Mayor represents Mayoral compensation that was not provided for in the City Charter or City policies and procedures.
- The City purchased the vehicle for the Mayor prior to obtaining budgetary authorization. The City Purchasing Officer signed a purchase order for the vehicle on December 2, 2016, and the City Manager authorized the purchase on the same date by e-mail. The City Manager subsequently included the vehicle purchase in a requested budget amendment that was approved by the City Council at its March 16, 2017, meeting, approximately 3 months after the Mayor began using the car. In response to our inquiry, City personnel indicated that the City Manager was aware at the time he approved the purchase that budgetary authorization would not be obtained through a budget amendment until March 16, 2017; however, the City Manager authorized the purchase as there was an immediate need for the vehicle. In response to our request for records evidencing the “immediate need” for the vehicle purchase. City personnel did not provide such records but speculated that the immediate need may have been attributable to the previous vehicle assigned to the Legislative Department (City Council and not exclusively to the Mayor) having approximately 100,000 miles on it, and the Mayor had been using that vehicle for frequent trips outside Brevard County on City business. Notwithstanding, because the vehicle was purchased approximately 3 months before the budget amendment was presented to the City Council for authorization, it is not apparent that, at the time of purchase, the City Council intended to authorize the purchase of a new vehicle for the Mayor’s use.
- The City continued to pay the Mayor the \$200 monthly incidental expense allowance after the City purchased the vehicle for the Mayor’s use in December 2016 and allowed the Mayor to use the City fuel dispensary for that vehicle. During the period December 2016 through February 2018, the City paid the Mayor a total of \$3,000 for the incidental expense allowance and the Mayor utilized gasoline from the City fuel dispensary valued at \$1,472. In response to our inquiry as to why the City continued to pay the full monthly allowance given that he had been provided a City vehicle and fuel, City personnel indicated that the allowance is not just for mileage (e.g., for meals and other incidental costs). Notwithstanding, as the Mayor’s incidental expense allowance was for costs, including the cost of mileage related to his attending local meetings in his official capacity, it is not apparent why the City continued to pay the Mayor the full monthly incidental expense allowance amount given that the Mayor’s mileage-related expenses were otherwise paid by the City.
- As noted above, City procedures provide that any vehicle dedicated to the Legislative Department may not be utilized for personal use or as a “take-home” and the City Clerk “shall create a detailed tracking protocol whereby documentation of said vehicle(s), and fueling thereof, is conspicuously placed in the department lobby and available for inspection by the general public. While it is not clear that a vehicle assigned exclusively to the Mayor would represent a vehicle dedicated to the Legislative Department, it would be prudent for the City to apply those procedures to such a vehicle. Regardless, a detailed tracking protocol for the Mayor’s vehicle, and fueling thereof, was not maintained, nor did the Mayor maintain alternate records documenting the uses and purposes

¹⁰⁵ Section 3.6, *City Council Policies and Procedures*, Public Vehicle Use.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

for trips made in the City-owned vehicle. Accordingly, City records did not demonstrate the City-related purposes for which the vehicle was used or the extent the vehicle may have been used for personal purposes.

Recommendation: The City should:

- **Discontinue providing a vehicle for the Mayor's use as the City Charter does not provide that the Mayor be assigned a take-home vehicle or, alternatively, document the specific authority for providing the Mayor a take-home vehicle, reduce the Mayor's monthly incidental expense allowance amount by an amount proportional to the mileage-related expenses, and require the Mayor to document the purpose for all uses of and trips made in the City-owned vehicle.**
- **Enhance budgetary controls to ensure that authorizations for new vehicle acquisitions are accomplished through the annual budget process in accordance with City procedures.**

Finding 21: Automobile Allowances

State law¹⁰⁶ authorizes the City to establish travel policies that vary from the provisions of State law.¹⁰⁷ In October 2006, the City Council approved a resolution¹⁰⁸ that authorizes certain executive employees¹⁰⁹ to either be assigned a take-home vehicle or receive a monthly automobile allowance. The resolution established a monthly automobile allowance of \$374 for the period January 2008 to December 2017, which the City increased to \$405 starting January 2018. Notwithstanding, the City had not established travel policies that required, and procedures that ensured that, decisions for vehicle assignments and automobile allowances consider cost-effectiveness and be documented and monthly automobile allowances be based on documentation supporting the costs of a typical month's official business travel. Such documentation could include periodic reports of business-related travel for a given month, including the dates, locations, and miles traveled for each official business use.

During the period October 2016 through February 2018, pursuant to the City resolution, the City paid 17 employees automobile allowances totaling \$104,741 based on the City-adopted monthly rates. In response to our inquiries, City personnel indicated that issuing monthly automobile allowances to certain executive employees is a longstanding practice and that the allowances are a less expensive option than assigning City vehicles. However, although we requested, records were not provided to evidence that the automobile allowance was the less expensive option or to support the reasonableness of the allowance amount. Absent City policies and procedures that require the maintenance of records supporting the cost-effectiveness of vehicle assignments and automobile allowances and the

¹⁰⁶ Section 166.021(9)(b), Florida Statutes.

¹⁰⁷ Section 112.061, Florida Statutes.

¹⁰⁸ Resolution No. 2006-51, dated October 1, 2006.

¹⁰⁹ Executive at-will employees include the City Manager, Deputy City Manager, City Attorney, Deputy City Attorney II, City Clerk, Deputy City Clerk, and Department Heads.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

reasonableness of the monthly automobile allowances, the basis for the allowances is not readily apparent.

Recommendation: The City should establish policies and procedures that require and ensure periodic documented comparisons of the costs for providing a City-owned vehicle to the automobile allowance to ensure that the most cost-effective option is selected. In addition, to support the reasonableness of the automobile allowance amount, the policies and procedures should require and ensure that all employees receiving a monthly automobile allowance periodically provide documentation supporting the actual costs of official business travel for a given month.

Finding 22: Take-home Vehicle Assignment and Use

City administrative codes¹¹⁰ establish certain requirements governing the assignment and use of City vehicles for all employees and require the City Manager or designee to authorize take-home vehicle assignments¹¹¹ through the use of a *Take Home Vehicle Program Agreement* (program agreement).¹¹² The program agreement requires employees to certify that they live within the City limits, include their typical commuting route, and agree to adhere to City administrative codes regarding take-home vehicle usage. The program agreement is to be signed by the employee, applicable department head, and the City Manager or designee.

To determine whether City records evidenced appropriate assignment and approval for take-home vehicles, we requested in November 2018 the program agreements for each of the 146 Police Department employees and 18 other City employees who were assigned take-home vehicles. However, agreements were not provided to evidence that 145 Police Department employees and 9 other City employees lived within the City limits and understood and agreed to follow City administrative codes, or that appropriate approval of the take-home assignments was obtained. In response to our inquiries, City personnel indicated that they did not have any knowledge as to why agreements were not completed or not maintained.

Absent properly completed and approved take-home vehicle program agreements to evidence that employees live in the City limits and understand and agree to follow City administrative codes, there is an increased risk that the vehicles will be used for unauthorized purposes.

Recommendation: All take-home vehicle assignments should be supported by a properly completed *Take Home Vehicle Program Agreement* signed by the employee, applicable department head, and the City Manager or designee as required by City administrative codes.

¹¹⁰ Section 50, City of Palm Bay Administrative Code, *Personal Usage of City-Owned Motor Vehicles*.

¹¹¹ Section 50.2, City of Palm Bay Administrative Code, *Policy*.

¹¹² Section 50.5, City of Palm Bay Administrative Code, *Specific Rules*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Finding 23: Vehicle Taxable Fringe Benefits

City administrative codes¹¹³ establish guidelines for the personal use of City-owned vehicles. The codes allow City employees to use City-owned vehicles for commuting, qualified non-personal use, and de minimus personal use (infrequent and brief side trips for personal reasons). Other personal use of City-owned vehicles must be specifically authorized by the City Manager or designee.

Pursuant to United States Treasury Regulations,¹¹⁴ an employee's 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 IRC¹¹⁵ provides that the personal use of an employer-provided vehicle is a fringe benefit that must be included in the employee's gross income as compensation for services, unless otherwise excluded. Pursuant to City administrative codes,¹ each department head is responsible for monitoring their department employees' compliance with the provisions of the codes, and the Finance Director is responsible for the calculation and reporting of vehicle usage as income in accordance with applicable provisions of the IRC.

As of November 2018, 165 employees were assigned take-home vehicles. The take-home vehicles included 146 Police Department vehicles, 18 vehicles assigned to other City departments, and a vehicle assigned to the City Manager. In addition, a take-home vehicle was purchased for the Mayor's use. Our inquiries of City personnel and examination of City payroll records for the period October 2016 through February 2018 for the 165 employees and the Mayor disclosed that an amount related to personal use of the City-owned vehicles was generally included in the gross income reported to the Internal Revenue Service (IRS). However, we also noted that:

- The City Manager was provided full-time use of a City-owned vehicle as part of his compensation. According to City administrative codes, in situations "where the City has determined that the employee may utilize the City-owned or leased vehicle for unlimited personal use, the employee shall file a Monthly Vehicle Use Report for the first two weeks of the months of June each year. The Finance Department shall utilize these representative periods to calculate the annual number of 'after-hours' use miles." In response to our inquiries, City personnel indicated that the City Manager did not submit a Monthly Vehicle Use Report and, therefore, no amounts for personal use of the City-owned vehicle were included in the City Manager's gross income reported to the IRS for the 2016 and 2017 calendar years.
- Beginning November 30, 2016, the Mayor was assigned a City-owned vehicle specifically purchased for his use on a take-home basis as discussed in Finding 20. In response to our inquiry, City personnel indicated that the Mayor did not submit the required Monthly Vehicle Use Report to the Finance Department and, therefore, no amounts for personal use of the City-owned vehicle were included in the Mayor's gross income reported to the IRS for the 2016 and 2017 calendar years.

¹¹³ Section 50, City of Palm Bay Administrative Code, *Personal Usage of City-Owned Motor Vehicles*.

¹¹⁴ Title 26, Section 1.61-21(a), Code of Federal Regulations.

¹¹⁵ Title 26, Section 132(a)(3), United States Code.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- Although the City developed a *Take Home Vehicle Program Agreement*¹¹⁶ to document employee participation in the City's Take-Home Vehicle Program, the Agreements were not always completed. Specifically:
 - The City had 20 take-home vehicles (4 Police Department vehicles and 16 vehicles assigned to other departments) that did not qualify as non-personal use vehicles¹¹⁷ and a *Take Home Vehicle Program Agreement* was not completed for 8 employees each assigned 1 of these vehicles.
 - The City Utilities Department had 4 on-call vehicles that were not assigned to specific employees as the responsibility to respond to calls rotated between Department employees. Although City administrative codes¹¹⁸ required the vehicle assignments to be tracked as take-home vehicle assignments, a *Take Home Vehicle Program Agreement* was not completed for the 25 Utilities Department employees who shared the 4 on-call vehicles during the 2017 calendar year.

Because a *Take Home Vehicle Program Agreement* was not completed for these employees, Payroll Department personnel were unaware of the employees' use of City-owned vehicles. As a result, Payroll Department personnel did not request and obtain the various forms required to document the employees' personal use and calculate the value of such use. Consequently, the value of the employees' personal use of the City-owned vehicles was not calculated and included the employees' gross income reported to the IRS.

The Finance Director and some of the department heads were unaware of the requirements to include the value of personal vehicle usage in employees' gross income reported to the IRS. Consequently, only those department heads aware of the reporting requirement ensured that the necessary forms were completed and submitted to the Payroll Department. Absent records identifying the individuals assigned City-owned vehicles and any personal use of those vehicles, the City's ability to calculate and include the value of such personal use in the employee's gross income reported to the IRS is limited.

Recommendation: The City should ensure that the value of the personal use of City-owned vehicles is appropriately included in employees' gross income, reported to the IRS, and based on appropriately completed records of City-owned vehicle assignments and use.

PUBLIC RECORDS

The City is responsible for establishing policies and procedures that are designed to effectively promote compliance with the statutory and ordinance requirements requiring the maintenance of public records.

¹¹⁶ Section 50.5, City of Palm Bay Administrative Code, *Personal Usage of City-Owned Motor Vehicles, Specific Rules*.

¹¹⁷ Qualified non-personal use vehicles are City-owned vehicles that are unlikely to be used for personal travel because of the vehicles' special design and include clearly marked police and fire vehicles, unmarked vehicles used by law enforcement officers, large cargo capacity vehicles, qualified special utility repair trucks, pickup trucks with specific permanently installed equipment, and cargo vans that have permanent shelving or are constantly carrying equipment. An employee's use of a qualified non-personal use vehicle is excluded from the employee's income.

¹¹⁸ Section 50.4, City of Palm Bay Administrative Code, *Personal Usage of City-Owned Motor Vehicles, Conditions for General Use*.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Finding 24: Public Records Retention

State law¹¹⁹ requires the City to maintain public records in accordance with the Florida 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.¹²⁰

According to the State's records retention schedules,¹²¹ records documenting successful bid responses and negotiation for contracts, leases, and agreements related to capital improvement and real property must be maintained for 10 fiscal years after completion or termination of the arrangements. Records for arrangements not related to capital improvement and real property must be maintained for 5 fiscal years after completion or termination of the arrangement. The State's 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 are required to be retained in accordance with the minimum retention requirements presented in the schedules.¹²²

The City *Records and Information Management Manual, 2009*, provides that the City will comply with the State's records retention schedules and establishes the duties and responsibilities of City personnel for retaining records. While performing audit procedures to evaluate the City's procurement processes, we noted certain instances in which the City did not comply with the State records retention requirements. For example:

- As discussed in Finding 5, in August 2005 the City contracted with a utility consultant for continuing engineering services and, during the period October 2016 through February 2018, the City paid \$1.3 million to the consultant. In March 2019, we requested City records supporting and associated with the consultant's proposal for the August 2005 contract. However, City personnel indicated that, after maintaining the records for 5 years from inception of the contract, the records were destroyed.
- In connection with our examination of City records related to four construction contracts totaling \$12.2 million (as discussed under the heading **Construction Administration**), we requested, but were not provided, the date- and time-stamped envelopes documenting the timely receipt of the successful respondents' proposals for these procurements. Similarly, during our testing of 30 competitive procurements with awards of \$17.4 million and with expenditures of \$18.4 million¹²³ occurring during the period October 2016 to February 2018, we noted that the City did

¹¹⁹ Section 119.021(2)(a) and (b), Florida Statutes.

¹²⁰ Section 119.10, Florida Statutes.

¹²¹ *State of Florida General Records Schedules GS1-SL for State and Local Government Agencies*, Item #s 64, 65, 70, and 71.

¹²² *State of Florida General Records Schedules GS1-SL for State and Local Government Agencies*, General Information and Instructions, Section VI. Electronic Records.

¹²³ Four of the procurements, for debris removal, debris removal monitoring, consulting, and legal services, were not awarded for specific amounts; rather, they were awarded based upon per unit or per hour pricing with amounts to be determined as necessary subsequent to the awards. During the period October 2016 through February 2018, the City expended \$2.4 million pursuant to these awards, and this amount is not included in the \$17.4 million award total.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

not retain the date- and time-stamped bid or proposal envelopes to document the receipt of respondent bids or proposals for 23 of 24 applicable awards as follows:

- o 11 procurements for construction-related services awarded during the period January 2017 to January 2018.
- o 12 procurements for non-construction-related services awarded during the period August 2016 to March 2018.

While the public proposal opening logs as well as the sign-in sheets for the public openings were retained, City personnel indicated that they only retain the envelopes that contain respondent proposals until the contracts are finalized. After the contracts are finalized the bid and proposal envelopes are disposed of or destroyed.

Since City records supporting the capital improvement arrangements and the construction contracts' successful respondents' proposals should have been retained for 10 years after the arrangements were completed, and City records supporting non-capital improvement arrangements should have been retained for 5 years after the arrangements were completed, these records should have been available upon our request.

In addition, our discussions with City personnel in February 2019 disclosed that the City had not established procedures that required the retention of records of electronic communications, such as e-mail and text messages. According to City personnel, e-mails are retained on City servers; however, text messages sent and received from wireless communication devices are not retained because of the expense involved. However, according to the City Manager, City administrative codes will be updated in January 2020 to include retention policies for electronic communications.

Absent effective public records retention procedures and adequate controls to ensure compliance with the minimum retention requirements, the City has limited 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 ensure that policies and procedures require and ensure records are appropriately maintained in accordance with the applicable public records retention requirements.

Finding 25: City Council Meeting Minutes

Pursuant to State law,¹²⁴ minutes of City Council meetings must be promptly recorded and open to public inspection. As a good business practice, to ensure that minutes accurately reflect all action and proceedings of the Council, the minutes of each meeting should be reviewed, corrected if necessary, and approved at a subsequent Council meeting. The City Charter¹²⁵ provides that the City Clerk is responsible for preparing City Council meeting minutes. According to City personnel, the City Council officially approves the minutes at a Council meeting before the City Clerk makes the minutes available

¹²⁴ Section 286.011(2), Florida Statutes.

¹²⁵ Section 3.07, City of Palm Bay Charter.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

for public inspection. Notwithstanding, the City had not established policies that require Council meeting minutes to be promptly prepared, reviewed, approved, and made available to the public.

The City maintains City Council meeting minutes on its Web site, allowing public access to official City Council actions. During the period October 2016 through February 2018, the City Council held 44 meetings, including 32 regular meetings (generally two each month) and 12 special meetings. Our examination of City Council meeting minutes for this period disclosed that the minutes for 23 City Council meetings, consisting of 15 regular meetings and 8 special meetings, were not made available to the public until 35 to 119 days after the meetings occurred.

In response to our inquiry, City personnel indicated that delays in the preparation and approval of the minutes occurred because of an increased number of meetings and the length of many meetings. City personnel also indicated that State law does not require that minutes be transcribed and made available to the public within a specific timeframe. Notwithstanding the lack of a specific timeframe, the prompt preparation, review, and approval of meeting minutes enhances the ability of the public to have timely access to official City Council actions. According to City personnel, the City Clerk's office plans to address the issue during the 2019-20 fiscal year budget process by requesting that the City Council create a part-time position within the City Clerk's office with primary responsibility for transcribing City Council meeting minutes.

Recommendation: The City should establish policies that require Council meeting minutes to be promptly prepared, reviewed, approved, and made available to the public and ensure that City procedures comply with such policies.

ADMINISTRATION AND MANAGEMENT

Effective administration and management require the establishment of policies and procedures for strategic planning, a comprehensive framework of internal controls, budgetary planning and oversight, and financial reporting. Established administration and management policies and procedures are essential to ensure City officials and employees administer their assigned responsibilities in accordance with applicable statutory¹²⁶ and ordinance requirements. Such policies and procedures should be designed to effectively promote and monitor compliance with the statutory and ordinance requirements and to demonstrate accountability for the use of public resources.

Finding 26: Anti-Fraud Policies and Procedures

Effective policies and procedures for communicating, investigating, and reporting known or suspected fraud are essential to aid in the mitigation, detection, and prevention of fraud. Such policies and procedures serve to establish the responsibilities for investigating potential incidents of fraud and taking

¹²⁶ For example, Chapter 166, Florida Statutes, *Municipal Home Rule Powers Act*.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

appropriate action, reporting evidence of such investigations and actions to the appropriate authorities, and protecting the reputation of persons suspected but determined not guilty of fraud.

City ordinances¹²⁷ provide whistle-blower protections for employees who report knowledge of unlawful activity, misfeasance, or malfeasance to appropriate authorities for investigation and corrective action. In addition, the City Council adopted a Code of Ethics policy¹²⁸ that requires, for example, public officials to avoid action that might result in or create the appearance of using public office for private gain.

Our audit procedures found that, while the City ordinances and Code of Ethics policy have some positive features essential to aid in the mitigation, detection, and prevention of fraud, they do not:

- Provide examples of actions constituting fraud.
- Require individuals to communicate and report known or suspected fraud.
- Provide for anonymous reporting of known or suspected fraud.
- Require officials to keep accurate records of reported fraud or suspected fraud.
- Assign responsibility for investigating potential incidents of fraud and taking appropriate action.
- Provide guidance for investigating potential and actual incidents of fraud; reporting evidence obtained by the investigation to the appropriate authorities, which may be the City Council members or City legal counsel if an incident involves City management; or protecting the reputations of persons suspected but determined not guilty of fraud.

In response to our inquiry, the City Manager indicated that City ordinances and policies lacked certain anti-fraud features because the City's existing procedures are adequate to prevent and address fraud. Notwithstanding this response, absent adequately designed, comprehensive anti-fraud policies and procedures, there is an increased risk that a known or suspected fraud may be identified but not communicated, investigated, or reported to the appropriate authority for resolution.

Recommendation: The City should establish policies and procedures for communicating, investigating, and reporting known or suspected fraud that:

- **Provide examples of actions constituting fraud.**
- **Require individuals to communicate and report known or suspected fraud.**
- **Provide for anonymous reporting of known or suspected fraud.**
- **Require officials to keep accurate records of reported fraud or suspected fraud.**
- **Assign responsibility for investigating potential incidents of fraud and for taking appropriate action.**

¹²⁷ Sections 34.20 through 34.32, City of Palm Bay Code of Ordinances, *Whistle-blower's Ordinance*.

¹²⁸ City Policy adopted July 1, 2004.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- Provide guidance for investigating potential and actual incidents of fraud, reporting evidence obtained by the investigation to the appropriate authorities, and protecting the reputations of persons suspected but not determined guilty of fraud.

Finding 27: Budget Controls

Pursuant to State law¹²⁹ and City ordinances,¹³⁰ the City Council must adopt a budget each fiscal year. The City Council-adopted budget must regulate the City's expenditures and it is unlawful to expend or contract for expenditures in any fiscal year 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 budget for that fiscal year.¹³¹

City ordinances¹³² establish the City's legal level of budgetary control (i.e., the level at which expenditures may not legally exceed budget amounts) at the department level within each fund. The City Council is authorized to transfer budget appropriations between departments within the same fund or to increase or decrease budget appropriations in any department, division, or fund.

In its 2016-17 fiscal year comprehensive annual financial report, the City reported negative budget variances for instances in which actual expenditure amounts exceeded the budgeted amounts at the fund level. For example, the City reported negative budget variances of \$585,790 for the Neighborhood Stabilization Program (NSP) Fund, \$159,000 for the Risk Management Fund (RMF), \$1,959 for the General Fund, and \$32,956 for the Miscellaneous Donations Fund. Our examination of City accounting records and inquiries of City personnel regarding these variances disclosed that:

- No revenues or expenditures were budgeted for the NSP Fund because, according to City personnel, none were expected; however, in April 2018 City personnel recorded a journal entry in the 2016-17 fiscal year accounting records to move expenditures recorded in the State Housing Initiative Partnership (SHIP) Fund to the NSP Fund for the Growth Management Operations Department.
- The RMF budget overexpenditures resulted mainly from unrecorded estimated litigation claim costs because, according to City personnel, the Finance Department was not timely provided an actuary report needed to estimate those costs for the City Attorney Department.
- The General Fund budget overexpenditures resulted from an underestimation of anticipated costs for the City Attorney Department legal services and other miscellaneous costs.
- The City has not historically budgeted revenues and expenditures for the Miscellaneous Donations Fund¹³³ because, according to City personnel, City personnel are not able to predict donation amounts. The negative budget variance resulted from expenditures totaling \$31,229

¹²⁹ Section 166.241(2), Florida Statutes.

¹³⁰ Sections 35.021 and 35.026, City of Palm Bay Code of Ordinances.

¹³¹ Section 166.241(5), Florida Statutes.

¹³² Section 35.035, City of Palm Bay Code of Ordinances.

¹³³ The Miscellaneous Donations Fund is used to account for donations made to the Police, Fire, and Parks and Recreation Departments from outside sources.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

and \$1,727 by the Police and Fire Departments, respectively. City personnel asserted that the City's financial auditors have not raised the lack of budgets and amendments for this Fund as a concern during the City's annual financial statement audits.

According to City personnel, because State law¹³⁴ provides that a municipality can only amend its budget within the fiscal year or within 60 days following the end of the fiscal year, the Budget Department stops making budget amendments by November 30 (60 days after the City's September 30 fiscal year-end). However, the City's accounting records are not always closed by November 30, and the Accounting Department frequently posts correcting entries to the City's accounting records after November 30. Consequently, transactions recorded in the City's accounting records after November 30 may result in budget overexpenditures for the fiscal year. Notwithstanding, State law provides that a municipal government may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget.

Absent proper monitoring and timely amending of the budget to meet changing financial circumstances, there is an increased risk that expenditures may not be effectively monitored to ensure compliance with the legal level of budgetary control and that expenditures may exceed available resources.

Recommendation: The City should enhance budget controls to ensure that expenditures are limited to approved budgeted amounts as required by State law.

Finding 28: Budget and Financial Condition Monitoring

State law¹³⁵ requires the governing body of each municipality to adopt a budget each fiscal year to regulate municipality expenditures. According to GFOA recommended budget practices,¹³⁶ regular monitoring of budgetary performance provides an early warning of potential problems and gives decision makers time to consider actions that may be needed if major deviations in budget-to-actual comparison results become evident. City ordinances¹³⁷ require the Finance Director to prepare, and the City Manager to submit, a monthly report to the City Council of all receipts and disbursements in sufficient detail to show the exact financial condition of the City. The monthly reports are to disclose, for the General Fund, Utilities Fund, and Building Fund, current fiscal year revenue amounts compared to prior fiscal year revenue amounts and current fiscal year budgeted expenditures (or expenses, as applicable) compared to current fiscal year actual amounts.

As part of our audit, we requested for examination the 17 monthly reports that should have been prepared and submitted to the City Council for the period October 2016 through February 2018. Our examination

¹³⁴ Section 166.241(5), Florida Statutes.

¹³⁵ Section 166.241(2), Florida Statutes.

¹³⁶ *Recommended Budget Practices, A Framework for Improved State and Local Government Budgeting*, National Advisory Council on State and Local Budgeting, Government Finance Officers Association (1998).

¹³⁷ Section 35.001, City of Palm Bay Code of Ordinances.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

disclosed instances of noncompliance with City ordinances and GFOA recommended budget practices. Specifically, we found that:

- Monthly reports for 7 months were not submitted to the City Council. According to City personnel, monthly reports were prepared and posted on the City's Web site; therefore, the City Council and members of the public had access to the reports. Notwithstanding, City ordinances require the submittal of monthly reports of all receipts and disbursements to the City Council.
- None of the 17 monthly reports contained all City receipts and disbursements in sufficient detail to show the financial condition for each of the City's respective funds as the budget and actual information was aggregated for all but 3 governmental funds. Specifically, while the monthly reports separately presented financial information for the General Fund, Utilities Fund, and Building Fund, the reports did not separately present the budget and actual amounts for the City's other 28 governmental funds (such as the Bayfront Community Redevelopment Agency (BCRA) Fund and the BCRA Construction Fund), 10 enterprise funds (such as the Utilities Connection Fee Fund and the Main Line Extension Fee Fund), and 4 internal service funds (such as the Risk Management Fund and the Fleet Services Fund). Those 42 funds and the 3 separately presented funds (General Fund, Utilities Fund, and Building Fund) were aggregated and presented as "citywide."

In response to our inquiries, the Finance Director indicated that City ordinances do not define what is considered "sufficient detail" for purposes of showing "the exact financial condition of the City;" therefore, the presentation of budget and actual financial data for all funds is unnecessary. According to the Finance Director, the Finance Department and individual department heads monitor budget versus actual activity at the fund and department level at least monthly, and the City Manager and the City Council are notified of any upcoming issues involving City finances. Notwithstanding this response, absent the preparation and submittal of periodic budget-to-actual comparison reports that include all City funds to the City Council, the City Council may lack the information necessary to gain an appropriate understanding of the City's financial condition. Such information is essential to identifying and remedying critical budget shortfalls and verifying that sufficient funds are available before authorizing purchases and expenditures.

Recommendation: The City should prepare and submit to the City Council monthly reports of receipts and disbursements as required by City ordinances. Should the City Council believe that posting monthly financial reports on the City's Web site is a better method of providing financial information to decision makers and the public, the City Council should consider amending City ordinances to direct such postings rather than the monthly reports. In addition, to more accurately show the financial condition of the City and provide for the budgetary monitoring contemplated the GFOA, the City should periodically present the financial activity for each individual fund.

Finding 29: Council Members Communications with City Personnel

The City Charter¹³⁸ provides that neither the Council nor its members shall either direct, interfere, or otherwise deal with City officers and employees who are subject to the direction and supervision of the

¹³⁸ Section 3.052, City of Palm Bay Charter.

**PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT**

City Manager, except through the City Manager. The City Charter further states that neither the Council nor its members shall give orders to any such officer or employee. After reasonable notice to the City Manager, individual members of the Council may closely scrutinize, by questions and observations, all aspects of City government operations, solely for the purpose of obtaining information to assist the Council in the formulation of sound policies to be considered. All recommendations for improvement in City government operation by individual Council members are to be made to and through the City Manager.

Our examination of City records and discussions with City personnel disclosed that the Mayor and another City Council member interacted with City employees without first giving reasonable notice to the City Manager. City personnel provided to us the following examples:

- In May 2017, the Mayor directly contacted, without first contacting the City Manager, the Utilities Director regarding unprofessional behavior by Utilities Department personnel. Subsequently, the City Manager sent an e-mail to the Mayor reminding the Mayor to copy the City Manager's office on communications with City employees since all complaints are tracked and reviewed by the City Manager to ensure issues are timely routed to appropriate departments and consistently handled. The City Manager also informed the Mayor in his e-mail that City Council members (includes the Mayor) contacting City staff directly places that staff in an uncomfortable position.
- In August 2017, a City Council member toured or visited the Fire and Utilities Departments without giving advance notice to the City Manager. Subsequently, the City Manager sent an e-mail to the City Council member informing him that directly contacting employees without including the City Manager places the employees in an awkward and uncomfortable situation.

When the City Manager is excluded from interactions between City Council members and City employees, there is an increased risk that information, such as residents' concerns, may not be timely communicated to the appropriate City staff and consistently, efficiently, and effectively addressed.

Recommendation: In accordance with the City Charter, the Mayor and other City Council members should not direct, interfere, or otherwise deal with City officers and employees who are subject to the direction and supervision of the City Manager, except through the City Manager.

INFORMATION TECHNOLOGY

As the City depends on information technology (IT) to record, process, maintain, and report essential financial and program information, City management has an important stewardship responsibility for establishing effective IT controls that provide reasonable assurance of the achievement of management's control objectives, including, in particular, the confidentiality, integrity, and availability of data and IT resources.

Finding 30: Information Technology User Access Privileges

Effective IT access controls include measures that limit user access privileges to only those system functions necessary for the performance of assigned job duties and promote an appropriate separation of duties. Periodic reviews of user access privileges help ensure that only authorized users have access

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

and that the access privileges provided to each user remain appropriate. An effective periodic review consists of identifying the current access privileges of all users and evaluating the assigned access privileges to ensure that they align with the users' job responsibilities.

User access privileges within the City's business services application, including the human resource (HR), payroll, and finance functions, were controlled by assigning employees specific user profiles with access to established applications, menus, options, and subfunctions. In response to our inquiry, City personnel indicated that, to assign access to new employees:

- HR Department personnel send the Communications and Information Technology (CIT) Department personnel a notification listing the new employee's name, position, and start date.
- CIT Department personnel create a network login and a business application account and assign the same user access privileges to the new employee as the former employee in that position.

Annually, on October 1, and at other times during the year, for example when a new department director is appointed, department directors review and update their department's designee authorized to request access to IT resources. However, neither the department directors nor CIT Department personnel periodically evaluate each user's access privileges to the business services application to ensure that the access is appropriate based on the user's assigned job duties. Although we requested, City personnel did not explain why periodic evaluations of user access privileges were not performed.

The City had employee access reports that included employees and their assigned user profiles; however, the City did not have the ability to succinctly extract the applications, menus, options, and subfunctions granted to each user profile in a manner that readily corresponded to user fields. In response to our inquiries, City personnel provided us a listing, not created directly from the City's business services application, that purported to show summarized IT access privileges for 197 users. Our examination of the listing and discussions with City personnel disclosed instances in which City controls over user access privileges were not effective. Specifically:

- 18 users (e.g., the Chief Procurement Officer, Finance Director, City Engineer, and Assistant Public Works Director) had update access privileges to purchasing and payment processing functions that were incompatible as the privileges allowed the users to add or update vendor information, approve requisitions, approve purchase orders, pay invoices, and issue accounts payable checks.
- 22 users had update access privileges to payroll functions that were incompatible or unnecessary for the user's job duties. Of these 22 users:
 - 10 users not assigned to the HR Department (e.g., the City Manager, Risk Manager, and Budget Administrator) could add or update employee information and also change employee rates of pay. Nine of these users also had the ability to issue payroll checks.
 - 7 HR Department employees had the ability to issue payroll checks, which was incompatible with the employees' abilities to add or update employee information and change rates of pay.
 - 3 Police Department employees (Accreditation Management Unit Secretary, Crime Analyst, and Special Operations Secretary) were able to add or update employee information, even though the access was unnecessary for the employees' job duties.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

- 1 Fire Department employee was able to update employee rates of pay, even though the access was unnecessary for the employee's job duties as Special Projects Manager.

The existence of inappropriate or unnecessary IT access privileges increase the risk that unauthorized disclosure, modification, or destruction of City data and IT resources may occur and not be timely detected. In response to our inquiries in October 2019, CIT Department personnel indicated that procedures would be developed to review access controls and to limit access to the minimum access needed for employees to perform their job duties.

Recommendation: The City should establish procedures that ensure IT user access privileges are necessary for the users' assigned job duties and enforce an appropriate separation of duties. Such procedures should include an effective process for documented, periodic evaluations of user access privileges and prompt removal of any inappropriate or unnecessary access privileges detected.

Finding 31: Information Technology Disaster Recovery Plan

An important element of an effective internal control over IT operations is a disaster recovery plan to help minimize data and asset loss in the event of a major hardware or software failure. Among other things, a well-designed disaster recovery plan should:

- Identify key personnel and responsibilities and include a communication strategy.
- Identify the City's critical data, processes, and applications for restoration in priority order given the timing of a potential disaster and the estimated prolonged outage. For example, City management may identify critical applications such as finance, human resources, and other necessary applications for priority restoration.
- Provide detailed backup procedures or schedules of critical data. Detailed instructions should include identification of an alternative site for use in the event of an IT resource failure, critical data sets to be backed up, frequency of backups, storage location(s), and how data will be accessed during a disaster.
- Require annual testing of the plan and evaluation of the City's ability to access and run critical applications and processes from an alternate site in the event of a disaster.

Plan elements should be tested annually to disclose any areas not addressed by the plan and to facilitate proper conduct in an actual disruption of IT operations.

In response to our inquiry, City personnel indicated that the City periodically backs up data and performs additional backups when a hurricane watch is issued; however, the City had not, as of July 2019, established an IT disaster recovery plan. According to the City Manager, for the past 5 budget years, CIT Department personnel have requested additional budgeted moneys of approximately \$600,000 to implement a disaster recovery system; however, the City Council did not approve the requests.

Absent a comprehensive disaster recovery plan and annual testing of the plan elements, there is an increased risk that the City may be unable to continue critical IT operations, or maintain availability of information systems data and resources, in the event of a disruption of IT operations.

***PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT***

Recommendation: The City should establish a comprehensive IT disaster recovery plan, and annually test and evaluate the plan.

End of Preliminary and Tentative Audit Findings.