

Solicitation RFP 2023-064

Internal Auditor Services

Bid Designation: Public



City of Delray Beach

Bid RFP 2023-064 Internal Auditor Services

Bid Number **RFP 2023-064**

Bid Title **Internal Auditor Services**

Bid Start Date **Jul 19, 2023 5:09:05 PM EDT**

Bid End Date **Aug 16, 2023 2:00:00 PM EDT**

Question & Answer End Date **Aug 4, 2023 5:00:00 PM EDT**

Bid Contact **Casetra Thompson**
Contract Administrator
Purchasing
thompsonc@mydelraybeach.com

Bid Contact **Peggy Cadeaux**
Chief Procurement Officer
Finance
cadeauxp@mydelraybeach.com

Contract Duration **3 years**

Contract Renewal **2 annual renewals**

Prices Good for **120 days**

Bid Comments **Internal Auditor Services**

Scope : The City of Delray Beach, Florida ("City") is seeking proposals from qualified Respondents to perform the internal audit function for the City in accordance with the terms, conditions, and specifications contained in this Request for Proposals (RFP).

The City will not hold a Pre-Bid Conference.

It is the responsibility of the Proposer to ensure all pages are included in the submission. All Proposers are advised to closely examine the Solicitation package.

Questions and Answers: The City provides a specified time for Vendors to ask questions and seek clarification regarding the requirements of the solicitation. All questions or clarification inquiries must be submitted through Periscope (formerly BidSync) by the date and time referenced in the solicitation document (including any addenda). The City will respond to all questions via Periscope.

BidSync is now known as "Periscope S2G, Supplier-To-Government" for vendors. Any reference to BidSync in this solicitation shall refer to "Periscope S2G, Supplier-To-Government."

The City of Delray Beach is exempt from Federal and State Taxes for tangible personal property tax.

The City of Delray Beach reserves the right to accept or reject any or all Proposals, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such coverage and terms it deems will best serve the interests of the City.

Proposals will be accepted through a secure mailbox at Periscope S2G (www.PeriscopeS2G.com) until the

Deadline for Submission as indicated in this RFP. Late Bids will not be accepted. The City will only accept electronic bids for this RFP.

Once the bid has been decrypted the tabulation link will appear under the “details tab” page. Vendors are instructed to contact Periscope S2G (BidSync) immediately for technical assistance if this feature is not available on their dashboard. Per Section 11.8b: General Terms and Conditions, Notice of Intent to Award shall be posted in Periscope S2G.

**Added on Aug 8, 2023:
Added on August 8, 2023:
Addendum No.2**

Words in ~~striketrough~~ type are deletions from existing text. Words in bold and underlined type are additions to existing text. The following changes and clarifications are as follows:

- Attachment A - FY 2019 Internal Audit Plan has been added.**
- Attachment B - Completed Internal Audit Report #1 has been added.**
- Attachment C - Completed Internal Audit Report #2 has been added.**
- Attachment D - Completed Internal Audit Report #3 has been added.**
- Attachment E - Completed Internal Audit Report #4 has been added.**

Item Response Form

Item **RFP 2023-064--01-01 - Group A Audit Services to be Provided**
 Quantity **1 each**
 Unit Price
 Delivery Location **City of Delray Beach**
 Finance
 Finance
 100 NW 1ST AVENUE
 DELRAY BEACH FL 33444
 Qty 1

 Expected Expenditure \$1.00

Description

Group A Audit Services to be Provided

1. Preparation of the annual audit plan to include conducting the risk assessment.
2. Execution of the annual audit plan, including testing and evaluation of a minimum of four (4) areas within the City on an annual basis.
3. Submit reports of findings to the City Commission and the City’s independent auditors and make reports available to other pertinent entities, Palm Beach County Office of Inspector General, State of Florida Auditor General’s Office.
4. Attend workshop/City Commission meetings as necessary.

Item **RFP 2023-064--01-02 - Group B Additional Services**
 Quantity **1 each**
 Unit Price
 Delivery Location **City of Delray Beach**
 Finance
 Finance
 100 NW 1ST AVENUE
 DELRAY BEACH FL 33444
 Qty 1

Description

Group B Additional Services



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING DIVISION

REQUEST FOR PROPOSAL

RFP NO. 2023-064

INTERNAL AUDITOR SERVICE

DUE DATE AND TIME: AUGUST 16, 2023 @ 2:00 P.M. (LOCAL TIME)

INSTRUCTIONS

Proposals must be received on or before the due date and time (local time). All Proposals will be publicly opened at City Hall, unless otherwise specified.

The City will only accept electronic submittals for this Request for Proposals (RFP). Proposals will be accepted through a secure mailbox at Periscope Supplier-to-Government (S2G) ([www.Periscope S2G.com](http://www.PeriscopeS2G.com)) until the Due Date and Time indicated in this RFP. Periscope S2G does not accept electronic Proposals after the Due Date and Time. It is the sole responsibility of the Proposer to ensure its electronic RFP submission is complete prior to the solicitation Due Date and Time. Electronic submission of Proposals will require the uploading of forms and/or attachments as designated in this RFP. Electronic submission must include a signed original of the Solicitation Summary form. The submission of forms and attachments containing embedded documents or proprietary file extensions is prohibited.

If the Solicitation Summary form is not included, the City may deem the Proposal non-responsive. Proposals must contain all information required to be included in the submittal, as described in this Solicitation.

BROADCAST

The City of Delray Beach utilizes electronic online services for notification and distribution of its solicitation documents. The City's solicitation information can be obtained from: (a) Periscope S2G - www.PeriscopeS2G.com (b) Purchasing webpage on the City of Delray Beach <https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations>; and (c) Request via email.

Proposers who obtain solicitations from sources other than those named above are cautioned that the Request for Proposals package may be incomplete. The City will not evaluate incomplete Proposal packages. Periscope

S2G is an independent entity and is not an agent or representative of the City.

CONTACT

Any questions regarding the specifications and Solicitation process must be submitted in writing through the "Question and Answer" feature on www.PeriscopeS2G.com. Requests for clarification and additional information must be received prior to the deadline for Submission of Questions on August 4, 2023, at 5:00 P.M. (Eastern Standard Time).



The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444
LEGAL ADVERTISEMENT

REQUEST FOR PROPOSAL NO. 2023-064
INTERNAL AUDITOR SERVICES

The City of Delray Beach, Florida (“City”) is seeking proposals from qualified Respondents to perform the internal audit function for the City in accordance with the terms, conditions, and specifications contained in this Request for Proposals (RFP).

Request for Proposals documents are available beginning July 19, 2023 on the Purchasing Division’s webpage of the City of Delray Beach website at <https://www.delraybeachfl.gov/government/city-departments/purchasing/current-bids-solicitations>, Periscope S2G at www.PeriscopeS2G.com, by contacting the City Purchasing Division at thompsonc@mydelraybeach.com or by phone at 561- 243-7163.

Proposals will be accepted through a secure mailbox at Periscope S2G (www.PeriscopeS2G.com) until the Deadline for Submission as indicated in this RFP. **The Due Date and Time for submission of proposals is August 16, 2023 at 2:00 PM (Eastern Time).** Late Proposals will not be accepted. **The City will only accept electronic Proposals for this RFP.**

The City will not hold a Pre-Proposal Conference.

It is the responsibility of the Proposer (Respondent) to ensure that all pages are included in the submission. All Proposers are advised to closely examine the solicitation package. Any questions regarding the completeness or substance of the solicitation package or scope of services must be submitted in writing via email to thompsonc@mydelraybeach.com.

The City of Delray Beach is exempt from Federal and State taxes for tangible personal property tax.

The City of Delray Beach reserves the right to accept or reject any or all Proposals, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such terms as it deems will best serve the interests of the City.

CITY OF DELRAY BEACH

**SECTION 1
 PROJECT OVERVIEW**

- 1.1 The City of Delray Beach, Florida, is seeking proposals from qualified Respondents to perform the internal audit function for the City in accordance with the terms, conditions, and specifications contained in this Request for Proposals (RFP).
- 1.2 **TERM OF CONTRACT**
 The Contract shall commence upon the date of the duly executed Agreement for a term of three (3) years with the option, if exercised by the City, of two (2) additional one (1) year renewals.
- 1.3 **METHOD OF AWARD:**
 The Method of Award for this solicitation will be to the Proposer with the highest ranking or scores, with whom the City is able to negotiate an acceptable Agreement. The City will enter negotiations with the firm receiving the highest-ranking proposal score. Should negotiations fail then the City will enter negotiations with the next highest-ranking firm.
- 1.5 The City intends to contract a single firm for the services listed in this procurement.
- 1.6 The anticipated schedule for this solicitation is as follows:

| ITEM | EVENT | DATE/TIME |
|-------------|---|------------------------|
| a. | Issue RFP | July 19, 2023 |
| b. | Institute Cone of Silence | July 19, 2023 |
| c. | Non-Mandatory/Non-Mandatory Pre-Proposal Conference | N/A |
| d. | Deadline for Delivery of Questions | August 4, 2023 |
| e. | Due Date and Time (for delivery of Proposals) | August 16, 2023 |
| f. | Technical Evaluations | TBD |
| g. | Oral Presentations/Interviews (if conducted) | TBD |
| h. | Final Evaluations | TBD |

- 1.7 **MEETING LOCATIONS**
 - City Hall Conference Room – located at 100 N.W. 1st Avenue, first floor, Delray Beach, FL.
 - Swinton Operations Center (SOC) – Conference Room and Training Rooms – located at 434 South Swinton Avenue, Delray Beach, FL.

END OF SECTION 1

SECTION 2 SPECIAL TERMS AND CONDITIONS

2.1 PURPOSE

The purpose of this Request for Proposals (RFP) is to solicit Proposals from qualified firms or individuals to perform the internal audit function for the City the City of Delray Beach.

The City expects each Proposer to clearly outline its best and most comprehensive resources in its response, because all services and responsibilities identified in this solicitation will be awarded to the selected Proposer.

2.2 ELIGIBILITY

To be eligible to respond to this Request for Proposals and be considered for award, the Proposer must demonstrate to the satisfaction of the City that it or the principals assigned to the engagement has successfully provided services, similar in scope and complexity, to a municipality, quasi-governmental organization, or a private organization. Proposers must meet all of the following minimum qualifications:

- a. Proposer must have at least 10 years of experience in auditing a municipality, quasi-governmental organization or a private organization similar in scope and complexity to the City of Delray Beach.
- b. Licensed – The proposing firm or individual is properly licensed for practice as a certified public accounting firm/certified public accountant in the State of Florida.
- c. Independence – The proposing firm or individual meets the independence requirements and continuing education and external quality control review requirements contained in the American Institute of Certified Public Accountants and current *Government Auditing Standards* as published by the U.S. Government Accountability Office.

2.3 RECORDS, ACCOUNTS, AND STATEMENTS

The successful Proposer shall keep on its premises, or such other place approved by the City, current, true, accurate, and complete records and accounts of all services provided to the City and shall give the City or City's representative access during reasonable business hours and upon three (3) business days' notice to examine and audit such records and accounts. Such records shall be maintained at such standards to allow a certified auditor the ability to properly examine the records in order to certify a statement of the successful Proposer's business with the City.

2.4 GENERAL STANDARDS

The successful Proposer shall at all times comply with all rules, regulations, and ordinances of the City and other governmental agencies having jurisdiction. The successful Proposer shall further take all precautions and extreme care to conduct its activities in a safe, professional, and prudent manner with respect to its agents, employees, members, visitors, and participants.

- a. Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for any material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b. Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, or any of its employees, is or has been involved within the last three (3) years.

- c. Provide a copy of the individual's or firm's latest peer review.

2.5 DEFAULT

- a. In the event the successful Proposer defaults in the performance of the contract, the City shall have the following options:
 - i. The City Manager will give the successful Proposer thirty (30) days' written notice of default. If the problem is not resolved within the thirty (30) days, the City may immediately terminate the contract upon providing written notice of the Proposer's failure to timely cure the default and obtain the services elsewhere.
 - ii. The City may recover at law any and all claims that may be due to the City from the successful Proposer.
 - iii. The City may perform such work as it deems necessary to cure the default or subsequent default and charge the successful Proposer for the full cost of labor and materials expended, plus thirty percent (30%) of the cost for administrative overhead.
- b. The acceptance of all or part of monies due for any period after a default shall not be deemed as a waiver of any of these options, or a waiver of the default or subsequent default of the same or any other term, covenant, and condition.
- c. The successful Proposer agrees that the City shall not be responsible or have any liability whatsoever for any alleged damages, claim of lost profits, or otherwise in the event the City declares the successful Proposer in default hereunder.

2.6 INSURANCE

The selected Proposer shall not commence any performance pursuant to the terms of this RFP until certification or proof of insurance has been received and approved by the City's Risk Coordinator or designee.

The required insurance coverage is to be issued by an insurance company authorized, licensed, and registered to do business in the State of Florida, with the minimum rating of A- VII or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least ten (10) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the selected Proposer's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

The selected Proposer must submit a current Certificate of Insurance, naming the City of Delray Beach as an additional insured and listed as such on the insurance certificate, no later than ten (10) days after award and prior to commencement of any work. New certificates of insurance are to be provided to the City upon expiration. All renewal or replacement certificates of insurance shall be forwarded to the City's Purchasing Division located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

The selected Proposer shall provide insurance coverage as follows:

- 2.6.1. **WORKERS COMPENSATION** – With statutory limits, the City reserves the right not to accept exemptions to the Workers Compensation requirements of this Solicitation.

- 2.6.2. **COMMERCIAL GENERAL LIABILITY** – With limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

The Commercial General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

- 2.6.3. **AUTOMOBILE LIABILITY** – Covering all vehicles associated with Proposer's operations to include all owned, non-owned and hired vehicles. The coverage will be written on an occurrence basis with limits of liability not less than One Million Dollars (\$1,000,000) combined single limit per each occurrence.

- 2.6.4. **PROFESSIONAL LIABILITY ("Errors & Omissions")** – With limits of not less than one Million Dollars (\$1,000,000) per occurrence.

The selected Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.

- 2.6.5. **DATA BREACH AND PRIVACY/CYBER LIABILITY INSURANCE** – Including coverage for failure to protect confidential information and failure of the security of the Proposer's computer systems or the City's systems due to the actions of the Proposer which results in unauthorized access to City data. The limit applicable to this policy shall be no less than \$1,000,000 per occurrence and must apply to incidents related to the Cyber Theft of the City's property.

The selected Proposer must submit, no later than ten (10) days after award and prior to commencement of any work, a Certificate of Insurance naming the City of Delray Beach as an additional insured.

2.7 PERFORMANCE BOND/LETTER OF CREDIT **Intentionally Omitted**

2.8 CERTIFICATIONS/LICENSES

Any Proposer that submits an offer in response to this solicitation shall, at the time of such offer, hold all the required licenses, permits, and certifications issued by the applicable State, County or City agency/department qualifying the Proposer to perform the services described in this solicitation.

The City may at its option, and in its best interest, allow the Proposer to supply any missing information on certification and licensing during the Proposal Evaluation period.

2.9 METHOD OF PAYMENT: MONTHLY INVOICES

The selected Proposer shall submit an invoice to the City, each month, after the services have been performed and have been received and accepted by the City. The amount charged shall not be in excess of the rates and fees agreed to in the Agreement.

The date of the invoices shall not exceed thirty (30) calendar days from the performance of the work. Under no circumstances shall the invoice be submitted to the City in advance of the performance of the work.

The invoice shall contain the following basic information: the awarded Proposer's name and address, invoice number, date of invoice, description of the service performed, the contract number, purchase order number, and any discounts.

The City prides itself on paying its vendors promptly and efficiently, and as such requires that vendors accept payment via wire transfer, ACH (direct deposit), or an appropriate electronic payment method. The City is averse to issuing paper checks and seeks to discontinue this practice. All payments shall be made in accordance with the Florida Prompt Payment Act, Section 218.74, *Florida Statutes*, upon presentation of a proper invoice by the awarded Proposer.

2.10 SUBCONTRACTING IS NOT ALLOWED

The City will not allow any subcontracting of the work to be performed under this Contract. The selected Proposer must perform the work with its own staff. During the performance of the Contract, the City may occasionally allow the selected Proposer to substitute some of its staff to account for unavailable individuals, but only with the explicit written permission of the City.

2.11 OTHER FORMS OR DOCUMENTS

If the City is required by the selected Proposer to complete and execute any other forms or documents in relation to this solicitation, the terms, conditions, and requirements in this solicitation shall take precedence to any and all conflicting or modifying terms, conditions or requirements of the selected Proposer's forms or documents.

2.12 MODIFICATION OF SERVICES

- a. The City reserves the right to delete or modify any portion of the contracted services at any time without cause, and if such right is exercised by the City, the rates and fees shall be reduced at the same ratio as the estimated costs of the services deleted relates to the estimated costs of the service originally contracted. If service has already been provided on the portion of the work to be deleted, the selected Proposer will be paid for the deleted portion based on the estimated percentage of the completion of such portion.
- b. If the selected Proposer and the City agree on modifications or revisions to the service elements, after the City has approved performance of a particular task or project, and a budget has been established for that task or project, the selected Proposer shall submit a revised budget to the City for approval prior to proceeding with the task or project.

END OF SECTION 2

SECTION 3 SCOPE OF SERVICES

3.0 **GENERAL INFORMATION AND BACKGROUND**

The City of Delray Beach, Florida (City) is seeking the service of an independent certified public accounting firm or independent certified public accountant to perform the internal audit function for the City and other auditing services that may be requested by the City of Delray Beach.

Description of Operations or Background:

For the last few years, the internal audit function was performed by the auditing firm JMD Premier Group, Inc.

The City is a full-service city with a Commission/Manager form of government. The Mayor is elected at-large every three years and presides over four Commissioners who are also elected at-large for three-year alternating terms. The City Attorney, City Manager and Internal Auditor report to and serve at the pleasure of the City Commission. The City has approximately 780 employees and an FY2023 annual operating budget of \$255 million.

The City provides a full range of services, including Public Safety (police and fire protection/EMS); Parks and Recreation (beaches, community pools, marina/docks, boat ramps, multiple parks and recreation centers; Public Works (traffic, roads, parking and public infrastructure); Environmental Services Department (water and sewer, storm water, engineering and construction services); Community Improvement (permits, inspections, code enforcement, garbage and trash); Planning Department (short and long term land use review and planning, zoning, support for administrative boards, and land development regulations), and administrative and financial support services.

Computer System: The City operates with Tyler New World Financial Management and HR/Payroll software. It also uses Sungard Public Sector for its utility billing and cash receipts processes.

3.1 **SCOPE OF SERVICES:**

3.1.1 General Responsibilities

The successful Proposer will provide the City with an independent appraisal of the adequacy and effectiveness of its systems of internal administrative and accounting controls, and determine the financial integrity, economy, efficiency and effectiveness of the City's operations when compared with established standards and best practices. Perform the internal audit function in accordance with current International Standard for the Professional Practice of Internal Auditing or the Government Auditing Standards issued by the Comptroller General of the United States, and in accordance with Florida statutes.

3.1.2 Audit Services to be Provided

- a. Conduct an annual risk assessment of the City's primary operations. This assessment will identify the strengths, weaknesses, challenges and potential risk of City operations. An internal audit plan for each year will be developed based on the outcomes of the risk assessment. This assessment shall also include in-person interviews with relevant management personnel and/or members of the City Commission, and the review of available documentation including previous audit reports.
- b. Review the Risk Assessment and internal audit plan annually (at a minimum) and modify same to reflect changes in the internal or external environment that affects the risks that the City is facing.
- c. Test and evaluate a minimum of four (4) areas within the City over a twelve-month period. The selection of these four areas should take into account risk, control weaknesses, size, and complexity of

operations. At the conclusion of each evaluation, a report will be issued to the City Commission. The report shall include an executive summary, scope, background, significant findings of risk exposures and/or control deficiencies, recommendations for correcting each significant finding and management's response to these findings.

- d. Submit reports of findings to the City Commission and the City's independent auditor and make reports available to the Office of the State Auditor General or Palm Beach County Office of Inspector General upon request.
- e. Ensure that matters reported by internal audits, or other regulatory bodies are resolved in a timely manner.
- f. Review other areas as deemed necessary as requested by the City.

3.2 **AUDITING STANDARDS TO BE FOLLOWED:** To meet the requirements of this Request for Proposals, the Proposer shall adhere to the ethical and professional standards promulgated by the International Standards for the Professional Practice of Internal Audits (IIA), and as appropriate, Government Auditing Standards, as issued by the United States General Accountability Office (GAO), and state laws or rules or regulations.

3.3 **WORKING PAPER RETENTION AND ACCESS TO WORKING PAPERS:** All work papers and reports shall be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of the need to extend the retention period. The auditor shall make working papers available, upon request, and with the prior authorization of the City, to the City of Delray Beach, Florida ("City") or other parties designated by the City. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

END OF SECTION 3

SECTION 4 RESPONSE REQUIREMENTS

4.1 SUBMITTAL REQUIREMENTS

Proposers should carefully follow the format and instructions outlined herein. All documents and information must be fully completed and signed as required. Do not password-protect electronic documents.

The Proposal shall be written in sufficient detail to permit the City to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.2 REQUIRED INFORMATION

In addition to the information required in Section 3, Scope of Services, Proposers must submit the following information with their Proposals:

a. SUBMITTAL FORMAT

To facilitate and expedite review, the City asks that all Proposers follow the response format outlined below. Failure to submit your response in the format requested may result in delay evaluating your Proposal. To assist you in preparing your response, the City's selection procedures are also described herein. Proposers must abide by all requirements set forth to avoid any risk of disqualification.

b. PROPOSALS SHOULD FOLLOW THE FORMAT BELOW:

TAB 1 – INTRODUCTION

Provide a cover letter no longer than two (2) pages in length, signed by an authorized representative of your firm. Provide a positive commitment to provide the required services. Also, the letter should disclose the name of the contracting agent and primary contact person, his/her title, address, phone number, fax number and email address. The table of contents should follow the cover letter.

TAB 2 – TABLE OF CONTENTS

Include a clear identification of the material included in the Proposal by page number.

TAB 3 – MINIMUM QUALIFICATIONS

Each proposer shall submit information and documentation requested that confirms it meets the following qualification requirement(s):

- A. Must be registered with the States of Florida, Division of corporations to do business in Florida.

No documentation is required. The City will verify registration.

- B. Describe the qualifications and relevant experience of the Engagement Partner and all key staff that are intended to be assigned to this contract. Include resumes for the Engagement Partner and all key staff described. Include the qualifications, training and experience, especially as it relates to auditing.

- i. Provide an organizational chart of the engagement team and identify individuals with professional certifications in the engagement team.

- C. Proposer is NOT listed on the Florida State Board of Administration, Scrutinized List of Prohibited Companies found at:

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/scrutinized_list_of_prohibited_companies

Provide an executed copy of the Scrutinized Company Certification form.

- D. Proposer has no reported conflict of interests in relation to this solicitation.

Disclose the name of any officer, director or agent who is also an employee of the City. Disclose the name of any City employee who owns, directly or indirectly, any interest in the Proposer's firm or any of its branches. If no conflicts of interests are present, Proposer must submit a statement to that affect.

TAB 4 – PROPOSER'S INFORMATION

- A. Legal contracting name including any dba and state of organization or incorporation.
- B. Ownership structure of Proposer's company (e.g., Partnership, Limited Liability Corporation, Corporation).
- C. Provide, in this section, a completed and executed copy of Proposer's W-9 that includes the company federal identification number.
- D. Contact information for Proposer's Corporate headquarters and any offices in Palm Beach and Broward counties to include the following:
- i. Address
 - ii. City, State, Zip
 - iii. Phone
- E. Contact information for Proposer's primary and secondary representative during this solicitation process.
- i. Name
 - ii. Phone
 - iii. E-mail
 - iv. Mailing Address
 - v. City, State, Zip
- F. Provide details of any ownership changes to Proposer's organization in the past three years or changes anticipated within six months of the Due Date and Time (e.g., mergers, acquisitions, changes in executive leadership).
- G. Provide the names of the persons who are officers or principals of the company.
- H. Any additional organizational information that the Proposer's wishes to supply to augment its Proposal.
- I. Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized

representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for any material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

- J. Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors, is or has been involved within the last three (3) years.

TAB 5 – EXPERIENCE, ABILITY AND REFERENCES

- A. Provide details of Proposer’s years of experience in the field of internal auditing for projects similar in scope and complexity to that described in this RFP. Include the types of accounts and clients for which your firm presently provides internal auditing services, particularly your firm’s experience with governmental entities. Describe any services your firm offers that may distinguish it from others or any unique qualifications of your firm to provide auditing services to the City.
- B. Provide background information on the principals of your company who will be associated with this engagement. Provide information about the general organization structure of your firm, including names and reporting relationships of key management team members. Provide information about the audit team to be assigned to perform the Work, including the responsibilities of each proposed audit team member. Include an organizational chart of the proposed audit team and a brief biography of the persons who will be primarily responsible for performing the Work. Describe your firm’s “back-up plan” in the event one or more of persons assigned to this engagement leaves the firm.
- C. Provide a minimum of three (3) client references for projects with similar scope who are agreeable to responding to an inquiry by the City. References should include the following information:
- i. Organization name
 - ii. Contact name(s)
 - iii. Address
 - iv. Telephone number
 - v. Date of service (start/end)
 - vi. Total amount of contract
 - vii. Scope of Work (brief description)

TAB 6 – TECHNICAL APPROACH

Please include the following in your proposal with regard to your firm’s audit approach and methodology:

- A. Describe how you would approach conducting an initial risk assessment for the City and how you would develop an internal audit schedule for the periodic review of internal controls in each of the City’s departments based upon the risk assessment.
- B. Describe the methods by which audit programs will be prepared and tailored to the City’s unique processes. Provide your firm’s audit and internal controls philosophy, in particular with respect to assets and controls of government.
- C. Describe your firm’s experience in auditing technology systems controls, including accounting software systems, PC based software applications, local area networks, cybersecurity controls, etc.

- D. Describe the method by which the work completed by the audit engagement team will be documented, in addition to any reports provided, and the availability of such documentation for review by the City, regulators, external auditors, etc. Also indicate where such workpapers will be maintained and whether there are any circumstances under which the City would not be provided copies of workpapers it requests.
- E. Provide samples of management reports, including audit reports and comment/recommendation tracking and follow-up reports that the City can expect to receive in connection with the firm's audit services. Detail proposed meeting availability for phone calls and in-person meetings. Attendance at City Commission meetings may be needed periodically as well.
- F. Describe the extent to which City personnel will be required to assist or provide support to the members of your staff conducting audits. Describe any support requirements expected of the City, i.e., special reports, technology, etc.

TAB 7 – FEE PROPOSAL

Proposers shall submit the electronic bid form in Periscope S2G to submit its Fee Proposal. The following pricing is submitted as, all inclusive, to provide Internal Audit Services in accordance with the requirements identified in this Scope of Services, and as set forth in this RFP document.

Fee Proposal for all services, materials, supplies, and any other items or requirements necessary to complete the work in Section 3.1 shall be proposed as the lump sum in **Group A**. The fee proposal outlined in Group A shall consist of the following:

- Preparation of the annual audit plan to include conducting the risk assessment.
- Execution of the annual audit plan, including testing and evaluation of a minimum of four (4) areas within the City on an annual basis.
- Submit reports of findings to the City Commission and the City's independent auditors and make reports available to other pertinent entities, Palm Beach County Office of Inspector General, State of Florida Auditor General's Office.
- Attend workshop/City Commission meetings as necessary.

Hourly rates of key personnel, including all partners, managers, seniors or other professional staff that will perform work and/or services under this contract. These hourly rates will be used to coincide with the cost estimates in the audit plan and shall be used as a basis for any additional work not included in the original scope of work that may be later authorized by the City Commission, identified herein as Additional Services in **Group B**.

Group A - The **LUMP SUM** total must be entered in Periscope S2G "Place Offer Form" which will be considered in the final evaluation and ranking of the Proposers. Proposers are hereby informed that the Unit Price for this line will be the Proposer's proposed (all-inclusive) maximum not-to-exceed price for all services and deliverables. Price is a matter of responsiveness and will be considered in final evaluation and ranking of qualified firms. Failure to complete and electronically submit pricing in Periscope S2G shall determine the Proposer to be non-responsive to the solicitation requirements.

Bid pricing should be noted as a maximum amount payable for services, which remains subject to reductions through negotiations, and is not a 'guaranteed' amount by City.

TAB 8 – ATTACHMENTS

All Attachment/Forms and Affidavits required by this solicitation shall be fully executed by the Proposer and submitted as shown in Section 7 of this solicitation.

END OF SECTION 4

**SECTION 5
EXHIBITS**

5.1 EXHIBITS - NONE

END OF SECTION 5

**SECTION 6
 THE EVALUATION PROCESS**

6.1 REVIEW OF PROPOSALS FOR RESPONSIVENESS

Each Proposal will be reviewed to determine if the Proposal is responsive to the submission requirements outlined in this solicitation. A responsive Proposal is one that follows the requirements of this solicitation, includes all documentation, is submitted in the format outlined in this solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the Proposal being deemed non-responsive.

6.2 REVIEW OF PROPOSALS FOR RESPONSIBILITY

Each Proposer will be reviewed to determine if the Proposer is a responsible Proposer. A responsible Proposer is a Proposer which the City affirmatively determines (prior to the award of a contract) has the ability, capability, and skill to perform under the terms of the contract; can provide the materials or service promptly within the time specified, without delay or interference; has a satisfactory record of integrity and business ethics; and meet the Minimum Qualification requirements in this solicitation.

6.3 EVALUATION CRITERIA

Proposals will be evaluated by an Evaluation/Selection Committee that will evaluate and rank Proposals using the criteria outlined below. The Evaluation/Selection Committee will be comprised of appropriate City personnel and/or members of the community, as deemed necessary, with the appropriate experience and/or knowledge. The criteria are itemized with their maximum scores for a maximum total of **one hundred (100)** points per Evaluation/Selection Committee member.

| <u>CRITERIA</u> | <u>MAX. POINTS</u> |
|---|--------------------|
| a. Demonstrated Relevant Experience with Similar Audit Engagements & References | 30 |
| b. Staff Qualifications and Experience | 25 |
| c. Audit Approach/Methodology | 25 |
| e. Fee Proposal | 20 |

6.4 ORAL PRESENTATIONS

Upon initial completion of the criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on, among other considerations, scores in clusters and/or maintaining competition. Upon completion of the oral presentation(s), the Evaluation/Selection Committee will perform a final review to re-evaluate, re-rate, and re-rank and short-list the Proposals remaining in consideration based upon the written documents, combined with the oral presentation. In such circumstances, the initial ranking of the Proposers shall be considered a preliminary ranking until after oral presentations are completed before the City Commission. The City Commission reserves the right to select the proposal which in the opinion and sole discretion of the City Commission will be in the best interest of or most advantageous to the City. The City Commission reserves the right to waive any irregularities and technicalities in the proposals.

6.5 PRICE OFFERS AND EVALUATION

After the evaluation of the technical areas of the Proposal, the City will evaluate the price aspects of the Proposal. The City will use the prices submitted by each Proposer to estimate the total cost of the Proposer's services. The

Proposer that submits the lowest total price for all combined services will be awarded the maximum number of points (20). The total points awarded for price is determined by applying the following formula: $(\text{Lowest Proposed Price} / \text{Vendor's Price}) \times (\text{Maximum Number of Points for Price}) = \text{Price Score}$. The pricing evaluation is used as part of the evaluation process to determine the highest-ranked Proposer. The City reserves the right to negotiate the final terms, conditions, and pricing of the contract as may be in the best interest of the City.

6.6 NEGOTIATIONS

If the City and the Proposer(s) cannot reach agreement on a contract, the City reserves the right to terminate negotiations and may, at the City Manager's or designee's discretion, begin negotiations with the next highest-ranked Proposer(s). This process may continue until a contract acceptable to the City has been executed or all Proposals are rejected. No Proposer shall have any rights against the City arising from such negotiations or termination thereof.

6.7 CONTRACT AWARD

Any contract resulting from this solicitation will be submitted to the City Manager or designee, and the City Commission for approval, as appropriate. All Proposers will be notified in writing when the City Manager or designee makes an award recommendation. The contract award, if any, shall be made to the Proposer whose Proposal shall be deemed by the City to be in the best interest of the City. Notwithstanding the rights of protest listed herein, the City's decision of whether to make the award and to which Proposer shall be final.

END OF SECTION 6

SECTION 7 PROPOSAL SUBMITTALS

7.1 FORMS

The forms listed below must be completed by an official having legal authorization to contractually bind the company or firm. Each signature represents a binding commitment upon the Proposer to provide the goods and/or services offered to the City if the Proposer is determined to be the most responsive and responsible Proposer. Solicitation forms should be submitted via web forms available on <https://www.periscopeholdings.com/s2g> when submitting an electronic proposal. Web forms require Proposers to use their <https://www.periscopeholdings.com/s2g> password to submit, which serves as a signature from Proposer.

- a. Acknowledgment of Addenda
- b. Proposal Submittal Signature Page
- c. Conflict of Interest Disclosure Form
- d. Notification of Public Entity Crimes Law
- e. Notification of Public Records Law
- f. Drug-Free Workplace
- g. Non-Collusion Affidavit
- h. Truth-In-Negotiation Certificate
- i. Scrutinized Company
- j. Conditions of Purchase
- k. Sample Performance Bond Format (if required, will be requested from the Proposer recommended for award)
- l. Sample Payment Bond Format (if required, will be requested from the Proposer recommended for award)
- m. Sample Letter of Credit Format (if required, will be requested from the Proposer recommended for award)

ACKNOWLEDGEMENT OF ADDENDA

INSTRUCTIONS: COMPLETE PART I OR PART II, WHICHEVER APPLIES

PART I:

List below the dates of issue for each addendum received in connection with this solicitation:

Addendum #1, Dated _____

Addendum #2, Dated _____

Addendum #3, Dated _____

Addendum #4, Dated _____

Addendum #5, Dated _____

Addendum #6, Dated _____

Addendum #7, Dated _____

Addendum #8, Dated _____

Addendum #9, Dated _____

Addendum #10, Dated _____

PART II:

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS SOLICITATION

Firm Name

Signature

Name and Title (Print or Type)

Date

PROPOSAL SUBMITTAL SIGNATURE PAGE

By signing this Proposal, the Proposer certifies that it satisfies all legal requirements as an entity to do business with the City, including all Conflict of Interest and Code of Ethics provisions.

Firm Name:

Street Address:

Mailing Address (if different from Street Address):

Telephone Number(s): _____

Fax Number(s): _____

Email Address: _____

Federal Employer Identification Number: _____

Prompt Payment Terms: _____% _____ days' net _____ days

Signature: _____
(Signature of authorized agent)

Print Name: _____

Title: _____

Date: _____

By signing this document, the Proposer agrees to all terms and conditions of this solicitation and the resulting contract/agreement.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL, FOR NOT LESS THAN 120 DAYS, AND THE PROPOSER'S UNEQUIVOCAL OFFER TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS SOLICITATION. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED ABOVE, BY AN AUTHORIZED REPRESENTATIVE, SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE CITY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS PROPOSAL.

CONFLICT OF INTEREST DISCLOSURE FORM

The award of this contract is subject to the provisions of Chapter 112, *Florida Statutes*. All Proposers must disclose within their Proposal: the name of any officer, director, or agent who is also an employee of the City of Delray Beach.

Furthermore, all Proposers must disclose the name of any City employee who owns, directly or indirectly, an interest of more than five percent (5%) in the Proposer’s firm or any of its branches.

The purpose of this disclosure form is to give the City the information needed to identify potential conflicts of interest for evaluation team members and other key personnel involved in the award of this contract.

The term “conflict of interest” refers to situations in which financial or other personal considerations may adversely affect, or have the appearance of adversely affecting, an employee’s professional judgment in exercising any City duty or responsibility in administration, management, instruction, research, or other professional activities.

Please check one of the following statements and attach additional documentation if necessary:

_____ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other Cities, Counties, contracts, or property interest for this Proposal.

_____ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other Cities, Counties, contracts, or property interest for this Proposal.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

NOTIFICATION OF PUBLIC ENTITY CRIMES LAW

Pursuant to Section 287.133, *Florida Statutes*, you are hereby notified that a person or affiliate who has been placed on the convicted contractors list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity; may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit Proposals on leases or real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-Proposer, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 [F.S.] for Category Two [\$35,000.00] for a period of thirty-six (36) months from the date of being placed on the convicted contractors list.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

**Notification of Public Records Law Pertaining to Public Contracts and Requests
for Contractor Records Pursuant to Chapter 119, Florida Statutes**

Pursuant to Chapter 119, Florida Statutes, Contractor shall comply with the public records law by keeping and maintaining public records required by the City of Delray Beach in order to perform the service. Upon request from the City of Delray Beach’ custodian of public records, contract shall provide the City of Delray Beach with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract. If the Contractor does not transfer the records to the City of Delray Beach. Contractor upon completion of the contract, shall transfer, at no cost, to the City of Delray Beach all public records in possession of the Contractor or keep and maintain public records required by the City of Delray Beach in order to perform the service. If the Contractor transfers all public records to the City of Delray Beach upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of Delray Beach, upon request from the City of Delray Beach’ custodian of public records, in a format that is compatible with the information technology systems of the City of Delray Beach.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OFFICE OF THE CITY CLERK LOCATED AT 100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444, PHONE NUMBER (561) 243-7000, EMAIL ADDRESS: JOHNSONK@MYDELRAYBEACH.COM.

Acknowledged:

Firm Name

Signature

Name and Title (Print or Type)

Date

DRUG-FREE WORKPLACE

_____ is a drug-free workplace and has
(Company Name)
a substance abuse policy in accordance with and pursuant to Section 440.102, *Florida Statutes*.

Acknowledged by:

Firm Name

Signature

Name and Title (Print or Type)

Date

NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, after being by me first duly sworn, deposes and says of his/her personal knowledge that:

a. He/She is _____ of _____, the Proposer that has submitted a Proposal to perform work for the following:

RFP No.: _____ Title: _____

b. He/She is fully informed respecting the preparation and contents of the attached Request for Proposals, and of all pertinent circumstances respecting such solicitation.

Such Proposal is genuine and is not a collusive or sham Proposal.

c. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Proposer, firm, or person to submit a collusive or sham Proposal in connection with the solicitation and contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such solicitation and contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposer, firm, or person to fix the price or prices in the attached Proposal or any other Proposal, or to fix any overhead, profit, or cost element of the Proposal price or the Proposal price of any other Proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City or any person interested in the proposed contract.

d. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _ day of _____, 20_, by _____ (name of person acknowledging).

Personally known ___OR Produced Identification
Type of Identification Produced _____

Notary Public – State of _____

TRUTH – IN – NEGOTIATION CERTIFICATE

The undersigned warrants (i) that it has not employed or retained any company or person, other than bona fide employees working solely for the undersigned, to solicit or secure the Agreement and (ii) that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than its bona fide employees working solely for the undersigned or agreed to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement.

The undersigned certifies that the wage rates and other factual unit costs used to determine the compensation provided for in the Agreement are accurate, complete, and current as of the date of the Agreement.

(This document must be executed by a Corporate Officer.)

Name: _____

Title: _____

Date: _____

Signature: _____

Scrutinized Company Certification

This certification is required pursuant to Florida State Statute Section 287.135.

As of July 1, 2011, a company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more.

Companies must complete and return this form with its response.

Company. _____ FID or EIN No. _____

Address. _____

City. _____ State. _____ Zip. _____

I, _____, as a representative of _____ certify and affirm that this company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

Signature

Title

Printed Name

Date

CONDITIONS OF PURCHASE

1. **ACCEPTANCE:** This order is for the purchase of goods and/or services (herein referred to as "the Articles" described on the front side herein). The Buyer's offer to the Seller and the Seller's acknowledgment to the Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions herein set out. In the absence of such acknowledgement, commencement of delivery of the Articles and/or services and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed agreement between the parties providing otherwise. In the event of a conflict, Buyer's terms and conditions prevail.
2. **WARRANTY-PRODUCT:** The Seller expressly warrants that the Articles shall be merchantable within the meaning of Articles 2-314 (2) of the Uniform Commercial Code as provided by Florida Law and in effect on the date of this order. In addition to all warranties which may be prescribed by law the Articles shall conform to specifications, drawing, and description and shall be free from defects in materials and workmanship. Seller also warrants that the extent the Articles are not manufactured pursuant to detailed designs furnished by Buyer, that they will be free from defects in design. Such warranties, including warranties prescribed by law shall run to Buyer, its successor, assigns, and customers, and to users of the Articles for a period of one (1) year after delivery unless otherwise stated.
3. **INDEMNITY AND INSURANCE:** (a) Seller shall defend, indemnify and hold Buyer, its employees, its customers and users of the purchased Articles, harmless from any property damage, personal injuries, or death arising out of Seller's (or its subcontractor's) work or performance hereunder and shall procure and maintain liability insurance, including contractual liability coverage, with minimum limits of \$300,000 combined single limits to be effective during period of warranty with such higher limits as Buyer shall reasonably request of Seller. Seller shall on or before delivery of the Articles purchased hereunder, furnish to Buyer a Certificate of Insurance evidencing the foregoing coverage and limits. (b) Seller shall defend, indemnify and hold Buyer harmless from the assessments by any third party of any liquidated damages or proven actual damages arising out of the failure of Seller to timely deliver the Articles purchased hereunder. (c) Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, agents and employees from and against any and all damages, charges, losses, (including the cost of any Articles lost by libel, condemnation, or voluntary recall) actions, and proceedings brought by the United States of America, or any State government or any agency or instrumentality thereof against Buyer, its officers, directors, agents and/or employees or assigns on such Articles by reason of any claim or findings by and said public authority that any such Articles are not as herein guaranteed.
4. **TERMINATION:** (a) Buyer may terminate this order, in whole or in part without liability to Buyer, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the other terms or conditions hereof. (b) Buyer may terminate this order in whole or in part, at any time for its convenience, by noticing to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder and stop the placement of subcontractors, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim must be submitted to Buyer within sixty (60) days after the effective date of the termination. (c) Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. (d) Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto.
5. **COMPLIANCE WITH LAWS:** Seller guarantees to Buyer that the Articles comply with all federal, state, and local laws, regulations, declarations, interpretations, and orders issued thereunder.
6. **CONTROLLING LAW:** This order and the performance of the parties hereunder shall be controlled and governed by the law of the State of Florida, and the venue shall be in Palm Beach County, Florida.
7. **GENERAL:** All warranties shall be construed as conditions as well as warranties. No waiver of a breach or any provision of this order shall constitute a waiver of any other breach or provision. No modification or change in, or

departure from, or waiver of the provisions of this order shall be valid or binding unless approved by Buyer in writing. This order shall constitute the entire agreement between the parties. The Seller expressly agreed that any terms or conditions contained on any form or agreement other than this agreement, unless specifically agreed to otherwise by Seller and Buyer, which are not in full accord with the above stated agreement and its terms, shall be null and void.

8. ALLOCATION OF RISK: This risk for any damage to or destruction of the goods shall be borne by the Seller at all times until delivery to the control of the Buyer, which shall be the point at which the Buyer actually receives the goods for use and has accepted such.
9. COURSE OF PERFORMANCE: The fact that a party may accept or acquiesce in a course of performance under this agreement does not affect the meaning of this agreement even though the accepting/acquiescing party knows of the nature of the performance and has an opportunity to object to it. (With respect to this course of performance provision, any time an individual attempts to perform under the contract in a manner which is not in accord with the terms of the contract, the City must promptly object to the manner of performance.)
10. PAST PRACTICES: The previous customs and practices of the parties hereto shall not be deemed a waiver or modification of the terms hereof.
11. REPAIRS - NON-ACCEPTANCE: If any of the goods are delivered in a defective or non-working condition, efforts of the Buyer to correct such defect shall not constitute an acceptance where commercially reasonable in extent and cost, so that the Buyer may still reject the goods where the attempt to repair has proved unsuccessful.
12. PLACE OF DELIVERY: The goods shall be delivered to the City of Delray Beach, Florida, at address as stated on front.
13. INSPECTION GOODS: The Buyer shall have the right to inspect all goods before accepting delivery or making payment, therefore. If rejected, the goods will be returned at Seller's risk, and all handling and transportation expenses, both ways, will be borne by and assumed by Seller. When material has been rejected by Buyer and returned for replacement it is essential that Seller receive new shipping instructions from Buyer before making the replacement. Inspection and approval for acceptance shall be made by the appropriate user department. The expense of inspection shall be borne by the Buyer except as to goods which are properly rejected as non-conforming. Inspection shall be made within fourteen (14) calendar days of the delivery of goods.
14. NOTICE OF DEFECTS: It is expressly agreed that all claims for alleged damages or defective goods, shortage, or other cause shall be deemed waived unless made in writing and sent by Buyer within twenty (20) calendar days after Buyer learns of the alleged defect, damage, shortage, or other cause giving rise to the claim, provided, however, that any defects incapable of discovery shall not be deemed waived by the provisions herein, and, provided further, that this provision shall not be deemed a waiver of any warranties set forth herein or in any modification to this agreement.
15. FITNESS FOR PARTICULAR PURPOSE: Buyer makes no warranties except as set forth herein, provided, however, that notwithstanding any other provisions to the contrary herein, Buyer may have sought the expertise of Seller with respect to the fitness for a particular purpose of the subject goods and in purchasing said goods, may have relied upon the representations of Seller as an expert with respect to the use of such goods. In that event, Seller hereby agrees that any document exhibiting a request by Buyer for goods for a particular purpose, a reliance by Buyer upon the expertise of Seller with respect to the use of the goods, or any other similar such request or reliance shall constitute a modification to the terms of this agreement which shall effect a warranty of fitness for a particular purpose.
16. CONSEQUENTIAL DAMAGE: Seller acknowledges that Buyer has informed him that the goods are to be used by Buyer and that failure of Seller to fulfill the terms of this contract may result in consequential damages to Buyer because of the intended use to be made of the goods to the Buyer.

SAMPLE PERFORMANCE BOND FORMAT

Intentionally Omitted

SAMPLE PAYMENT BOND FORMAT

Intentionally Omitted

SAMPLE LETTER OF CREDIT FORMAT

Intentionally Omitted

**SECTION 8
SAMPLE AGREEMENT FORMAT**

Below is the standard agreement format for this Request for Proposal. This is a sample agreement only and is subject to revisions. **PLEASE DO NOT COMPLETE.**

AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Delray Beach, a Florida municipal corporation ("City"), whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444, and - _____, a corporation (hereafter referred to as "Contractor"), whose address is _____.

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City's Request for Proposal No. 2023-064 and the Contractor's response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. INCORPORATION OF REQUEST FOR PROPOSAL

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Request for Proposal No. 2023-064 and the Contractor's response thereto, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City's Request for Proposal, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The City shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein, according to the terms and specifications of the referenced Request for Proposal.

ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the City: City of Delray Beach
100 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

- ii. with a copy to: City of Delray Beach
200 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

- iii. As to the Contractor: _____

Attn.: _____
Email: _____

b. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

ARTICLE 5. CONTRACT TERM

The Contract and Agreement shall be effective for three (3) years as of the effective date of this Agreement, and shall expire on _____, _____.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter written.

CITY OF DELRAY BEACH, FLORIDA

[SEAL]

By: _____
Shelly Petrolia, City Mayor

ATTEST:

By: _____
Katerri Johnson, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Lynn Gelin, City Attorney

CONTRACTOR

[SEAL]

By: _____

Printed Name

Title

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20__, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ___ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of Florida

EXHIBIT 9 GENERAL TERMS AND CONDITIONS

9.1 DEFINITIONS

- a. *Proposal:* any offer(s) submitted in response to this Request for Proposal.
- b. *Proposer:* person or firm submitting a response to this Request for Proposal.
- c. *Solicitation or Request for Proposal:* this Solicitation documentation, including any and all addenda.
- d. *Proposal Submittal forms:* describes the goods or services to be purchased and must be completed and submitted with the Proposal.
- e. *City:* shall refer to the City of Delray Beach, Florida.
- f. *Contract or Agreement:* Request for Proposal, all addenda issued thereto, all affidavits, the signed agreement, and all related documents that comprise the totality of the contract or agreement between the City and the Proposer.
- g. *Contractor:* selected Proposer that is awarded a contract to provide the goods or services to the City.
- h. *Purchasing Division:* Purchasing Division of the City of Delray Beach, Florida.
- i. *Responsible Proposer:* Proposer that has the capability in all respects to perform in full the contract requirements, as stated in the Request for Qualifications, and the integrity and reliability that will assure good-faith performance.
- j. *Responsive Proposer:* Proposer whose Proposal conforms in all material respects to the terms and conditions included in the Request for Qualifications.

9.2 CONE OF SILENCE

Pursuant to Section 2-355 of the Palm Beach County Ordinance No. 2011-039, and the purchasing policies of the City of Delray Beach, all Solicitations, once advertised and

until the appropriate authority has approved an award recommendation, are under the "Cone of Silence". This limits and requires documentation of communications between potential bidders and/or bidders on City Solicitations, the City's professional staff, and the City Council members.

9.3 ADDENDUM

The Purchasing Division may issue an addendum in response to any inquiry received, prior to the due date for Proposals, which changes, adds, or clarifies the terms, provisions, or requirements of the Solicitation. The Proposer should not rely on any representation, statement, or explanation, whether written or verbal, other than those made in the Solicitation document or in the addenda issued. Where there appears to be a conflict between the Solicitation and any addenda, the last addendum issued shall prevail. It is the Proposer's responsibility to ensure receipt of all addenda and any accompanying documentation. The Proposer is required to submit with its Proposal a signed "Acknowledgment of Addenda" form, when any addenda have been issued.

9.4 LEGAL REQUIREMENTS

This Solicitation is subject to all legal requirements contained in the applicable City Ordinances and Resolutions, as well as all applicable City, State, and Federal Statutes. Where conflict exists between this Solicitation and these legal requirements, the authority shall prevail in the following order: Federal, State, and local.

9.5 CHANGE OF PROPOSAL

Prior to the scheduled due date for Proposals, a Proposer may change its Proposal by submitting a new Proposal (as indicated on the cover page) with a letter on the firm's letterhead, signed by an authorized agent stating that the new Proposal replaces the original Proposal. The new submittal shall contain the letter and all information as required for submitting the original Proposal. No changes to a Proposal will be accepted after Proposals have been opened.

9.6 WITHDRAWAL OF PROPOSAL

A Proposal shall be irrevocable unless the Proposal is

withdrawn as provided herein. Only a written letter received by the Purchasing Division prior to the due date for Proposals may withdraw a Proposal. A Proposal may also be withdrawn one hundred eighty (180) days after the Proposal has been opened and prior to award, by submitting a letter to the Purchasing and Contracts Director. The withdrawal letter must be on company letterhead and signed by an authorized agent of the Proposer.

9.7 CONFLICTS WITHIN THE SOLICITATION

Where there appears to be a conflict between the General Terms and Conditions, Special Conditions, the Scope of Services, and/or Description of Items, the Proposal Submittal forms, or any addendum issued, the order of precedence shall be the last addendum issued, the Proposal Submittal forms, the Scope of Services and/or Description of Items, the Special Conditions, and then the General Terms and Conditions.

9.8 PROMPT PAYMENT TERMS

It is the policy of the City of Delray Beach that payment for all purchases by City departments shall be made in a timely manner. The City will pay the selected Proposer upon receipt and acceptance of the goods or services by a duly authorized representative of the City. In accordance with Florida Statutes, Section 218.74, the time at which payment shall be due from the City shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. Proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the City Manager or designee, not later than sixty (60) days after the date on which the proper invoice was received by the City.

9.9 DISCOUNTS (PROMPT PAYMENTS)

The Proposer may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the selected Proposer during the evaluation period. Proposers are requested to provide prompt payment terms in the space provided on the Proposal submittal forms signature page of the Solicitation.

9.10 PREPARATION OF PROPOSALS

- a. The Proposal submittal forms define requirements of the services to be performed or the items to be purchased and must be completed and submitted with the Proposal. Use of any other forms will

result in the rejection of the Proposal. The Proposal submittal forms must be legible. Proposers shall use typewriter, computer, or ink. All changes must be crossed out and initialed in ink. Failure to comply with these requirements may cause the Proposal to be rejected.

- b. An authorized agent of the Proposer's firm must sign the Proposal submittal forms where indicated. **Failure to sign the Signature Page of the Proposal shall render the Proposal non-responsive.**
- c. The Proposer must identify any exceptions it takes to the terms and conditions of the Solicitation and contract. Exceptions will not automatically result in the Proposer being deemed non-responsive; however, such a determination is at the discretion of the City. Proposers are cautioned that they may be considered non-responsive if Proposals are conditioned to modifications, changes, or revisions to the terms and conditions of this Solicitation.
- d. The Proposer may submit alternate Proposal(s) for the same Solicitation provided that such offer is allowable under the terms and conditions. The alternate Proposal must meet or exceed the minimum requirements and be submitted as a separate Proposal marked "Alternate Proposal".
- e. When there is a discrepancy between the unit prices and any extended prices, the unit prices will prevail.
- f. Late Proposals will not be accepted and will be returned to the sender unopened. It is the Proposer's responsibility to ensure timely delivery by the due date and time, and at the place stated in this Solicitation. No exceptions will be made due to weather, carrier, traffic, illness, or other issues.

9.11 CANCELLATION OF SOLICITATION

The City of Delray Beach reserves the right to cancel, in whole or in part, any Requests for Proposals when it is in the best interest of the City.

9.12 AWARD OF CONTRACT

- a. This contract may be awarded to the responsive and responsible Proposer meeting all requirements as set forth in the Solicitation. The

City reserves the right to reject any and all Proposals, to waive irregularities or technicalities, and to re-advertise for all or any part of this Solicitation as deemed in its best interest. The City shall be the sole judge of its best interest.

- b. The City reserves the right to reject any and all Proposals if it is determined that prices are excessive, best offers are determined to be unreasonable, or it is otherwise determined to be in the City's best interest to do so.*
- c. The Proposer's prior performance as a prime contractor or subcontractor on previous City contracts shall be taken into account in evaluating the Proposal received for this Solicitation.*
- d. The City will provide a copy of the ranking and scores to all Proposers responding to this Solicitation.*
- e. Award of this Proposal may be predicated on compliance with, and submittal of all required documents as stipulated in the Solicitation.*
- f. The City reserves the right to request and evaluate additional information from any Proposer after the due date for Proposals, as the City deems necessary.*

9.13 CONTRACT EXTENSION

The City reserves the right to automatically extend any agreement for a maximum period not to exceed one hundred eighty (180) calendar days in order to provide City departments with continual service and supplies while a new agreement is being solicited, evaluated, and/or successful.

9.14 WARRANTY

All warranties express and implied shall be made available to the City for goods and services covered by this Solicitation. All goods furnished shall be fully guaranteed by the selected Proposer against factory defects and workmanship. At no expense to the City, the selected Proposer shall correct any and all apparent and latent defects that may occur within the manufacturer's standard warranty.

9.15 ESTIMATED QUANTITIES

Estimated quantities or dollars are for Proposer's guidance only: (a) estimates are based on the City's anticipated needs and/or usage; and (b) the City may use these estimates to determine the selected Proposer. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for the given amount subsequent to the award of this contract.

9.16 NON-EXCLUSIVITY

It is the intent of the City to enter into an agreement with the selected Proposer that will satisfy its needs as described herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to, award of other contracts, use of any contractor, or perform the work with its own employees.

9.17 CONTINUATION OF WORK

Any work that commences prior to and will extend beyond the expiration date of the current contract period shall, unless terminated by mutual written agreement between the City and the selected Proposer, continue until completion at the same prices, terms, and conditions.

9.18 PROTEST

a. A recommendation for contract award or rejection of award may be protested by a Proposer. The Proposer may file a written protest with the City Clerk's office. The Proposer shall file its written protest with the City Clerk, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., excluding legal holidays. Protests shall contain the name, address, and phone number of the petitioner, name of the petitioner's representative (if any), and the title and Proposal number of the Solicitation. The protest shall specifically describe the subject matter, facts giving rise to the protest, and the action requested from the City.

b. The written protest must be received within three business days from the time of the initial posting of the intended award. Notice of Intent to Award shall be posted in Periscope S2G. Failure to file a timely formal written protest within the time period specified shall constitute a waiver by the Proposer of all rights of protest under this procedure.

c. The letter of protest shall be accompanied by a non-

refundable protest application fee in an amount equal to one percent (1%) of the protestor's bid or five thousand dollars (\$5,000.00), whichever is less. The protest application fee must be a cashier's check, a certified check, or an attorney's trust account check made payable to the City of Delray Beach. Failure to provide the required protest application fee shall deem the protest as incomplete and invalid.

9.19 LAWS AND REGULATIONS

The selected Proposer shall comply with all laws and regulations applicable to provide the goods or services specified in this Solicitation. The Proposer shall be familiar with all federal, state, and local laws that may affect the goods and/or services offered.

9.20 LICENSES, PERMITS AND FEES

The selected Proposer shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations, and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the City or a selected Proposer for failure to obtain and maintain required licenses, certifications, permits, and/or inspections shall be borne by the selected Proposer.

9.21 SUBCONTRACTING

Unless otherwise specified in this Solicitation, the selected Proposer shall not subcontract any portion of the work without the prior written consent of the City. The ability to subcontract may be further limited by the Special Conditions. Subcontracting without the prior consent of the City shall constitute a material breach of the agreement and may result in termination of the contract for default.

9.22 ASSIGNMENT

The selected Proposer shall not assign, transfer, hypothecate, or otherwise dispose of this contract, including any rights, title, or interest therein, or its power to execute such contract to any person, company, or corporation without the prior written consent of the City. Assignment without the prior consent of the City may result in termination of the contract for default.

9.23 SHIPPING TERMS

Unless otherwise specified in the Solicitation, prices quoted shall be F.O.B. Destination. Freight shall be included in the

proposed price.

9.24 RESPONSIBILITIES AS EMPLOYER

The employee(s) of the selected Proposer shall be considered to be at all times its employee(s), and not an employee(s) or agent(s) of the City or any of its departments. The selected Proposer shall provide physically competent employee(s) capable of performing the work as required. The City may require the selected Proposer to remove any employee it deems unacceptable. All employees of the selected Proposer shall wear proper identification.

It is the selected Proposer's responsibility to ensure that all its employees and subcontractors comply with the employment regulations required by the US Department of Homeland Security. The City shall have no responsibility to check or verify the legal immigration status of any employee of the selected Proposer.

9.25 INDEMNIFICATION

The selected Proposer shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the selected Proposer or its employees, agents, servants, partners, principals, or subcontractors. The selected Proposer shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The selected Proposer expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the selected Proposer shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

9.26 COLLUSION

A Proposer recommended for award as the result of a competitive Solicitation for any City purchase of supplies, materials, and services (including professional services, other than professional architectural, engineering, and

other services subject to Sec. 287.055 Florida Stats.), purchase, lease, permit, concession, or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the City stating either that the contractor is not related to any of the other parties proposing in the competitive Solicitation or identifying all related parties; and attesting that the Proposal is genuine and not a sham or collusive or made in the interest or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other Proposer to put in a sham Proposal, or any other person, firm, or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other Proposer. In the event a recommended Proposer identifies related parties in the competitive Solicitation, its Proposal shall be presumed to be collusive, and the recommended Proposer shall be ineligible for award unless that presumption is rebutted to the satisfaction of the City. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.

9.27 MODIFICATION OF CONTRACT

The contract may be modified by mutual consent, in writing, through the issuance of a modification to the contract, a supplemental agreement, purchase order, or change order, as appropriate.

9.28 TERMINATION FOR CONVENIENCE

The City, at its sole discretion, reserves the right to terminate any contract entered into pursuant to this Request for Proposal (RFP) with or without cause immediately upon providing written notice to the selected Proposer. Upon receipt of such notice, the selected Proposer shall not incur any additional costs under the contract. The City shall be liable only for reasonable costs incurred by the selected Proposer prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

9.29 TERMINATION FOR DEFAULT

The City reserves the right to terminate this contract, in part or in whole, or place the vendor on probation in the event the selected Proposer fails to perform in accordance with the terms and conditions stated herein by providing written notice of such failure or default and by specifying a reasonable time period within which the selected Proposer

must cure any such failure to perform or default. If the selected Proposer fails to cure the default within the time specified, the City may then terminate the subject contract by providing written notice to the selected Proposer. The City further reserves the right to suspend or debar the selected Proposer in accordance with the appropriate City ordinances, resolutions, and/or policies. The vendor will be notified by letter of the City's intent to terminate. In the event of termination for default, the City may procure the required goods and/or services from any source and use any method deemed in its best interest. All re-procurement costs shall be borne by the incumbent Proposer.

9.30 FRAUD AND MISREPRESENTATION

Any individual, corporation, or other entity that attempts to meet its contractual obligations with the City through fraud, misrepresentation, or material misstatement, may be debarred for up to five (5) years. The City, as a further sanction, may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

9.31 ACCESS AND AUDIT OF RECORDS

The City reserves the right to require the selected Proposer to submit to an audit by an auditor of the City's choosing at the selected Proposer's expense. The selected Proposer shall provide access to all of its records, which relate directly or indirectly to this contract, at its place of business during regular business hours. The selected Proposer shall retain all records pertaining to this contract, and upon request, make them available to the City for three (3) years following expiration of the contract. The selected Proposer agrees to provide such assistance as may be necessary to facilitate the review or audit by the City to ensure compliance with applicable accounting and financial standards.

9.32 OFFICE OF THE INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present, and proposed County programs, contracts, transactions, accounts and records. The Inspector General (IG) has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. The Inspector General may, on a random basis, perform audits on all City contracts.

9.33 PRE-AWARD INSPECTION

The City may conduct a pre-award inspection of the Proposer’s premises or hold a pre-award qualification hearing to determine if the Proposer is capable of performing the requirements of this Solicitation.

9.34 PROPRIETARY/CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of, Proposal submittals will be available for public inspection after the opening of Proposals in compliance with Chapter 119 of the Florida Statutes; popularly known as the “Public Record Law.” The Proposer shall not submit any information in response to this Solicitation that Proposer considers a trade secret, proprietary, or confidential. The submission of any information to the City in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection that would otherwise be available to the Proposer. In the event that the Proposer submits information to the City in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the Proposal as protected or confidential, the City may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer’s withdrawal of the confidentiality restriction, or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the Proposal. The redaction or return of information pursuant to this clause may render a Proposal non-responsive.

9.35 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Any person or entity that performs or assists the City of Delray Beach with a function or activity involving the use or disclosure of “individually identifiable health information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA mandates for privacy, security, and electronic transfer standards include, but are not limited to:

- a. Use of information only for performing services required by the contract or as required by law.
- b. Use of appropriate safeguards to prevent non-permitted disclosures.

- c. Reporting to the City of Delray Beach any non-permitted use or disclosure.
- d. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Proposer and reasonable assurances that IIHI/PHI will be held confidential.
- e. Making Protected Health Information (PHI) available to the customer.
- f. Making PHI available to the customer for review and amendment, and incorporating any amendments requested by the customer.
- g. Making PHI available to the City of Delray Beach for an accounting of disclosures; and
- h. Making internal practices, books, and records related to PHI available to the City of Delray Beach for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records and/or electronic transfer of data). The selected Proposer must give its customers written notice of its privacy information practices, including specifically, a description of the types of uses and disclosures that would be made with protected health information.

9.36 ADDITIONAL FEES AND SURCHARGES

Unless provided for in the contract/agreement, the City will not make any additional payments such as fuel surcharges, demurrage fees, or delay-in-delivery charges.

9.37 COMPLIANCE WITH FEDERAL STANDARDS

All items to be purchased under this contract shall be in accordance with all governmental standards, to include, but not be limited to, those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA).

9.38 COMPLIANCE WITH FEDERAL REGULATIONS DUE TO USE OF FEDERAL FUNDING

If the goods or services to be acquired under this Solicitation are to be purchased, in part or in whole, with

Federal funding, it is hereby agreed and understood that Section 60-250.4, Section 60-250.5, and Section 60-741.4 of Title 41 of the United States Code, which addresses Affirmative Action requirements for disabled workers, is incorporated into this Solicitation and resultant contract by reference.

9.39 BINDING EFFECT

All of the terms and provisions of this contract/agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

9.40 SEVERABILITY

In the event any term or provision of any contract or agreement entered into pursuant to this Solicitation is found by a court of competent jurisdiction to be invalid, the remaining terms and provisions shall continue to be effective and shall be interpreted and given meaning to the greatest possible extent in the absence of any severed terms or provisions.

9.41 GOVERNING LAW AND VENUE

This contract and all transactions contemplated by this agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue of all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.

9.42 ATTORNEY'S FEES

It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

9.43 EQUAL OPPORTUNITY AND ANTI-DISCRIMINATION

The City of Delray Beach complies with all laws prohibiting discrimination on the basis of age, race, gender, religion, creed, political affiliation, sexual orientation, physical or mental disability, color or national origin, and therefore is committed to assuring equal opportunity in the award of contracts and encourages small, local, minority, and

female-owned businesses to participate.

During the performance of this contract, the selected Proposer agrees it will not discriminate or permit discrimination in its hiring practices or in its performance of the contract. The selected Proposer shall strictly adhere to the equal employment opportunity requirements and any applicable requirements established by the State of Florida, Palm Beach County, and the federal government.

The selected Proposer further acknowledges and agrees to provide the City with all information and documentation that may be requested by the City from time to time regarding the Solicitation, selection, treatment, and payment of subcontractors, suppliers, and Proposers in connection with this contract.

9.44 AVAILABILITY OF CONTRACT TO OTHER CITY DEPARTMENTS

It is agreed and understood that any City department or agency may access this contract and purchase the goods or services successful herein. Each City department will issue a separate purchase order to the selected Proposer for the department's specific purchases.

9.45 CRIMINAL HISTORY BACKGROUND CHECKS

Prior to hiring a contract employee or contracting with a Proposer, the City may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The contract employee or Proposer will be required to sign an authorization for the City to access criminal background information. The costs for the background checks shall be borne by the City.

9.46 LABOR, MATERIALS, AND EQUIPMENT

Unless specified elsewhere in the Solicitation or resultant contract, all labor, materials, and equipment required for the performance of the requirements of the contract shall be supplied by the selected Proposer.

9.47 MINIMUM WAGE REQUIREMENTS

The selected Proposer shall comply with all minimum wage requirements, such as Living Wage requirements, minimum wages based on Federal Law, minimum wages based on the Davis-Bacon Act, and the provisions of any other employment laws, as may be applicable to this contract.

9.48 PACKING SLIP AND DELIVERY TICKET

A packing slip and/or delivery ticket shall accompany all items delivered to the City. The documents shall include information on the contract number or purchase order, any back-order items, and the number or quantity of items being delivered.

9.49 PURCHASE OF OTHER ITEMS

The City reserves the right to purchase other related goods or services, not listed in the Solicitation, during the contract term. When such requirements are identified, the City may request a price quote from the selected Proposer on the contract. The City, at its sole discretion, will determine if the prices offered are reasonable, and may choose to purchase the goods or services from the selected Proposer, another contract Proposer, or a non-contract Proposer.

9.50 PUBLIC RECORDS

Florida law provides that municipal records shall at all times be available to the public for inspection. Chapter 119, Florida Statutes, the Public Records Law, requires that all material submitted in connection with a Proposal response shall be deemed to be public record subject to public inspection upon award, recommendation for award, or thirty (30) days after Proposal opening, whichever occurs first. Certain exemptions to public disclosure are statutorily provided for in Section 119.07, Florida Statutes. If the Proposer believes any of the information contained in his/her/its Proposal is considered confidential and/or proprietary, inclusive of trade secrets as defined in Section 812.081, Florida Statutes, and is exempt from the Public Records Law, then the Proposer must, in its response, specifically identify the material which is deemed to be exempt and state the legal authority for the exemption. All materials that qualify for exemption from Chapter 119, Florida Statutes or other applicable law must be submitted in a separate envelope, clearly identified as "EXEMPT FROM PUBLIC DISCLOSURE" with the firm's name and the Proposal number clearly marked on the outside. The City will not accept Proposals when the entire Proposal is labeled as exempt from disclosure. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records.

The selected Proposer(s) shall keep and maintain public records and fully comply with the requirements set forth at

Section 119.0701, Florida Statutes, as applicable; failure to do so shall constitute a material breach of any and all agreements awarded pursuant to this Solicitation.

9.51 CONFLICTS OF INTEREST

All Proposers must disclose with their Proposal the name of any officer, director, or agent who is also an employee of the City of Delray Beach. Further, all Proposers must disclose the name of any City employee who has any interest, financial or otherwise, direct or indirect, of five percent (5%) or more in the Proposers' firm or any of its branches. Failure to disclose any such affiliation will result in disqualification of the Proposer from this Solicitation and may be grounds for further disqualification from participating in any future Solicitations with the City.

9.52 PUBLIC ENTITY CRIMES

As provided in Section 287.133(2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted Proposers list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity; may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit Proposals on leases of real property to a public entity; may not be successful or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

9.53 OTHER GOVERNMENTAL AGENCIES

If a Proposer is successfully awarded a contract as a result of this Solicitation, the Proposer shall allow other governmental agencies to access this contract and purchase the goods and services under the terms and conditions at the prices awarded.

9.54 COMPLETION OF WORK AND DELIVERY

All work shall be performed, and all deliveries made in accordance with good commercial practice. The work schedule and completion dates shall be adhered to by the selected Proposer, except in such cases where the completion date will be delayed due to acts of nature, force majeure, strikes, or other causes beyond the control of the selected Proposer. In these cases, the selected Proposer shall notify the City of the delays in advance of the original completion so that a revised delivery schedule can be appropriately considered by the City.

9.55 FAILURE TO DELIVER OR COMPLETE WORK

Should the selected Proposer fail to deliver or complete the work within the time stated in the contract, it is hereby agreed and understood that the City reserves the authority to cancel the contract with the selected Proposer and secure the services of another Proposer to purchase the items or complete the work. If the City exercises this authority, the City shall be responsible for reimbursing the selected Proposer for work that was completed and items delivered and accepted by the City in accordance with the contract specifications. The City may, at its option, demand payment from the selected Proposer, through an invoice or credit memo, for any additional costs over and beyond the original contract price that were incurred by the City as a result of having to secure the services of another Proposer.

9.56 CORRECTING DEFECTS

The selected Proposer shall be responsible for promptly correcting any deficiency, at no cost to the City, within three (3) calendar days after the City notifies the selected Proposer of such deficiency in writing. If the selected Proposer fails to correct the defect, the City may (a) place the selected Proposer in default of its contract; and/or (b) procure the products or services from another source and charge the selected Proposer for any additional costs that are incurred by the City for this work or items, either through a credit memorandum or through invoicing.

9.57 ACCIDENT PREVENTION AND BARRICADES

Precautions shall be exercised at all times for the protection of persons and property. All selected Proposers performing services or delivering goods under this contract shall conform to all relevant OSHA, State, and County regulations during the course of such effort. Any fines levied by the above-mentioned authorities for failure to comply with these requirements shall be borne solely by the selected Proposer. Barricades shall be provided by the selected Proposer when work is performed in areas traversed by persons, or when deemed necessary by the City.

9.58 OMISSIONS IN SPECIFICATIONS

The scope of services or description of items contained within this Solicitation describes the various functions and classes of work required as necessary for the completion of the project. Any omissions of inherent technical functions or classes of work within the specifications and/or statement of work shall not relieve the Proposer from furnishing, installing, or performing such work where

required to the satisfactory completion of the project.

9.59 MATERIALS SHALL BE NEW AND WARRANTED AGAINST DEFECTS

The selected Proposer hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the selected Proposer in conjunction with this Solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose. In the event any of the materials supplied to the City by the selected Proposer are found to be defective or do not conform to specifications, (1) the materials may be returned to the selected Proposer at the Proposer's expense and the contract cancelled; or (2) the City may require the selected Proposer to replace the materials at the selected Proposer's expense.

9.60 TOXIC SUBSTANCES/FEDERAL "RIGHT TO KNOW" REGULATIONS

The Federal "Right to Know" Regulation implemented by the Occupational Safety and Health Administration (OSHA) requires employers to inform their employees of any toxic substances to which they may be exposed in the workplace, and to provide training in safe handling practices and emergency procedures. It also requires notification to local fire departments of the location and characteristics of all toxic substances regularly present in the workplace.

Accordingly, the selected Proposer performing under this contract is required to provide two (2) complete sets of Material Safety Data Sheets to each City department utilizing any products that are subject to these regulations. This information shall be provided at the time when the initial delivery is made, on a department-by-department basis.

9.61 TAXES

The City of Delray Beach is exempt from Federal and State taxes for tangible personal property.

9.62 PROPOSER'S COSTS

The City shall not be liable for any costs incurred by Proposers in responding to this Request for Proposal.

9.63 SUBSTITUTION OF PERSONNEL

It is the intention of the City that the selected Proposer's personnel proposed for the contract shall be available for the initial contract term. In the event the selected Proposer wishes to substitute personnel, the selected Proposer shall propose personnel of equal or higher qualifications, and all

replacement personnel are subject to the City's approval. In the event the substitute personnel are not satisfactory to the City, and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the contract for cause.

9.64 FORCE MAJEURE

The City and the selected Proposer are excused from the performance of their respective obligations under the contract when and to the extent that their performance is delayed or prevented by any circumstances beyond their control, including fire, flood, explosion, strikes or other labor disputes, natural disasters, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance provided that:

- a. The non-performing party gives the other party prompt written notice describing the particulars of the force majeure, including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the force majeure.
- b. The excuse of performance is of no greater scope and of no longer duration than is required by the force majeure.
- c. No obligations of either party that arose before the force majeure causing the excuse of performance are excused as a result of the force majeure.
- d. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the selected Proposer shall not constitute a force majeure. The term of the contract shall be extended by a period equal to that during which either party's performance is suspended under this section.

9.65 NOTICES

Notices shall be effective when received at the addresses specified in the contract/agreement. Changes in respective addresses to which such notices are to be directed may be made from time to time by either party by written notice to the other party. Facsimile and email transmissions are acceptable notice effective when received; however, facsimile and email transmissions received after 5:00 p.m. or on weekends or holidays will be deemed received on the next business day. The original of the notice must also be mailed to the receiving party.

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the selected Proposer and the City of Delray Beach.

9.66 FISCAL FUNDING OUT

The City's obligation pursuant to any contract or agreement entered into in accordance with this Solicitation is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement. A non-appropriation event shall not constitute a default or breach of said contract or agreement by the City.

END OF SECTION 9

**SECTION 10
SOLICITATION SUMMARY**

The City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

PURCHASING DIVISION

SOLICITATION SUMMARY

IMPORTANT NOTICE

The information you provide on this page will be read aloud at the PUBLIC OPENING for this solicitation. It is VERY IMPORTANT that the summary information you provide below is exactly the same information contained in your Proposal. If subsequent to the opening of Proposals, the City determines that the information contained in the electronic version of your Proposal is different from the information on this solicitation Summary, the City reserves the right to deem your Proposal NON-RESPONSIVE and remove your Proposal from further evaluation and consideration for contract award.

PROPOSAL INFORMATION

Proposal Number: RFP 2023-064

Title: INTERNAL AUDITOR SERVICES

Due Date and Time: AUGUST 16, 2023, 2:00 P.M., ET

Name of Proposer: _____

Address: _____

Contact Person: _____

Authorized Signature: _____

Date: _____

By signing and submitting this solicitation Summary, the Proposer affirms that the information provided above is an exact and correct summary of the information contained in the electronic version of the Proposer's Proposal to the City of Delray Beach.

THIS SOLICITATION SUMMARY MUST BE SIGNED AND INCLUDED AS AN ELECTRONIC COPY IN THE PROPOSAL.



CITY OF DELRAY BEACH
100 N.W. 1ST AVENUE, DELRAY BEACH, FL 33444

Solicitation Addendum

Addendum No.: 2
Solicitation No.: RFP 2023-064
Solicitation Title: Internal Auditor Services
Addendum Date: August 8, 2023
Purchasing Contact: Casetra Thompson, thompsonc@mydelraybeach.com

THIS RFP IS HEREBY AMENDED AS SET FORTH HEREIN BELOW. THIS ADDENDUM NO. 2 IS HEREBY INCORPORATED IN AND MADE A PART OF RFP NO. 2023-064.

Words in ~~strike through~~ type are deletions from existing text. Words in **bold** and underlined type are additions to existing text. The following changes and clarifications are as follows:

Addendum No. 2

Attachment A - FY 2019 Internal Audit Plan has been added.
Attachment B - Completed Internal Audit Report #1 has been added.
Attachment C - Completed Internal Audit Report #2 has been added.
Attachment D - Completed Internal Audit Report #3 has been added.
Attachment E - Completed Internal Audit Report #4 has been added.

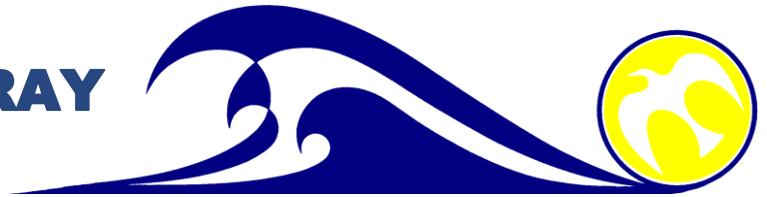
End of Addendum

INSTRUCTIONS:

Receipt of this addendum must be acknowledged as instructed in the solicitation document. Failure to acknowledge receipt of this Addendum may result in the disqualification of Respondent's response.



**CITY OF DELRAY
BEACH**



100 N.W. 1ST AVENUE ~ DELRAY BEACH, FLORIDA 33444 ~ (561) 243-7448

Internal Audit Plan Fiscal Year 2019

Executive Summary

Government Auditing Standards and the Institute of Internal Auditors' Standards encourage the Chief Audit Executive to establish a risk-based approach to determine the priorities for an upcoming audit year. This report describes how Internal Audit analyzed the City's risk environment, prioritized audit areas, and prepared the annual Audit Plan for fiscal year 2019 based on available resources.

In collaboration with the City Commission and City Executive Leadership Team, Internal Audit utilized a best practice methodology and established an audit universe of auditable areas for the City. Next, a high-level risk assessment of each auditable area was conducted.

There are many activities performed by management and staff at the City of Delray Beach that are designed to mitigate risks and reduce the likelihood that a negative event will occur. The risk remaining despite those controls or efforts is called *residual risk*. It is important to note that the risk assessment process does not attempt to measure or rank residual risk. Instead, the goal of this process is to assess the *inherent risk*, that is, the total risk absent internal controls, or the "raw risk," in each of the City's auditable areas. The Internal Auditor will determine how existing controls, policies and procedures within the City's auditable areas reduce inherent risk during the planning phase of each one of the proposed audit engagements following the selection of areas from the risk assessment process.

The risk assessment process entails several steps including identification of key risk factors to be used and weighted in selecting audits for the annual plan based on ranked scores. Such risk factors were designed in conjunction with the objectives of the Internal Auditor's Charter. In general, the annual plan audits would include one or more of the following:

- Financial Audits
- Operational Audits
- Compliance Audits
- Internal Control Reviews
- Special Projects
- Follow-up Audits

The Internal Auditor exercised professional judgment in the selection of the six key areas proposed for the first internal audit plan for fiscal year 2019 based on the risk assessment analysis and resource availability. These six areas selected from the High and Medium ranked weighted risk scores include:

- IT – Security;
- Finance – Payroll;
- Purchasing – Contract Management;
- Parks & Rec. – Dept. Administration (Cash Handling);
- Finance – Utility Billing;
- Finance – Bank Reconciliations.

Julia Davidyan, DBA, CPA, CGAP
Internal Auditor
City of Delray Beach

Risk Assessment Methodology

The rationale for conducting a risk assessment is aimed at effectively directing internal audit activities to areas that are relevant and important to the organization for purposes of creating an audit plan. There are three main steps in the risk assessment process.

Step 1: Understand City's Strategic Goals & Gather Information

Risk is defined as any issue or event that may impact the City's ability to achieve its strategic goals. As such, identifying the City's key goals is a prerequisite to identifying key risk factors for the risk assessment. This information gathering process included review of the following:

- Delray Beach Strategic Business Plan 2019-2022 (Draft)
- Comprehensive Annual Financial Report for the Year Ended September 30, 2017
- Fiscal Year 2018-2019 Budget Worksheets (and related performance measures information)
- Capital Improvement Program Budget for Fiscal Year 2019-2023
- Other internal documents and organizational structure diagrams
- Office of Inspector General (IG) of Palm Beach County Fiscal Year 2019 Annual Risk Assessment and Audit Plan document
- Prior IG inspection and audit reports for the City of Delray Beach

In addition, throughout the risk assessment, Internal Audit met with various internal and external parties to the City to seek feedback on areas of concern.

Step 2: Select Risk Factors and Weights

Risk factors include quantitative and qualitative criteria and attributes used for identifying areas of City operations that would benefit most from an internal audit. The number of risk factors typically ranges between five to ten factors, based on the maturity of an entity's Internal Audit program and number of years the risk assessment has been applied.

Inherent risk is determined by considering all the risk factors selected; not just an individual factor. However, not all factors are considered equal. A weighting is applied to each factor to reflect their relative importance which is a matter of auditor judgment, based on common business practices, City's strategic goal and other related information that was gathered in step 1.

The following six risk factors and weights were selected for purposes of the first Citywide risk assessment:

- Complexity of Operations (25%)
- Susceptibility to Error or Fraud (25%)
- Reputation (15%)
- Laws & Regulations (10%)
- Degree of Change (15%)
- Financial Impact (10%)

The overall risk scores were calculated using the following formula:

$$\text{OVERALL RISK SCORE} = \Sigma(\text{RAW RISK FACTOR SCORE} \times \text{FACTOR WEIGHTING})$$

The overall risk *ranking* of all the auditable units is determined based on a 33% (High) - 42% (Medium) - 35% (Low) distribution which yield the following score ranges:

| Overall Risk Rank | Weighted Score Between | |
|-------------------|------------------------|-----|
| | High | 349 |
| Moderate | 308 | 348 |
| Low | 100 | 305 |

Legend:

High – significant impact on City operations, financial results and/or reputation

Moderate – moderate impact on City operations financial results and/or reputation

Low – insignificant impact on City operations, financial results and/or reputation

Step 3: Complete a Citywide Risk Assessment by Identifying, Assessing and Ranking Auditable Areas

There are many activities performed by management and staff at the City of Delray Beach that are designed to mitigate risks and reduce the likelihood that a negative event will occur. The risk remaining despite those controls is called residual risk. It is important to note that the risk assessment process does not attempt to measure or rank residual risk. Instead, the goal of this process is to assess the inherent risk, that is, the total risk absent internal controls, or the “raw risk” in each of the City’s auditable areas.

Determining the auditable areas, also referred to as the “audit universe,” (i.e. programs, activities, work areas) and allocating scarce audit resources to those auditable areas based on the overall ranked factors selected, is a common approach for establishing the enterprise-wide risk assessment that drives an annual audit plan. A total of 110 auditable units were identified by Internal Audit.

To assess the relative importance of potential audit area, the Internal Auditor requested input from the City’s Executive Leadership Team concerning their perceived risk in the various operational areas under their supervision. Worksheets were sent out with a set of survey questions related to each risk factor with a scoring answer option between 1 and 5. All responses were gathered, populated in the summary risk assessment worksheet and the auditable areas identified were ranked based on their overall individual risk scores. Finally, Internal Audit interviewed members of the City Commission for their input on specific areas of concerns regarding programs and operations.

Summary:

The first Citywide risk assessment represents the beginning point to an ongoing assessment process, to take place annually thereafter. In addition, the areas selected for the audit plan will be subject to an engagement level risk assessment to determine the specific audit goal or objective within that auditable area. In the event a need arises for substantial modification or deviation from an approved annual audit plan, such request will be brought forward in front of the City Commission for approval.

Fiscal Year 2019 Internal Audit Plan

Availability of Resources:

In order to determine a realistic production capacity, prior to selecting the audit areas for fiscal year 2019, a calculation of projected time available was conducted for the Internal Audit resource of one. About 1,900 hours were deemed available after considering holidays, time off and professional development hours. The available hours were allocated as follows:

- Administrative overhead and time reserved for activities such as ad hoc requests, misc. departmental consulting, unannounced tests and internal investigations was budgeted at 450 hours.
- An update of the risk assessment for fiscal year 2020 and completion of the documentation of the Internal Audit Policies and Procedures (by 12/31/18): 120 hours.
- External auditor assistance: up to 100 hours.
- Six audit areas selected: approximately 1230 hours (see next page for allocation of hours by area).

For purposes of time allocation, a rough size of an audit engagement (planning, fieldwork and reporting hours combined) was used to assess the number of audits possible. However, scope and actual hours may vary.

| Description | Rough hours |
|--------------|-------------|
| Small audit | < 150 |
| Medium audit | 150-300 |
| Large audit | >300 |

Summary:

Based on availability of resources, six audit areas were selected (see next page for details). Internal Audit used several considerations when selecting these projects for fiscal year 2019. First, best practice suggests making selections from each of the risk categories (High, Medium, Low). However, given that this is the first year of the risk assessment being implemented and Internal Audit beginning its operations, it was deemed most appropriate to focus on the High and Medium risk areas.¹

Internal Audit also considered the number of audit areas selected for any one department and attempted to have coverage over as many departments as was deemed practical given more pressing priorities (consideration was given to unique situations and circumstances which would supersede other audit areas with higher risk scores). Although several selections were made from one department, in total, the proposed audit plan reaches four different departments.

As the risk assessment is expected to be updated annually, in future years additional considerations such as length of time from last audit or number of findings/recommendations at last audit are going to be considered as part of the audit areas selection process.

¹ Details of calculations and risk assessment scores for all 110 auditable areas are available upon request.

The following are the audit areas proposed for the Fiscal Year 2019 Internal Audit Plan:

| High | | | | |
|---|-----------------|----------------|----------------------------|---|
| | IT | Finance | Purchasing | Parks & Rec. |
| | Security | Payroll | Contract Management | Dept. Administration (Cash Handling) |
| Combined Rankings | | | | |
| <i>Complexity of Operations</i> | 75 | 75 | 117 | 100 |
| <i>Susceptibility to Error or Fraud</i> | 92 | 92 | 50 | 92 |
| <i>Reputation</i> | 45 | 75 | 75 | 60 |
| <i>Laws & Regulations</i> | 50 | 30 | 50 | 30 |
| <i>Degree of Change</i> | 68 | 68 | 53 | 53 |
| <i>Financial Impact</i> | 40 | 30 | 20 | 20 |
| <i>Auditor Adjustment</i> | 15 | 15 | 10 | 10 |
| Result: | 384 | 384 | 374 | 364 |
| Rank# on Results Worksheet: | #8 | #9 | #16 | #29 |
| Estimated Audit Hours: | 220 | 220 | 220 | 130 |

| Medium | | |
|---|------------------------|----------------------------|
| | Finance | Finance |
| | Utility Billing | Bank Reconciliation |
| Combined Rankings | | |
| <i>Complexity of Operations</i> | 67 | 75 |
| <i>Susceptibility to Error or Fraud</i> | 75 | 50 |
| <i>Reputation</i> | 45 | 60 |
| <i>Laws & Regulations</i> | 20 | 20 |
| <i>Degree of Change</i> | 60 | 68 |
| <i>Financial Impact</i> | 40 | 25 |
| <i>Auditor Adjustment</i> | 15 | 10 |
| Result: | 322 | 308 |
| Rank # on Results Worksheet: | #67 | #73 |
| Estimated Audit Hours: | 220 | 220 |



CITY OF DELRAY BEACH



Internal Audit Report: #21-01 Overpayments (Consulting Services)

SERVICE PERFORMANCE INTEGRITY RESPONSIBLE INNOVATIVE TEAMWORK

Executive Summary

August 31, 2021

Dear Mayor and Commissioners,

Duplicate payments are one of several types of overpayment errors that can occur within the accounts payable process. This type of overpayment represents a vulnerability to any organization, and a loss if remains undetected.

Internal Audit performed a limited-scope performance audit of the City of Delray Beach consulting payments processed by the Finance Department. The audit was prompted by the identification of an overpayment issued in January 2021 for internal auditing services.

Given that the overpayment took place in January 2021, the scope of this audit included a review of a sample of payments issued for consulting services between December 1, 2020 and February 28, 2021.

Audit results provided herein are based on inquires, transaction examinations, and the review of other audit evidence and provide reasonable, but not absolute assurance that controls are in place and effective. In addition, effective controls in place during and audit may subsequently become ineffective as a result of technology changes or reduced standards of performance on the part of management.

Audit Objective

Determine whether adequate controls are in place to prevent overpayments to vendors (consulting services).

This limited-scope performance audit was conducted in accordance with generally accepted government auditing standards. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objective. The evidence presented herein is believed to provide a reasonable basis for the findings and conclusions based on the audit objective.

Apart from the overpayment which triggered this audit, no further duplicate payments were identified during the period under audit. Recommendations to strengthen and improve controls over the invoice payment process and to reduce the likelihood of future overpayments are included in this report.

I extend my appreciation to the Finance Department's management and staff for their cooperation during this audit. Please contact me for questions or comments on this report.

Sincerely,



Julia Davidyan, DBA, CPA, CGAP
City Internal Auditor

Internal Audit Report #21-01: Overpayments (Consulting Services)

Audit Authority & Statement of Independence

The Internal Audit function is administratively and operationally independent of the programs and departments it audits, both in appearance and in fact. The Internal Auditor is accountable to the Delray Beach City's Commission in accordance with the City's Charter Section 4.10-4.11. Although the Internal Auditor reports exclusively to the City Commission, she shall review any matter related to city business upon request of the majority of the City Commission or the City Manager. The performance audit was conducted at the request of Ms. Jennifer Alvarez, Interim City Manager.

Performance Audit Overview

The United States Government Accountability Office (GAO) promulgates government generally accepted auditing standards (GAGAS) that provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and help improve government operations.

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against a criteria. Such audits include objective analysis to assist management and those charged with governance in using the information to improve program performance, operations, and facilitate decision making by parties with responsibility to oversee or initiate corrective action and contribute to enhanced public accountability.

Compliance with Governmental Auditing Standards

This limited-scope performance audit was conducted in accordance with GAGAS. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objective. The evidence presented herein is believed to provide a reasonable basis for the findings and conclusions based on the audit objective.

Internal Audit Responsibility

The Internal Audit function strives to assist managers with the effective discharge of their responsibilities to achieve departmental goals and contribute to the City's mission. Internal Audit promotes effective controls and furnishes management with an independent appraisal and recommendations related to the activities reviewed. Internal Audit's role is vital to maintaining the public's trust that the City's resources are used effectively and efficiently.

Management Responsibility

City management is responsible for ensuring that resources are managed properly and used in compliance with laws and regulations; programs are achieving their objectives; and services are being provided efficiently, effectively, and economically.

Accounts Payable Process Background

The City’s accounts payable process is centralized within the Finance Department. The Accounts Payable (AP) staff are responsible for the receipt and processing of invoices for payment, assisting in the resolution of vendor issues, check printing, and providing support to all City departments. They are also tasked with effectively managing and monitoring the recording of all expenditures within the City and providing assurance that all payments made by the City are financially accurate. The Finance Department has two full-time equivalents (FTE) dedicated to the centralized payment function. The table below shows the activity carried out by the AP staff.

All Commodities:

| Fiscal Year | Number of Invoices Processed | Total Dollar Amount of Invoices Processed |
|------------------------|------------------------------|---|
| 10/1/2019 – 09/30/2020 | 16,085 | \$67,198,485 |
| 10/1/2018 – 09/30/2019 | 18,412 | \$64,068,467 |

Consulting Services Only:

| Fiscal Year | Number of Invoices Processed | Total Dollar Amount of Invoices Processed |
|------------------------|------------------------------|---|
| 10/1/2019 – 09/30/2020 | 513 | \$10,204,774 |
| 10/1/2018 – 09/30/2019 | 491 | \$3,913,017 |

Achievement of accurate and timely payments to vendors is the primary goal of the AP staff. However, to achieve this goal, they must collaborate with other departments in the City. The City uses the Tyler New World (TNW) software to manage its financials. Department staff procure goods and services by creating an electronic requisition in TNW.

The requisition is converted to a purchase order by the Purchasing Department and then sent to the vendor. The duties of vendor set-up and Master Vendor File maintenance reside with the Purchasing Department for proper segregation of duties. All vendors are required to register with the City. A W-9 must be submitted by the vendor before business can be conducted with them.

When an invoice for the goods or services is received by the Finance Department, it is sent to the appropriate/responsible department for entry into TNW. A designee within each department compares the invoice to the purchase order, and enters it into the system. Some contractual agreements will not have a purchase order. The majority of invoices are submitted electronically via email. Prior to payment, all invoices must be reviewed by the department manager. Duties required to process accounts payable transactions are adequately segregated. Once approved by the respective department manager, TNW continues the routing of the invoice and an AP clerk in Finance can review and approve it, which posts the debit to the corresponding expense account. Invoices approved and processed will advance to the weekly check run process or electronic funds transfer (EFT) payment process. Prior to the release of checks and EFT payments, an additional review is performed by the Accounting Manager or designee in Finance. Over 90% of payments are via checks.

January 2021 Duplicate Payment Identified

On January 8, 2021, AP issued check #586755 (\$3,560) for vendor #15603, for internal auditing services invoice #1008 (for November, 2020). There was no balance forward on this invoice.

At time of issuance of invoice #1009 (for December, 2020), the November invoice of \$3,560 remained unpaid, and as such, the vendor included it as a balance forward, along with the \$1,600 December charges, for a total invoice amount of \$5,160.

On January 22, 2021, AP issued check#586952 (\$5,160), and as such overpaying by \$3,560 the December, 2020 invoice. The check should have been for \$1,600 only. The Finance Department was made aware of this overpayment by the vendor and the check was returned and voided on February 10, 2021. On February 12, 2021, the correct check#587322 was issued for the amount of \$1,600.

As noted in the description of the AP process, the balance forward should have been identified by the AP clerk during the review of the invoice already entered for payment by the respective department. The overpayment was also not caught in the secondary review before the payment was approved for payment. In discussing this overpayment with the Chief Accounting Officer, it was concluded that it was due to a human error. Staff was subsequently re-trained on the procedures for invoice review and approval prior to check issuance.

Subsequent Audit Objective

Given the overpayment discovered, the objective of this limited-scope audit was to determine whether adequate controls are in place to prevent overpayments to vendors (consulting services).

Audit Scope & Methodology

The scope of this audit included a review of the current policies and procedures. The control testing covered the three months period of December 1, 2020 through February 28, 2021. During this period, 119 invoices for consulting services were processed, totaling \$1,774,729. The audit work included the following procedures:

- Interviews with management and staff.
- Research of best practices for AP.
- Review of written policies and procedures over AP.
- Duplicate payments/overpayments control testing of a sample of randomly selected invoices:
 - Internal control and compliance testing sample selected was based on the sample guidance provided by the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide Government Auditing Standards and Single Audits*.

Results & Conclusion

Internal Audit selected and obtained a random sample of 25 invoices. The selected invoices were recalculated in terms of the payment amount on the invoice to ensure it was mathematically accurate and the amount paid further agreed with the check stub or EFT payment notification. The selected invoices were further reviewed for any balance forward amounts to ensure no duplication or overpayment of an open invoice or previously paid one.

Based on the testing conducted, no other instances of overpayment were identified. It is concluded that adequate controls are in place to ensure payments are mathematically accurate, properly supported, and that proper internal controls are in place to prevent overpayments to consulting services vendors.

Discussion Points & Recommendations

Although no additional overpayments were identified, the following discussion points and recommendations are made as an opportunity to strengthen and improve the AP processing. The recommendations below, which are based on industry best practices, and discussions held with the Finance Department, are intended to provide additional assurances through increased risk mitigation designed to prevent errors and fraud.

Discussion Point & Recommendation #1:

In addition to re-training of staff and management on the existing procedures for invoice review and approval prior to check issuance, it is recommended that AP staff follow a checklist of specific items to look for during the review process (i.e. balance forward, duplication of amount or invoice number).

Management Representative Responding:

Management concurs with the recommendation. The Accounts Payable staff will follow an internal control checklist with specific steps to mitigate the risk of duplicate payments and to strengthen the invoice review process internal controls.

Date of expected implementation (if any): Implemented in June 2021.

Discussion Point & Recommendation #2:

It is recommended that established cut-off timelines for invoice processing are strictly enforced. Frequent last minute payment requests from City departments place pressure on AP staff to complete processing of invoice payments in a short period of time to meet the cut-off deadline. Such practice limits the proper review of invoices prior to entry for payment.

Management Representative Responding:

Management concurs with the recommendation. Accounts Payable processes checks on Thursdays. AP will ensure that Departments abide to the normal check run schedule and will enforce establish cut-off timelines. Therefore, Departments will be required to complete their invoice approval process and to submit complete documentation to AP by the stated deadline to AP to process complete and accurate invoices in a timely manner. AP will minimize accommodating exceptions to the schedule. In case of emergencies, the Department Director shall seek approval from the Finance Director to process a check outside the normal check run schedule. Approval will be granted on case by case basis.

Date of expected implementation (if any): The process is currently in place.

Discussion Point & Recommendation #3:

There are currently two full-time equivalents (FTE) dedicated to the centralized payment function. The review of the invoices prior to entry into TNW for payment is a manual process. Given the increasing volume of invoices in recent years, it is recommended that the Finance Department should consider requesting additional FTE to ensure the AP function is properly staffed to keep-up with the payment needs of the City while carefully following AP payment procedures.

Management Representative Responding:

Management concurs with the recommendation. Due to budget constraints, Management will be unable to hire an additional AP Specialist. Therefore, Management will provide additional help to the AP staff from the Executive Assistant and Accountants to ensure that invoices are processed timely and efficiently.

Date of expected implementation (if any): August 2021.

Discussion Point & Recommendation #4:

Given the manual nature of the invoice data entry for payment processing and the fact that the January overpayment of the balance forward from the prior invoice was not detected after the fact internally, it is recommended that the Finance Department should consider conducting periodic (quarterly) self-audit of prior check issuances to continue the monitoring of control effectiveness.

Management Representative Responding:

Management concurs with the recommendation. The Accounting Manager and the Chief Accounting Officer will conduct quarterly AP data audits to monitor and improve the AP systems and controls. These audits will help detect and prevent duplicate payments in the future.

Date of expected implementation (if any): October 2021.

Acknowledgments

It is important to recognize the significant accomplishments achieved by the AP function. I commend staff for working diligently to pay invoices considering the volume of payment requests received compared to the small number of employees tasked with making the payments. I also commend staff for proactively taking on additional roles to help expedite payments even though such expedited payments are outside the established policies.

Distribution of Report

This report is intended for the information and use of the Mayor and City Commission, management, and others within the City of Delray Beach. However, the report is a matter of public record and its distribution is not limited.



CITY OF DELRAY BEACH



Internal Audit Report: #21-02 Old School Square Lease Compliance

SERVICE · PERFORMANCE · INTEGRITY · RESPONSIBLE · INNOVATIVE · TEAMWORK

To: The Mayor and City Commission
From: Julia Davidyan, Internal Auditor
Re: Old School Square Lease Compliance
Date: September 8, 2021

Audit Authority & Statement of Independence

The Internal Audit function is administratively and operationally independent of the programs and departments it audits, both in appearance and in fact. The Internal Auditor is accountable to the Delray Beach City Commission in accordance with the City's Charter Sections 4.10-4.11. Although the Internal Auditor reports exclusively to the City Commission, she shall review any matter related to city business upon request of the majority of the City Commission or the City Manager.

This performance audit was conducted at the direction of the City Commission, as given on July 13, 2021.

Performance Audit Overview

The United States Government Accountability Office (GAO) promulgates government generally accepted auditing standards (GAGAS) that provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and help improve government operations.

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against the criteria. Such audits include objective analysis to assist management and those charged with governance in using the information to improve program performance and facilitate decision making by parties with responsibility to oversee or initiate corrective action and contribute to enhanced public accountability. Performance audit objectives vary widely and include compliance and current status or program condition.

Compliance with Governmental Auditing Standards

This limited-scope performance audit was conducted in accordance with GAGAS. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the conclusions based on the audit objectives. The resulting analysis presented herein is believed to provide a reasonable basis for the conclusion based on the audit objective.

Audit Objective

The objective of this limited-scope performance audit was to determine whether Old School Square Center for the Art, Inc. (OSS) complied with the eight reporting commitments of Article 6.1. (a-h) of the Lease Agreement between the City of Delray Beach and OSS entered into as of the 1st of December, 2016 (the Lease).¹

¹ The reporting commitments establish the criteria for the compliance audit.

Audit Scope & Methodology

As part of this audit, Internal Audit reviewed the reporting commitments listed in Article 6.1. of the Lease. Records were requested from OSS and subsequently analyzed in order to establish compliance with each reporting commitment. Article 25.1. addresses *record keeping*, and *audit of the books* terms of the Lease such that:

“Lessee, at all times during the term of this Lease, will keep proper books of record and account in which full, true and correct entries will be made of its transactions with respect to the operation of the Premises in accordance with generally accepted accounting practices, consistently applied, and which will properly and correctly reflect all items of income and expense in connection with the operation of the Premises.”

“...Any inspection or audit of the books and records of Lessee or the procuring of documents verifying financial and other information, by or on behalf of Lessor, shall be for Lessor’s verification of Lessee’s operation of the Premises, and shall not constitute any assumption of responsibility or liability by Landlord to Lessee or anyone else with regard to the condition, maintenance, or operation of the Premises, nor relieve Lessee of any of Lessee’s obligations.”²

Furthermore, since OSS has not responded to any further requests for information or inquires after August 11, 2021, additional records were obtained from the Delray Beach Community Redevelopment Agency (CRA) in an attempt to identify such that would bring OSS into compliance with select commitments of Article 6.1. Pertinent best practices for nonprofit organizations and guidance on proper financial reporting was further researched.

Conclusion

Based on the limited-scope performance audit conducted (compliance objective), it is concluded that, in the aggregate, OSS is not in compliance with Article 6.1. of the Lease. Appendix A provides for the detailed analysis of OSS reporting commitments and the compliance audit results. Recommendations to enhance financial record-keeping and reporting transparency are provided in commitments 6.1.b and 6.1.c.

Distribution of Report

This report is intended for the information and use of the Mayor and City Commission, management, and others within the City of Delray Beach. However, the report is a matter of public record and its distribution is not limited.

Sincerely,



Julia Davidyan, DBA, CPA, CGAP
City Internal Auditor

² Refer to Appendix B for pertinent excerpts from the Lease.

Appendix A: Analysis of OSS Lease Reporting Commitments and Compliance Audit Results

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | | |
|--|--|--|--|--|--|
| <p>a. Three (3) year Strategic Plan (updated annually), "...which shall confirm Lessee has operated and is operating the Premises in compliance with its Operating Commitments."</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p> | <p>FY(17-18); Due 9/1/2017</p> <p>Yes: 2016-2019 Strategic Planning Cycle PowerPoint Presentation</p> <p>No*</p> | <p>FY(18-19); Due 9/1/2018</p> <p>No (Annual update not provided)</p> <p>No*</p> | <p>FY(19-20); Due 9/1/2019</p> <p>No (Annual update not provided)**</p> <p>No*</p> | <p>FY(20-21); Due 9/1/2020</p> <p>No (There is no strategic plan covering the year 2020 in the planning cycles)</p> <p>No*</p> | <p>FY(21-22); Due 9/1/2021</p> <p>Yes: 2021-2023 Strategic Planning Cycle PowerPoint Presentation</p> <p>No*</p> |
| <p>Conclusion: Unless other documents exist (e.g., board meeting notes, strategic planning notes) that would supplement what was provided by OSS, the current reporting period and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.a.</p> | | | | | |

Notes:

* The PowerPoint presentations provided (2016-2019; 2021-2023) contain *Situational* and *SWOT* analyses but stop short of an industry standard strategic plan (with organization-wide measurable goals and objectives to be able to compare to actual results, performance, from year-to-year, and for purposes of reporting commitment 6.1.h. - semi-annual reporting).³

For this reason, there appears to be no clear progression from the 2016-2019 planning cycle to the 2021-2023 planning cycle via annual updates that would have revealed, for instance, when was the capital improvement of the Crest Theater introduced as an objective or goal of OSS.

** Although a PDF file dated May 8, 2019, was provided, it appears identical to the 2016-2019 PowerPoint presentation and contains no annotation indicative of an annual update. OSS COO, Holland Ryan, indicated verbally on 8/10/21 that these files are "all he had."

³ Sample components of a strategic plan for a nonprofit organization can be found here: https://www.brighterstrategies.com/wp-content/uploads/2017/11/StrategicPlanning_2017.pdf

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | | |
|--|---|----------------------------|----------------------------|----------------------------|----------------------------|
| b. Annual Budget, "...which shall confirm OSS has operated and is operating the premises in compliance with the Operating Commitments..." | FY(17-18); Due 9/1/2017 | FY(18-19); Due 9/1/2018 | FY(19-20); Due 9/1/2019 | FY(20-21); Due 9/1/2020 | FY(21-22); Due 9/1/2021 |
| <i>Files Received?</i> | Yes | Yes | Yes | Yes | Yes |
| <i>Complies?</i> | No* | No* | No* | No* | No** |
| Conclusion: Unless other documents exist (e.g., Capital Improvements Budget, Organization-wide Budget and narrative) that would supplement what was provided by OSS for CRA funding purposes, the current reporting period and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.b. | | | | | |

Notes:

* The budget information provided are the CRA Budget files and narratives. At a first glance, these budgets include the Organization’s operating budget in terms of income and expenses components (separately presented), and Programing that is CRA specific, as well as brief narrative. However, since the intent of such budgets is for purposes of CRA funding (which cannot exceed 25% of an organization’s total operating budget), a close examination of the content reveled that the narratives were for the CRA-funded program components only, and not the Organization as a whole. Thus, if one wanted to understand the background for a certain income or expense components for OSS as a whole, such information would not be available in these CRA Budget files. Narratives or budget notes are instrumental to understanding an organization’s budget as they document the underlying rationale behind the budget numbers.⁴ In addition, a sperate narrative or budget for capital improvements (which is considered to be part of the Organizational budget) was not provided.

** In addition, it appears that the FY 2021-2022 annual and FY 2020-2021 quarterly budget reports (CRA reporting that provided the budget to actual comparison) may be incomplete or inaccurate. Below are notable examples and recommendations to enhance accuracy and transparency of reporting:

1. The FY 2021-2022 Combined Budget file, and quarterly reports (FY 2020-2021), do not account for the major and ongoing capital improvement (Crest Theater renovation). It is noted that in prior budget cycles, capital improvement expenses were listed as a line item (although left blank) on the same type of file. The supporting donor contribution for this project was also not identified as a source of income in the FY 2021-2022 Combined Budget file, only in certain quarters. Per inquiry with Mr. Ryan and Ms. Lawrence (OSS CFO), it was relayed that the Crest Theater capital improvement is accounted for differently now, in a separate construction budget. As such, a request was made to obtain this separate construction budget (income source and expenses), as it should be part of the annual budget packet of the Organization to confirm compliance with this lease requirement. As of the date of this report, no such information has been provided by OSS. Thus, it remains unknown what was the budgeted expense

⁴ Best practices in nonprofit are provided by the Association of Nonprofit Accountants and Finance Professionals: <https://www.anafp.org/Best-Practices-in-Nonprofit-Budgeting> Additionally, a sample budget narrative is provided here: <https://rcfdenver.org/wp-content/uploads/2017/05/Sample-Budget-Narrative.pdf>

and supporting income for this capital improvement. It is recommended for OSS to include in their budget packet all budgets (operating and capital) that are prepared for the Organization, along with the supporting narrative to enhance transparency and accountability to the public and those providing outside funding.

2. The FY 2021-2022 Combined Budget file and quarterly budget-to-actual reports (FY 2020-2021) appear to present incomplete or inaccurate actual year-to-date expense data pertaining to payroll. In this specific instance, where FY (2020-2021) year-to-date is 10/1/20 through 5/31/21, the payroll expense totals of \$370,845.96 and fringe benefits of \$33,755.82 appear identical to the already reported amounts in the FY (2020-2021) year-to-date, that is 10/1/20 through 3/31/21 quarterly budget reports. It appears unreasonable for actual payroll totals not to change between 3/31/21 and 5/31/21, unless the 5/31/21 column header date was mislabeled. In addition, the \$370,845.86 payroll expense for 10/1/20 through 3/31/21 on the quarterly budget report appears at odds with the *Statement of Activities* ('Profit & Loss' OSS ledger report printed on 06/19/21) for 10/1/21 through 3/31/21 that lists \$430,783.89 as *Payroll Expense* (Account #500). It is recommended for OSS to review the completeness and accuracy of the reporting in year-over-year and quarter-over-quarter reports in order to enhance transparency and accountability to the public and those providing outside funding, such as the CRA.
3. Public records indicate that during FY 2020-2021 (on May 6, 2021), OSS had their first draw Paycheck Protection Program (PPP) loan in the amount of \$309,709 forgiven. The proper accounting treatment of OSS's loan forgiveness would follow the Financial Accounting Standards Board (FASB) respective *Accounting Standards Codification* (ASC) and recognize a net gain (a line item such as *Other Income on Nontaxable PPP Loan Forgiveness*) on the OSS *Statement of Activities*, since OSS has previously accounted for the PPP loan issuance as a long term liability (on the *Statement of Financial Position*).⁵ From a transparency perspective, it would have been prudent of OSS to acknowledge this substantial loan forgiveness pertaining to FY 2020-2021 covered expenses when providing the Combined Budget reporting and funding application as of May, 2021, for FY 2021-2022 (especially since on March 12 of 2021, the Small Business Administration (SBA) approved a second draw PPP loan in the amount of \$283,095 to OSS).
 - It appears the PPP loan was only discussed following a question from a CRA Board member at the August 25, 2020 CRA Board meeting. Responding to this question, Ms. Eadon (OSS CEO at the time) stated that OSS "...had received a PPP loan, and those funds were about ready to run out." Based on the figures reported in the quarterly FY 2020-2021 budget to actual reports, and the commentary from Ms. Eadon, it appears that OSS may have inadvertently "double dipped" payroll expenses incurred or used the PPP loan funding for other purposes in excess of the percentage designated by the SBA. "Double dipping" is defined as being reimbursed twice for the same expense.⁶ Under this scenario, OSS would have reported to the SBA for PPP loan forgiveness purposes at least some of the payroll expense incurred, which CRA funding had already covered (as part of Program A). Such CRA covered payroll expenses should have been subtracted from total payroll expenses to avoid "double-dipping." The PPP loan was approved on April 15 of 2020, thus starting the maximum covered period of 24 weeks. In order to obtain forgiveness, at least 60% (\$185,825.40) of the \$309,709 loan amount needed to be spent on payroll related expenses.

⁵ See ASC 405-20, *Extinguishments of Liabilities* and ASC 470-50, and *Debt Modification and Extinguishments* as discussed in Technical Guide issued by the AICPA: <https://www.aicpa.org/content/dam/aicpa/interestareas/frc/downloadabledocuments/tqa-sections/tqa-section-3200-18.pdf>

⁶ See *Navigating the Interaction Between the Use of PPP Loan Proceeds, PPP Forgiveness and Restricted Funding*, published by the FMA (Fiscal Strength for Nonprofits): <https://fmaonline.net/wp-content/uploads/2021/02/Navigating-the-Interaction-Between-PPP-and-Restricted-Funding-Sources-Revised-2-2-21.pdf>

The ‘Profit & Loss’ reports provided to the CRA by OSS do not identify separately PPP covered expenses vs. not. Thus, the table below provides for the actual quarterly payroll expenses for the Organization (with payroll taxes and fringe benefits added together) as reported by OSS to the CRA in the budget reports of the respective quarters, with any assumptions made outlined in the corresponding notes. After properly subtracting CRA funded payroll expenses (as per the Q3 OSS detail report outlining use of Program A funding), it appears the required 60% use of PPP towards payroll is not met, thus pointing to a possible “double-dipping.” It is recommended that nonprofits keep separate ledger accounts or utilize other mechanisms to ensure they avoid “double-dipping,” especially if planning to apply for forgiveness of the second draw PPP. See helpful tips provided by the FMA in footnote 6.

| | OSS FY 19-20 (Q3) APR 2020 - JUN 2020 | OSS FY 19-20 (Q4) JUL 2020 - SEP 2020 | 26 Week Total* | |
|--|--|--|----------------|--|
| Payroll (inclusive of taxes & fringe benefits**) | 164,391.00 | 193,082.05 | | |
| Less: CRA reimbursement as part of Program A*** | <u>97,099.00</u> | <u>97,099.00</u> | | |
| Remaining Expense: | <u>67,292.00</u> | <u>95,983.05</u> | 163,275.05* | PPP Forgiveness Eligible* |
| | | | 185,825.40 | Minimum required (60% of \$309,709 Loan) |

* The total count of weeks starting from 4/1/2020 to 9/30/2020 was 26 weeks. The covered period for PPP loan forgiveness period is capped at 24 weeks and starts on the date the loan is funded (4/15/2020) or the first payroll cycle thereafter. Thus, regardless of the inclusion of the payroll in the first two weeks of April or a shift in two weeks to start payroll expense accumulation from 4/15/2020, the entire covered period falls within Q3-Q4, and suggests that perhaps the \$163,275.05 should likely be adjusted to an even lower PPP eligible expense. In addition, this calculation also does not adjust down for any excess payroll of annual salaries that exceed \$100,000 that need to be excluded. An email from the OSS Finance Director to the CRA stated that as of August 27, 2020, OSS had 7 full-time employees while the rest of the staff remained on furlough. Prior quarterly reporting suggests staff was placed on furlough on or around March 14, 2020. As such, the payroll and fringe totals above, assuming the 7 FTE headcount, suggest there may be a need to review any salaries exceeding \$100,000 annually that would require adjustments for purposes of the PPP loan eligibility.

** It is noted that the fringe benefits total included in the above payroll totals was an identical expense amount in both quarters. That would appear unlikely since the payroll expense did change, thus suggesting the corresponding fringe amount should have changed as well.

*** The quarterly CRA funding/reimbursement total of \$97,009 that went towards payroll and fringe benefits was obtained from the OSS ‘Q3 Detail 8.06.2020’ file detailing the breakdown per department and program and totaled the \$187,500 quarterly CRA funding for all expense line-items listed. The same amount was assumed for Q4 as no such file was available for Q4 of FY 19-20.

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | |
|--|---|--|--|--|
| <p>c [1]. Annual Audit Report (including management letters (ML), and responses to management letters, if any)</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p> | <p style="text-align: center;">FY(16-17); Due 3/29/2018</p> <p style="text-align: center;">9/30/17 Audit Report: Yes ML: Yes</p> <p style="text-align: center;">Yes</p> | <p style="text-align: center;">FY(17-18); Due 3/29/2019</p> <p style="text-align: center;">9/30/18 Audit Report: Yes ML: Yes*</p> <p style="text-align: center;">Yes</p> | <p style="text-align: center;">FY(18-19); Due 3/28/2020</p> <p style="text-align: center;">9/30/19 Audit Report: Yes ML: Yes*</p> <p style="text-align: center;">Yes</p> | <p style="text-align: center;">FY(19-20); Due 3/29/2021</p> <p style="text-align: center;">9/30/20 Audit Report: No ML: No</p> <p style="text-align: center;">No**</p> |
| <p>Conclusion: The current reporting period is not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.c.[1].</p> | | | | |

Notes:

* The 9/30/18 and 9/30/19 management letters (ML) each noted a significant deficiency related to asset and liability account reconciliations (pledges receivables, split interest agreements, accumulated depreciation, and capital lease liability accounts). Management's response was also the same in both years and indicated, "While recent changes in senior management delayed the otherwise routine completion of these accounting functions, Management is now able to prioritize the completion of timely and accurate reconciliations of all such account balances." It is recommended that OSS's management pay closer attention to account reconciliations, specifically since the same accounts have been highlighted by two different CPA firms during the respective audits to be lacking such reconciliations.

** The FY 19-20 audit is ongoing as of the date of this report.

In lieu of the FY 19-20 audited financials, a review of the most recent *Statement of Net Position* ('Balance Sheet' per OSS ledger) reports available, was conducted. Specifically, an attempt was made to identify the capital improvement project temporary restricted contribution (based on major gift) as well as the PPP loans (long-term liabilities). It was noted that the format and presentation of account details and labels appearing on the 'Balance Sheet' was at times inconsistent, as outlined in the examples below, thus recommendations were made to enhance comparability from period-to-period and overall transparency of reporting, especially during periods when audited financial statements are delayed or unavailable:

1. In reviewing presentations, files, letters, narratives and quarterly or other updates from OSS, many referred to the Crest Theater renovation, its progress, or the major private donation. However, the files contain inconsistent information and unfortunately, no record made available as of the date of this report had clearly identified when or in what amount was the donation actually made.
 - o For instance, an OSS PowerPoint presentation from July 2019, stated the following: "Finalizing plans for a \$1.6M to renovation to the interior of the Crest Theatre, a \$900,000 private donation was received to being the project, a fundraising campaign has started to raise the remaining." No such donation amount was identified as restricted funds in the audited financial statements as of 9/30/2019.
 - o The FY 2021-2022 CRA funding application submitted by OSS on 5/21/21 stated that "...Our renovation project has started and is projected to be finalized in August of 2021 with the support of a restricted private \$1.SM [sic] gift..." This "SM" typo after the \$1, remains unresolved.

- There was a *Major Gift* line item in the amount of \$900,000 listed on the Q2 FY 2020-2021 (Jan.-March. 2021) quarterly reporting to the CRA, which also coincided with a similar amount of *Other Income* listed on the OSS ‘Profit and Loss’ report that provided activity from October 2020 through March 2021. This line item remained on the quarterly report for Q3 (April – June of 2021). However, the FY 2021-2022 budget file, submitted to the CRA on 5/21/21, and which identifies year-to-date (2021) actual income and expenses, this *Major Gift* line item and amount were removed and no longer listed anywhere within that budget report.
- Finally, a letter from the donor Margaret Blume dated August 30, 2021, identifies \$2.4 million as total funding (for both the 2017 Cornell and the 2021 Crest renovations). In the letter the donor states “Be advised that money that I donated for the completion of the Crest Theater project is no longer available. This gift will no longer be serving the purpose for which it was intended.” It is unclear how the donation could no longer be available if it was contributed to the OSS and the project was ongoing.⁷ The accounting for donor-imposed restrictions on gifts and contributions is discussed next.

Because contribution of funds towards the Crest renovation gifted to OSS stipulates a restriction (temporarily, while the capital improvement project is ongoing) it is considered an asset with a donor-imposed restriction, and should be reflected on the Balance Sheet as such.⁸ When donations are restricted, nonprofits must keep records that show donors’ intents and it is a best practice to then regularly review those records to track progress toward the release of those restrictions (presumably as the construction progresses). The most recent Balance Sheet available as of 3/31/21 (printed on 5/21/21 for the CRA funding application) does not reflect or identify any restricted assets (for instance a separate bank account or fund), restricted fund balance, nor separately labeled account for this major donation. However, other detail pertaining to very small and insignificant assets and liabilities is described in detail, for instance account# 134400 *Bulk Mail Postage Account* with a balance of \$23.11 as of 3/31/21 within *Other Assets*. In reviewing a similar Balance Sheet as of September 30, 2018, one could identify substantially more detail in sections such as *Fixed Assets* and fund balance restrictions (*Equity: Unrestricted Fund Balance* and *Temp. Restricted Fund Balance*). Also in the past, the June 30, 2017 OSS Balance Sheet identified a separate cash account titled *Cornell Renovation Fund* to distinguish between any operating, petty cash and other cash funds. Thus, it appears that OSS has the tools necessary to produce transparent financial reporting with applicable account detail and should be doing so for the benefit of accountability of any fund restrictions that would be of interest to donors and other funding partners.

2. The same most recent Balance Sheet available (as of March 31, 2021; printed on May 21, 2021) did not include the second PPP loan in the amount of \$286,095 that was approved by the SBA during the month of March (on March 12, 2021, per public records). Accrual basis of accounting requires recording of the cash or receivable and the corresponding liability as of the report date (3/31/21).⁹ Instead, the Balance Sheet only showed the first PPP loan (\$309,709) and EIDL loan (\$49,900), totaling \$359,609.00 in the category of *Long-Term Liabilities*. On an earlier Balance Sheet report (May 30, 2020) one could identify the specific PPP loan in the amount of \$309,709 listed under Account # 210001 *PPP Loan*. However, on later reports the loan details account was hidden and combined in total as *Long-Term Liabilities*.¹⁰ Thus, it appears that OSS has the ability to produce transparent financial reporting and should be doing so for the benefit of accountability to its funding partners and the public.

⁷ According to an internal City email dated 8/2/21 from Missie Barletto, Public Works Director, “Bill [Mr. Bill Branning, OSS Board Member] says that the full amount of the construction funding is sitting in a bank account under OSS name now.”

⁸ See ASC 985-605 *Non-for-Profit Entities*.

⁹ See ASC 470 *Debt*.

¹⁰ For instance, the Balance Sheet as of September 30, 2020, and December 31, 2020 showed the total *Long-Term Liabilities* of \$359,609.00, after the “May 30, 2020 [sic]” presented \$309,709.00. One would have had to identify the addition of the \$49,000 as the newly issued EIDL loan during June of 2020 based on public records because it was not listed with detailed account annotation on the financial report.

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | |
|--|--|--|--|---|
| <p>c [2]. IRS Form 990, 990-T</p> <p><i>Files Received?</i></p> <p><i>Complies?</i></p> | <p>FY(16-17); Due 3/29/2018</p> <p>2016 Form 990: Yes; 2016 Form 990-T: Yes</p> <p>Yes</p> | <p>FY(17-18); Due 3/29/2019</p> <p>2017 Form 990: Yes; 2017 Form 990-T: Yes</p> <p>Yes</p> | <p>FY(18-19); Due 3/28/2020</p> <p>2018 Form 990: Yes; 2018 Form 990-T: No*</p> <p>No*</p> | <p>FY(19-20); Due 3/29/2021</p> <p>2019 Form 990: No; 2019 Form 990-T: No</p> <p>No**</p> |
| <p>Conclusion: The current reporting period and one prior year are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.c.[2].</p> | | | | |

Notes:

* According to public records, the Internal Revenue Service (IRS) Form 990-T (*Exempt Organization Business Income Tax Return*) has not been filed for FY 18-19 as of the date of this report. The note on the 2018 IRS Form 990 filed on 3/20/2021 stated: “The organization will file Form 990-T upon completion of the audit of the financial statements for fiscal year ended September 30, 2019. The organization estimates zero tax due with the 2018 Form 990-T.” Because the Form 990 was filed prior to the completion of the financial audit, an amended Form 990 will likely be needed as well.

** As of the date of this report, OSS has not provided any status update on anticipated filing of IRS Form 990 (*Return of Organization Exempt from Income Tax*) for FY 19-20. The six-month extension granted by the IRS has expired on 8/16/2021. Although it is best and preferred to file Form 990 once audited financials are available (in this case such are not available for OSS FY ending 9/30/2020), it is not required as per the Form 990 instructions. Compiled or trial-balance data could be used for purposes of timely Form 990 filing, in order to avoid late filing and potential penalties. It appears the Form 990 will be filed late for a second year in a row based on the current information known.¹¹

¹¹ Annual Form 990 requirements can be reviewed here: <https://www.irs.gov/pub/irs-pdf/p4839.pdf>

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | | |
|---|--|--|--|--|--|
| <p>d. Annual Report (or a CRA A-Guide Report is deemed acceptable per 6.1.h: "...(i) a description of the principal activities, programs and services offered and provided; and (ii) the number of persons (adults and children) who participated,"</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p> | <p>FY(16-17); Due 12/29/2017</p> <p>Yes</p> <p>Yes</p> | <p>FY(17-18); Due 12/29/2018</p> <p>Yes</p> <p>Yes</p> | <p>FY(18-19); Due 12/30/2019</p> <p>Yes</p> <p>Yes</p> | <p>FY(19-20); Due 12/29/2020</p> <p>Yes</p> <p>Yes</p> | <p>FY(20-21); Due 12/29/2021</p> <p>Yes- FY 20-21: Q1, Q2, Q3</p> <p>Yes- pending Q4 provided when due</p> |
| <p>Conclusion: The current reporting period (pending FY 20-21, Q4 reporting) and prior years are deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.d.</p> | | | | | |

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | | |
|---|---|--|--|---|--|
| <p>e. Written Statement:</p> <p>"...Describing efforts and results to improve diversity of the OSS Board of Directors..." and programs offered.</p> <p style="text-align: right;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p> | <p>FY(17-18); Due 9/1/2017</p> <p>No</p> <p>No</p> | <p>FY(18-19); Due 9/1/2018</p> <p>No</p> <p>No</p> | <p>FY(19-20); Due 9/1/2019</p> <p>No</p> <p>No</p> | <p>FY(20-21); Due 9/1/2020</p> <p>Yes</p> <p>Yes*</p> | <p>FY(21-22); Due 9/1/2021</p> <p>No</p> <p>No**</p> |
| <p>Conclusion: The current reporting period and several prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.e.</p> | | | | | |

Notes:

* The diversity Board policy and reporting was not completed prior to the year 2020-2021 year, as per email dated 8/10/21 from Mr. Ryan, OSS COO.

** No reporting update for FY 21-22 has been received as of the date of this report.

| Reporting Commitment (Article 6.1): | OSS Fiscal Years (FY ending 9/30) and Submission Due Dates (as per the Lease) | | | | |
|---|---|---|---|---|---|
| <p>f. Written Statement (or a CRA A-Guide Report is deemed acceptable per 6.1.h:</p> <p>"Describing cooperation, participation, and collaboration with other organizations within the City."</p> <p style="text-align: center;"><i>Files Received?</i></p> <p style="text-align: right;"><i>Complies?</i></p> | <p>FY(16-17); Due 12/29/2017</p> <p>Yes: List of partnerships*</p> <p>No*</p> | <p>FY(17-18); Due 12/29/2018</p> <p>Yes: FY 17/18 quarterly reports*</p> <p>No*</p> | <p>FY(18-19); Due 12/30/2019</p> <p>Yes: List of partnerships*</p> <p>No*</p> | <p>FY(19-20); Due 12/29/2020</p> <p>Yes: List of partnerships*</p> <p>No*</p> | <p>FY(20-21); Due 12/29/2021</p> <p>Yes: List of partnerships*</p> <p>Not due yet**</p> |
| <p>Conclusion: The current reporting period (FY 19-20,) and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitment 6.1.f. Future reporting (FY 20-21) is not due until 12/29/21.</p> | | | | | |

Notes:

* The files provided or identified within the CRA applications and quarterly reporting were a listing of partner names but contained no written statement describing the cooperation as per this lease item. Quarterly reports for FY 17/18 identified an additional listing of event or partnership dates and the number of participants, but no written description of the cooperation, as outlined in the lease commitment was found.

** Additional information pertaining to this item could be reviewed to bring OSS to potential compliance by the due date.

| Reporting Commitment (Article 6.1): | Submission Due Dates (as per the Lease) | | | | |
|--|--|--|--|--|--|
| <p>g. Semi-Annual Reports providing: (i) activities/programs/services; (ii) status of funding for the activities/programs/services, and maintenance & operation of the Premises; (iii) the number of persons who participated; and (iv) a written statement re: status on meeting the goals and objectives from the strategic plans and the Operating Commitments (which were not met, with appropriate explanation). <i>Files Received?</i> <i>Complies?</i></p> | Due 1/1/17; 7/1/17 Yes No* | Due 1/1/18; 7/1/18 Yes No* | Due 1/1/19; 7/1/19 Yes No* | Due 1/1/20; 7/1/20 Yes No* | Due 1/1/21; 7/1/21 Yes No* |
| <p>Conclusion: The current reporting period and prior years are not deemed to be in compliance with the lease terms as provided in reporting commitments 6.1.g.</p> | | | | | |

Notes:
 * The files provided, which Mr. Ryan (OSS COO) believed address this item, were the CRA program reports (acceptable for commitments 6.1.d. and 6.1.f., as noted in 6.1.h.). Although this commitment does not state it could be substituted for CRA reporting, the reports provided appear to address components (i), (ii), and (iii). However, component (iv), which relates to the written statement regarding the status of goals and objectives from the strategic plan is missing. As stated in the notes for reporting commitment 6.1.a., supra, the strategic planning documentation does not provide for the organization’s goals and outcomes.

Appendix B: Excerpt of Pertinent Articles of the OSS Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "**Lease**") is made and entered into as of the 1st day of December, 2016, (the "**Effective Date**") by and between the City of Delray Beach, a Florida Municipal Corporation (hereinafter referred to as "**Lessor**", "**City**", or "**Landlord**") and Old School Square Center for the Arts, Inc., a Florida not-for-profit corporation, (hereinafter referred to as "**Tenant**" or "**Lessee**").

ARTICLE V - OPERATING COMMITMENTS

5.1. **Operating Commitments.** Lessee acknowledges that the Lessor desires to lease the Premises to Lessee in substantial reliance on the level of programming services that Lessee has previously provided under the Prior Lease, and those Lessee has represented that Lessee will provide on the Premises, including the staff necessary to provide such programming ("**Operating Commitments**"). The Operating Commitments include programming services that support Lessee's mission and that meet certain performance standards and are more particularly described in **Exhibit "B"** attached hereto.

5.2. **Diversity.** Lessee commits to provide diverse, high-quality, enriching entertainment and educational experiences for all residents of Delray Beach. Lessee is further committed to assuring that the experience Lessee provides and the manner in which Lessee conducts its business are reflective of the diversity of the residents of the City.

5.3. **Cultural Community Center.** It is mutually agreed that a condition for the granting of this Lease is the active and continuous use of the Premises as a high-quality cultural community center and gathering place by Lessee (except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies and acts of God) for the purpose herein described, in that said use provides a needed public service and provides additional employment and other benefits to the general economy of the area.

ARTICLE VI - REPORTING COMMITMENTS

6.1. **Operating Commitments.** Lessee acknowledges that the amount of Annual Base Rent is nominal and Lessor has agreed to lease the Premises to Lessee in consideration of Lessee's Operating Commitments. To ensure that Lessee complies with its Operating Commitments, Lessee has the following reporting and document production obligations (hereinafter "**Reporting Commitments**"):

a. Not less than **thirty (30)** days prior to the commencement of each fiscal year of Lessee during the term of this Lease, Lessee's three (3) year strategic plan (updated annually) which shall confirm Lessee has operated and is operating the Premises in compliance with its Operating Commitments;

b. Not less than **thirty (30)** days prior to the commencement of each fiscal year of Lessee during the term of this Lease, Lessee's annual budget for the Lessee's next fiscal year which shall confirm that Lessee is operating and shall operate the Premises in compliance with the Operating Commitments;

c. Not more than **One hundred and eighty (180)** days after the end of each fiscal year of Lessee during the term of this Lease, an annual audit of Lessee's business operations, including management letters, and responses to management letters, if any, and Lessee's annual income tax returns (IRS Form 990, 990-T or then current equivalent), which shall confirm Lessee has operated and is operating the Premises in compliance with the Operating Commitments;

d. Lessee shall submit annual reports to the City in form reasonably acceptable to the City, within **ninety (90)** days after Lessee's fiscal year-end which reports shall include the following: (i) a description of the principal activities, programs and services offered and provided by Lessee at the Premises during the immediate preceding fiscal year time period; and (ii) the number of persons (adults and children) who participated in Lessee's activities and programs during the immediate preceding year;

e. Not less than thirty (30) days prior to the commencement of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes Tenant's efforts and results to improve diversity on Tenant's Board of Directors, that the Tenant is committed to providing diverse, high quality, enriching entertainment and educational experiences for all of City's residents and to assuring that the experience Tenant provides and the manner in which Tenant conducts its business are reflective of the diversity of the City's residents;

f. No more than ninety (90) days after the end of each fiscal year of Tenant during the term of this Lease, Tenant's written statement signed by Tenant which describes cooperation, participation, and collaboration with other organizations within the City;

g. Tenant shall submit semi-annual reports to the City in form reasonably acceptable to the City, commencing on January 1, 2017, and continuing thereafter on the first

ARTICLE XXV - RECORDS

25.1. **Records**. Lessee, at all times during the term of this Lease, will keep proper books of record and account in which full, true and correct entries will be made of its transactions with respect to the operation of the Premises in accordance with generally accepted accounting practices, consistently applied, and which will properly and correctly reflect all items of income and expense in connection with the operation of the Premises. Lessor will have the right from time to time during normal business hours and upon reasonable notice to Lessee to examine all such books, records and accounts at Lessee's office or at the office of such other person as maintains them, and to make such copies or extracts as Lessor may reasonably be required in order for Lessor to comply with any agreement, ordinance, law or regulation regarding the use of the Premises and operation of the Premises, which shall at Lessor's sole costs and expense. Lessee will furnish to Lessor, at Lessee's expense, all evidence which Lessor may from time to time reasonably request as to the accuracy and validity of or compliance with all Lessee's obligations under this Lease. Any inspection or audit of the books and records of Lessee or the procuring of documents verifying financial and other information, by or on behalf of Lessor, shall be for Lessor's verification of Lessee's operation of the Premises, and shall not constitute any assumption of responsibility or liability by Landlord to Lessee or anyone else with regard to the condition, maintenance or operation of the Premises, nor relieve Lessee of any of Lessee's obligations.

25.2. **Funding Agreement**. If at any time during the term of this Lease, Lessee is a party to a funding agreement, or grant, or it is the recipient of a conditional gift (collectively a "**Funding Agreement**"), Lessee shall timely comply with all of the terms and conditions of the Funding Agreement.



CITY OF DELRAY BEACH



Internal Audit Report: #22-01 Payroll Processing (Paid Time Off)

SERVICE · PERFORMANCE · INTEGRITY · RESPONSIBLE · INNOVATIVE · TEAMWORK

Executive Summary

May 12, 2022

Dear Mayor and Commissioners,

Gross payroll at the City of Delray Beach exceeded \$65 million in the last two fiscal years, and personnel services continue to represent the largest expenditure category of the city's annual budget. Adequate and effective internal controls around payroll processing are, therefore, critical for ensuring that taxpayer dollars are properly utilized.

Internal Audit completed a performance audit of the City of Delray Beach payroll processing (and specifically paid time off) for the period of October 1, 2020, and through September 30, 2021.¹ The audit was requested by the majority of the City Commission.

Audit results provided herein are based on inquiries, review of established procedures, data analytics, transaction examinations, and the review of other audit evidence, and provide reasonable, but not absolute assurance that controls are in place and effective. In addition, effective controls in place during and audit may subsequently become ineffective as a result of technology changes or reduced standards of performance on the part of management.

Audit Objective

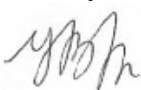
To evaluate internal controls governing payroll processing, and specifically paid time off (PTO), to ensure accuracy and compliance with City policies and procedures.

This performance audit was conducted in accordance with generally accepted government auditing standards. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. The evidence presented herein is believed to provide a reasonable basis for the findings and conclusions based on the audit objective.

It was concluded that the majority of the City's payroll transactions are processed accurately. However, a number of findings identified and observations made point to certain weaknesses within the internal controls over payroll and leave processing. These require immediate action and improvements in order to adequately address issues noted during this audit. Recommendations to strengthen and improve controls over the payroll processing and paid time off processes are further included in this report.

I extend my appreciation to the City's various departments management and staff for their cooperation during this audit. Please contact me for questions or comments on this report.

Sincerely,



Julia Davidyan, DBA, CPA, CFE, CGAP
City Internal Auditor

¹ Certain tests included a look-back to the preceding fiscal year of 10/1/2019-09/30/2020 as a baseline.

Internal Audit Report #22-01: Payroll Processing (Paid Time Off)

Audit Authority & Statement of Independence

The Internal Audit function is administratively and operationally independent of the programs and departments it audits, both in appearance and in fact. The Internal Auditor is accountable to the Delray Beach City's Commission in accordance with the City's Charter Section 4.10-4.11. Although the Internal Auditor reports exclusively to the City Commission, she shall review any matter related to City business upon request of the majority of the City Commission or the City Manager. This performance audit was conducted at the request of the majority of the City Commission.

Performance Audit Overview

The United States Government Accountability Office (GAO) promulgates government generally accepted auditing standards (GAGAS) that provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence to provide accountability and help improve government operations.

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against a criteria. Such audits include objective analysis to assist management and those charged with governance in using the information to improve program performance, operations, and facilitate decision making by parties with responsibility to oversee or initiate corrective action and contribute to enhanced public accountability.

Compliance with Governmental Auditing Standards

This performance audit was conducted in accordance with GAGAS. These standards require that the internal auditor plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. The evidence presented herein is believed to provide a reasonable basis for the findings and conclusions based on the audit objective.

Internal Audit Responsibility

The Internal Audit function strives to assist managers with the effective discharge of their responsibilities to achieve departmental goals and contribute to the City's mission. Internal Audit promotes effective controls and furnishes management with an independent appraisal and recommendations related to the activities reviewed. Internal audit's role is vital to maintaining the public's trust that the City's resources are used effectively and efficiently.

Management Responsibility

City management is responsible for ensuring that resources are managed properly and used in compliance with laws and regulations; programs are achieving their objectives; and services are being provided efficiently, effectively, and economically.

Payroll Processing and Paid Time Off Process Background

The following table summarizes totals for gross pay for the City and select paid time off (PTO)² hours codes by year:

| | Fiscal Year | |
|----------------------------|-------------------------------|-------------------------------|
| | <u>10/1/2019 – 09/30/2020</u> | <u>10/1/2020 – 09/30/2021</u> |
| Gross Pay | \$65,529,296 | \$66,478,794 |
| # of Employees Paid | 1,037 | 1,024 |
| <i>Hours Codes:</i> | | |
| Exempt Days Pay | \$212,416 | \$240,264 |
| Personal Holiday Pay | \$150,340 | \$174,125 |
| Sick Pay | \$1,242,920 | \$1,365,674 |
| Sick Pay - Termination | \$387,906 | \$367,077 |
| Vacation Pay | \$2,514,415 | \$3,316,661 |
| Vacation Pay - Termination | \$271,193 | \$247,263 |

The City uses Tyler New World (TNW) as its Enterprise Resource Planning (ERP) system for various processes throughout the City. Payroll is processed through TNW for all City employees. However, TNW does not have a time and attendance component currently in use, which results in a variation of processes among certain departments, and contributes to payroll processing complexity, as described below. In addition, the following excerpt from the payroll narrative provided by the Finance Department is the only known, City-wide policy and procedure for payroll processing.

City Departments (excluding Police and Fire)

Salaried (exempt) employees submit manual (Excel) timesheets each pay period. Timesheets are also printed for departments using electronic employee timekeeping systems for hourly employees. The Administrative Assistant in each department gathers the manual/printed timesheets, along with any “Employee Leave” forms, both of which are to be signed by the employee and their supervisor.³ The purpose of the “Employee Leave” form is to request and report any leave time taken during the pay period, such as vacation, sick, personal holiday and so forth.

Once the Payroll Administrator in Finance opens payroll in TNW (which gets pre-populated with regular schedule and pay for active employees), the Administrative Assistant (Level 1 Approver) for each department enters or updates pre-populated time in TNW based on the manual timesheets. Next, the Administrative Assistant prints the Payroll Hours Register report from TNW, reviews the report, electronically approves the time entered in the TNW system, and forwards the manual timesheet to the next approver level. The Supervisor/Department Head (next level approver) reviews the manual timesheet, compares it to what was entered in TNW, and approves it

² PTO reference in this report is not suggesting that sick, vacation or other leave benefits are treated in the same way from the perspective of their intended use or terms and availability. The reference to PTO is simply meant to serve as an abbreviation throughout the report for various leave benefits offered by the City of Delray Beach, unless specifically stated which type of benefit was impacted as part of the finding presented.

³ The timesheet and supervisor approval does not have to be on a printed copy of the timesheet and could be done using email and electronic signature, as was the practice during COVID-19.

electronically. Each department has various levels of approvals, with Level 4 completed by the Department Head or designee, as the final approval level. Each department must be at a Level 4 approval status in TNW to process payroll. The manual timesheets and Employee Leave forms are not sent to the Payroll Administrator in Finance, instead these are maintained in their respective departments (either electronically or in a printed copy) along with signed Payroll Hours Register reports generated out of TNW as backup.

Once a department is approved at a Level 4, the Payroll Administrator in Finance reviews the Payroll Hours Register report in TNW for unusual hours and codes and verifies information entered at the department level to ensure it follows appropriate City Personnel Policies or respective Union Contract(s). The Payroll Administrator also makes any necessary payroll changes for the period using the “Employee Appointment” form, or the “Employee Change Notice” form.

Upon final review by the Payroll Administrator, the Accounting Manager, Chief Accounting Officer, or designee, reviews the reports, compares the payroll Changes Forms to the Payroll Hours Register in TNW, and the Pay Day Registers in TNW, and looks for unusual hours and codes. The Accounting Manager, Chief Accounting Officer, or designee signs off on the Payroll Hours Register in TNW, confirming that the payroll has been reviewed and ready for processing and the final Payroll Validation process is completed. Then, the Pay Day Register and the Payment Register are generated in TNW.

Police and Fire Departments

The Police and Fire Departments use the Telestaff software for time and attendance and roster tracking. Employees in these departments utilize Telestaff to submit requests for approval by their respective supervisor for leave time such as vacation, sick, personal holiday and so forth.

Once the Payroll Administrator in Finance opens payroll in TNW, the Administrative Assistant (Level 1 Approver) in Police and Fire generate roster reports out of Telestaff and create summary excel worksheets based on the Telestaff data. These worksheets are used to enter payroll manually into TNW. There is currently no upload, interface or import capabilities from Telestaff into TNW. From this point on, once time has been entered into TNW, the remaining steps of review and approval in TNW are the same as with other City departments, which were described in the preceding section.

Audit Objective

The objective of this audit was to evaluate internal controls governing payroll processing, and specifically paid time off (PTO),⁴ to ensure accuracy of payroll calculations and compliance with City policies and procedures.

Audit Scope & Methodology

The scope of this audit included a review of the current procedures related to payroll processing and the personnel policies outlining PTO use and accruals. The control testing covered the period

⁴ PTO reference in this report is not suggesting that sick, vacation or other leave benefits are treated in the same manner from the perspective of their intended use terms and availability. The reference to PTO is simply meant to serve as an abbreviation throughout the report for various leave benefits offered by the City of Delray Beach, unless specifically stated which type of benefit was impacted as part of the finding presented in the following section.

of October 1, 2020, through September 30, 2021.⁵ The audit scope did not include payroll processes and calculations related to pay deductions or withholdings, check printing, or payroll distribution.

The audit work included the following procedures:

- Interviews with management and staff.
- Research of applicable laws, regulations, and best practices for Payroll processing and PTO.
- Review of written policies and procedures over Payroll and PTO.
- Review of time reporting codes and examples of applicable approval forms.
- Extraction and analysis of data generated from TNW, including data analytics tests and filtering on certain criteria to identify anomalies and outliers:
 - Employees who had no PTO taken during the year under audit.
 - Employees with 24 hours or less of PTO taken during the year under audit.
 - Analysis of sick and vacation payout at termination.
 - Analysis of incompatible codes such as ‘Leave Without Pay’ concurrent with accruals.
 - Analysis of the terms of taxable moving expenses payouts.
- Control testing of a sample of 40 randomly selected employees from various departments to test for payroll accuracy:
 - Internal control and compliance testing sample selected was based on the sample guidance provided by the American Institute of Certified Public Accountants (AICPA), *Audit and Accounting Guide Government Auditing Standards and Single Audits*.

Results & Conclusion

It was concluded that the majority of the City’s payroll transactions are processed accurately. However, a number of findings identified, and observations made point to certain weaknesses within the internal controls over payroll, and paid leave processing. These require immediate action and improvements in order to adequately address issues noted during this audit. The findings and recommendations to strengthen and improve controls over the payroll processing and paid time off processes are provided in the next section.

Findings

Finding #1: Overpayment of Sick Pay – Separation

While testing sick time payout at separation (or retirement), an overpayment of \$7,305.20 was identified. Employee #1 retired after 16 years of service and was entitled to a maximum of 560 hours of sick pay at retirement.⁶ However, the payout made was based on 840 hours, resulting in an overpayment of 280 hours, which at the rate of pay of \$26.09 totaled \$7,305.20. In a different

⁵ Certain tests included a look-back to the preceding fiscal year of 10/1/2019-09/30/2020 as a baseline.

⁶ Section 7.1 of the Personnel Policies covers the maximum hours to be paid out upon retirement or separation, based on the number of years worked. Only with 20+ years of service, the maximum of the payout of sick leave increases to 1120 hours. Below the 20 year mark, the maximum is 560 hours or less (based on the table provided on page 60 of the Personnel Policies). The table in the procedures manual established the percentage reduction of the sick accrual balance at separation based on the years of service. But the maximum remains 560 hours. Thus, if at retirement, 20 years of service have not been reached, the accrual reduction and maximum at separation applies. The complete policy can be found here:

<https://www.delraybeachfl.gov/home/showpublisheddocument/698/636746416899330000>

instance, such as with another employee (who also retired with less than 20 years of service), the proper maximum of 560 hours of sick leave payout was applied.

The overpayment appears to have been caused by human error resulting from incorrect interpretation and application of the Personnel Policies regarding leave payout at separation. The payroll administrator misread the policy for payout at retirement and the error was not caught by the secondary reviewer.

Finding #2: Inconsistent Accruals Practice of PTO and Other Fringe Benefits While on 'Leave Without Pay,' Resulting in Overpayments

During the data analysis of the pay codes, three inconsistencies have been noted, where employees on 'Leave Without Pay' (LWOP) had their accruals of leave and fringe benefits continue. As a result, one employee received a payout of vacation and other fringe benefits, which they do not appear to have been entitled to under the Personnel Policies.

Currently in TNW, there is no automated stop on continuation of benefit accruals when an employee is coded to be on a LWOP. During payroll processing, a report is run of all employees classified as LWOP and the payroll administrator has to manually review them, and remove any accruals that have been automatically added by TNW, and which do not apply based on the Personnel Policies. City's Personnel Policies (Section 7.6 Leave of Absence Without Pay) indicate the effects of being on LWOP as follows: *"Any month in which an employee, while on leave of absence without pay, works less than half of the normal work days will not be considered for the purposes of accruing sick leave, vacation, or other fringe benefits [emphasis added], based on continuous service. Employees who are on leave of absence without pay the day preceding or the day following a holiday shall not be compensated for the holiday."* This section also provides for the types of leaves that could be considered under LWOP. For instance, military leave (order of draft or call-up) and general leave (personal or medical).

The following are the three instances in which the above policies were not properly applied:

- Employee #2 has been on LWOP continuously since June of 2017, following an active guard reserve call up with the Florida Air National Guard. According to the above policy, no leave and fringe benefits should have been accruing (following the first 30 days). However, vacation, sick and other fringe benefits have been accruing, and the City has paid them out upon the employee's request. The payout requests have been submitted by the employee or on their behalf via Telestaff and approved by their supervisor and next level approver, along with the payroll processing personnel in their department and in Finance.

Prior to the start of the military leave in June of 2017, the employee sent an email to their Department Head requesting to use their accrued leave while on their extended leave (with specific reference made to sick leave). An approval of the request was memorialized in an email between the Department Head, Human Resources (HR) and the Union representative, with a notation that this was a unique situation and would not set a precedent.

A request to receive a payout of an accrual that an employee is entitled to because they have earned it ("use my accrued time") is different and separate from continuing to accrue time and fringe benefits going forward (while on LWOP). However, it appears that the root cause of the error was when staff across various levels misinterpreted the June 2017 communication regarding payment of already-accumulated accruals verses ongoing accruals, and also assumed

such one email to suggest that all the fringe benefits were to continue (such as Exempt FLSA days, Holiday Options, Police Education and Career stipend, Cell Phone Allowance, and the 3% 457 Plan Management Match). As a result, when submissions were made for payout, they were processed without further questioning. Refer to Appendix A for additional analysis of this case, the applicable laws, regulations, as well as estimates of the vacation leave, sick leave, and other fringe benefit accruals pertaining to this error.

- Employee #3 has been on active military duty since July of 2018 with the U.S. Army. Initially there was supplemental pay issued to them in accordance with PER-21-Military Leave Supplemental Pay and Benefits, and as such, the status in TNW was coded as ‘Away with Pay,’ which meant continuation of accrual of leave and fringes. Starting with October 2019, the status changed to LWOP, and according to the above policy, no leave and fringe benefits should have been accruing from that point onward. However, accruals of sick and vacation hours continued. This error resulted from incorrect interpretation and application of the Personnel Policies regarding LWOP and military leave. The payroll administrator misread the policy and was not removing the automatically-added accruals in TNW during the review process. This error was not caught by the secondary reviewer.

In addition, effective January 2021, sick accruals continued while vacation accruals stopped. Again, this points to the issue at hand of manual review of LWOP accruals. There have not been any payouts processed of accruals that were inadvertently added to the respective leave balances during the LWOP for this employee.

- Employee #4 has been placed on LWOP effective 01/19/2021, following the expiration of FMLA⁷ (which was also without pay in the months leading to January 2021). In accordance with the above policy, there were no accruals of sick and vacation in all the months of the LWOP, except for March 2021, during which 8 hours of sick and 8 hours of vacation were incorrectly accrued. This error was caused by a human mistake of the payroll administrator and is a result of the tedious, and manual review process of accruals during LWOP. The March 2021 accruals have not been paid out and were removed from the accrued balances of this employee during the subsequent processing of their separation in August 2021 (see separate finding outlined in #3).

Finding #3: Overpayment of Regular-Pay Past Separation (After an Employee Passed-Away)

While reviewing LWOP and PTO payouts at separation, an overpayment past the date of separation was noted. Employee #4 passed away on 08/17/2021. On 08/18/2021, a notice was entered by the department representative via the IT Boss ticket process for HR to make the status change for this employee in TNW. The status changes was processed in TNW only on 08/26/2021. This should have stopped any payroll processing in TNW past the date of the updated status entry. However, it appears employee #4 remained in active status, or got inadvertently reactivated in TNW, and starting with 08/30/2021, and through 09/24/2021 (including the Holiday), the employee was paid as ‘Regular Full Time’ for a total overpayment of \$2,537.60.⁸

It was noted, based on inquiry of Finance Department staff and review of the TNW audit trail, that no other system changes were logged in the month of August 2021, after the 08/26/2021 entry of

⁷ FMLA stands for Family and Medical Leave Act.

⁸ No payout was made of the 8 hours of sick and 8 hours of vacation leave accruals that were inadvertently added in March of 2021 (See finding #2).

the effective date of the termination. However, the audit trail log from TNW includes very limited information to be able to assess any system glitch or to conclude on an inadvertent reactivation by the user. Finance Department staff was also unable to identify why after the payment stopped on 09/24/2021, no review of the overpayment was conducted. It is also noted that the employee may have appeared on the active payroll list with regularly pre-populated hours due to the delay in the entry of the status change in TNW,⁹ and the proximity to the following pay period.

While it appears to be a combination of a user and a system error that the employee remained active or got reactivated, the review process of the payroll at the department level should have caught this mistake. However, the procedure outlined in the Finance Department's narrative for the review process was not properly followed. At the department level, an assumption was made that since HR was already notified of the date of death that this record has been updated to be removed from payroll processing. It was also noted that employee #4 had a very similar name to another employee in the same department, who was still active, which further contributed to the error being missed during the review process. A matching of the manual timesheets against the TNW report, with one extra employee on the report versus the available manual timesheets, should have revealed that there is an extra employee on payroll.

Finding #4: Inconsistent Use of Employee Leave Forms Process

The review of 'Employee Leave' forms, which are supposed to be used by the departments (outside of Police and Fire) for documentation of employee leave requests and approvals, revealed some variation. While two departments used a slightly different form version, one used just the IT Boss Ticket system to document leave requests.

In two selections, the Employee Leave form was only signed by the immediate supervisor (and no secondary approval signature of the department head or designee¹⁰ was found). Upon inquiry of the department, it was noted that their interpretation of the form was such that so long as an immediate supervisor approved the leave, no additional signatures were required. In another selection, the form was signed by a secondary approver, but was dated a number of months later.

Upon further review of the Employee Leave form it was noted that there are no instructions for its completion. There is also no documented procedure as to the required fields and signatures. Thus, the inconsistency in the use of the form could be attributed to the lack of instructions provided.

Finding #5: Underreporting of PTO Hours

An analysis was conducted of low PTO hours (24 or less) taken during the fiscal year under audit, with a look back to the preceding fiscal year (i.e. 10/1/2019-9/30/2020 and 10/1/2020-9/30/2021 were reviewed). As part of this review, several parameters were considered: the start and end dates of employment, other types of leaves of absence due to sick time, FFCRA¹¹, bereavement, training, changes in employee position, and changes in the type of employment (e.g. part-time to full-time), high payouts of hours at separation after short tenure with the City. An assessment of reasonableness was performed, and interviews and inquiries of supervisors and staff were further

⁹ The department submitted the change status to HR on 08/18/2021. It appears that on 08/23/2021, the HR Analyst notified Payroll and Benefits personnel of the notice received. However, the TNW audit log shows that only on 08/26/2021 was the change status entered into TNW.

¹⁰ Unless the department head is the immediate supervisor, in which case only one signature is expected.

¹¹ FFCRA code in TNW refers to the 80 hours (maximum) to be used under the Family First Coronavirus Act.

conducted to specifically identify a logical reason as to why there were 24 or fewer hours of PTO reported, or if any concerns or indicators of underreporting were present in general.

The following are three instances where PTO hours appear to have been underreported:

- An inconsistency with reported sick leave was identified, suggesting that an exempt employee (#5) had underreported an estimated 24 hours of leave and instead was paid for regular time worked for the week of 08/17/2020-08/21/2020. Employee #5 used sick leave under the FFCRA for the two weeks (10 working days), from 08/03/2020 through 08/14/2020. Their immediate supervisor indicated that a remote work accommodation was provided as a result, after the above FFCRA period has ended. Given the nature of their position, and the integral part they played in assisting their supervisor with daily administrative tasks, another employee was temporarily assigned their duties and work to assist the department head, while employee #5 was on the FFCRA leave. The temporary assignment of the substitute concluded on 08/24/2020. This means that for a period of a week, or 40 hours between 08/17/2020-08/21/2020 there was an overlap, as both the substitute and employee #5 reported regular working hours (the substitute was present in the office, while employee #5 was presumably working remotely). This further means that the City has in essence paid two salaries for the same administrative position for a week. As a result, further analysis via alternative procedures was conducted to assess the reasonableness of the overlap.

Although employee #5 and their supervisor indicated there was no reduction in the hours worked during the week in question, the supervisor could not identify any special projects or assignments given to this employee, and did acknowledge that the substitute continued to work in their temporarily-assigned capacity during the overlap week. Additionally, interviews of the substitute employee and email records reveal that employee #5 could have done limited work remotely.¹² Based on this review, it is estimated that only 16 hours of work were done that week, with the remaining 24 hours deemed as underreported PTO.

- Employee #6 worked in an exempt position for the City for exactly one year from January 2020 through January 2021. Upon separation, the employee received a payout of 96 hours of accrued vacation (totaling \$6,714.24), which were all the hours advanced to them (per the offer letter), since no vacation hours were used. However, a review of an Excel worksheet employee

¹² The conclusion is based on a number of contradictions between the job description, expected duties, and the need for accessing certain resources in order to be able to complete the work of an administrative assistant to a department head. Considering the limitation on access to complete such duties remotely, while the substitute continued to complete them in the office, the following was noted: 1) The substitute employee was given access to the City's email account of employee #5 at the start of the leave of absence in order to be able to continue addressing the extensive volume of daily emails and inquiries and to have the ability to schedule the meetings for the department head. Thus, there was no substantial backlog of emails possible during the overlap week when presumably employee #5 was working remotely. 2) The substitute was answering the phone of employee #5 at the office for the entire week, as the routing to the remote employee's cell-phone only occurred at the end of the week in question (Friday, 08/21/2020). 3) Employee #5 sent no emails at the start of the week for the entire day of 08/17/2020. 4) The remaining days included very limited email activity, and during short time-frames of the day. The content was predominately of brief replies (such as "Thank you") and forwarding of a handful of emails (with the statement "FYI"). The volume was inconsistent with a regular day's worth of emails expected for this position. 5) There was only one email communication with the supervisor the entire week, further suggesting the substitute, who was in the office, handled the regular work. 6) Employee #5 did not initially have a device charger and was also unable to access City's network drives for part of the week in question, as per the IT tickets and emails reviewed. 7) No emails were sent on weekend days (this was checked in case the workweek shifted to the weekend).

#6 maintained on their City-issued device, points to discrepancies in leave time actually used verses what has been reported on the manually-submitted timesheets, and is suggestive of the underreporting of PTO.

It appears employee #6 tracked their daily hours worked as if they were a non-exempt, hourly employee. During weeks where they exceeded 40 hours (for instance, if Monday through Wednesday were nine or ten hour days, or if some work was done on the weekend from home), a substantially shorter day on a Thursday, a Friday, or before a Holiday was noted. Furthermore, during some weeks, the worksheets suggest the employee worked less than 40 hours altogether. However, their timesheets did not reflect the same. In fact, none of the weeks tracked in the worksheet appear to match any of the timesheets actually submitted to the supervisor for approval. There were also no ‘Employee Leave’ forms found to account for these early departures or any documented supervisory approvals permitting the modification of the workweek, or taking the time off for extraordinary hours worked.¹³

- Employee #7 completed an ‘Employee Leave’ form on 12/04/2020 (signed by their supervisor and the Department Head on the same date) to request the use of a Personal Holiday leave on 12/07/2020. However, the timesheet for that week listed 12/07/2020 as a regular day worked and the Employee Leave form was not attached (that is when the files for this week were requested as part of the audit testing). Thus, the 8 hours of leave appear to have been underreported.

Upon inquiry, employee #7 acknowledged being off on 12/07/2020 and stated they entered the regular working day incorrectly on their timesheet. The reviewer of the timesheet did not notice the error, possibly due to the fact the Employee Leave form was not included with the timesheets packet. Employee #7 stated they would submit a correction to payroll related to this leave.

Finding #6: Missing Provision for Repayment of Taxable Moving Expenses upon Early Resignation

The data analysis of the taxable moving expenses pay code revealed that the City paid two employees in the same department \$5,000 each, without any provision in their offer letter or contract for repayment in the event of early resignation. Such provision for repayment is

¹³ According to the City’s Personnel Policies (Section 4.7), “*Departmental schedules shall provide for the completion of work tasks and delivery of public services within the standard work period of all employees of the department. Normal workday for non-shift personnel shall be from 8:00 a.m. to 5:0 p.m., Monday through Friday, unless otherwise authorized by the City Manager.*” In addition, exempt employees are not entitled to overtime pay. Instead, exempt employees receive “FLSA” or ‘Exempt Days’ for hours worked in excess of forty (40) hours (per Section 7.3). FLSA days can be taken in any increment of hours and were also permitted to be rolled-over if unused due to Covid-19. Finally, in addition to the FLSA days, Section 4.7 further states that “*nothing in this policy shall be interpreted to prevent a Department Director, the City Manager, or designee from allowing an exempt employee to occasionally [Emphasis added] take time off when the exempt employee has worked extraordinary number of hours or similarly exceeded the expected norm.*” In accordance with these policies, employee #6 received 10 days of FLSA, but did not use them all (only 6 such days were used). No documented approvals of time-off due to extraordinary hours were noted as the timesheets did not reflect any of the hours found in their separately-maintained Excel worksheet. Given that employee #6 and their immediate supervisor are both no longer employed by the City, no further inquiry was possible to address any verbal approval that may have been granted for “occasional” time-off. However, the fact of the matter remains that the timesheets submitted were inaccurate and that employee #6 self-regulated their schedule and underreported PTO actually used on a fairly consistent basis during the year of employment.

commonly set at some percentage to be repaid if the resignation takes place within one year, and another milestone is two years of employment. Both employees who received the payment for moving expenses resigned during the year under audit: employee #8¹⁴ around the nine month mark, and employee #6 at exactly a year (also see prior finding related to the same person). In a different department, it appears that provisions were added for repayment of moving expenses and another employee who departed after five months has repaid back this benefit.

In addition, a variation in the amount of benefit was noted, with some new hires receiving \$5,000, others \$3,000, or \$2,000. The amounts did not appear to correlate with distance of the move or seniority of the position. It was further noted that the City did not have a formal policy for taxable moving expenses.

General Observations and Recommendations

The following general observations and recommendations are made as an opportunity to strengthen and improve the payroll and PTO processing. The recommendations below, which are based on industry best practices, and discussions held with the City's management, will provide additional assurances through increased risk mitigation, which is designed to prevent errors and fraud.

Systems

1. The TNW ERP system as currently configured for payroll, is lacking the adequate audit trail and automation of many sub-processes within payroll, which are in turn defaulted to manual processing and review by staff, thus increasing the possibility of overpayments due to intentional or unintentional human error (see findings noted in this report). Even if the suggested reconfigurations to TNW (as discussed in the subsequent recommendations) are possible, the major weakness of the limited audit trail remains unresolved.¹⁵ It was further noted based on a discussion with the IT Director, that Tyler has recently informed its users that they would no longer be offering the TNW software to new clients and would not be doing any further upgrades to it. Tyler is encouraging the current users to move to Tyler Munis (their alternative ERP system). Thus, there is no foreseeable solution to the audit trail weakness of the existing system. Therefore, City's management is encouraged to explore the implementation of an alternative payroll system based on the needs of automation and most importantly, proper audit trail.
2. City's Management is also encouraged to implement a time and attendance system to eliminate the manual timesheets currently in place. There could be omissions or inaccuracies in the manual timesheets that are unintentional due to human error. However, the use of manual timesheets could also create the possibility for an easier rationalization for underreporting of leave time or overreporting of time worked. When an employee is not responsible for logging into a time and attendance system, clicking the entry of leave time, or approving the time they worked, and someone else makes these entries on their behalf (i.e. Administrative Assistants entering timesheets into TNW), the accountability on the individual is diminished. Given the

¹⁴ It was further noted that this employee was hired following a search conducted by the recruiting firm of Ralph Anderson. Thus, in addition to the moving expenses benefit of \$5,000, the City also paid the recruiting firm a finders fee of \$25,000 for this hire who resigned within eight months of hiring.

¹⁵ An automated process needs to have an adequate audit trail to ensure it is operating as intended.

many challenges noted with the current settings of the TNW payroll component and the weak audit trail, the bottom line is that the manual timesheets further increase the exposure to overpayments (such as past date of separation) and inaccuracies (underreporting of leave time), and should be avoided.

3. As noted in the background section, the Telestaff time and attendance software is used by the Police and Fire Departments. The version of Telestaff currently in use is outdated (original implementation was in 2018), but is in the process of being upgraded. If Telestaff remains for use by Police and Fire, integration with proper interface with any new payroll system should be ensured in order to eliminate the manual entry of payroll data which is the current process with TNW. Although TNW was supposed to have such interface, this proved to be not the case and thus payroll data entry of these two departments remains a tedious and manual process.

Internal Controls (Manual and Automated)

1. The Finance Department should retrain payroll processing staff and revisit the review process, with possible modifications of the following:
 - a. The process to calculate payout of accruals at separation/retirement involves a number of steps in order to properly apply the Personnel Policies. Best practice would suggest for all accrual payout policy parameters to be pre-set and automatically applied by the payroll processing software. This would limit human error and allow for consistency of application. However, such full automation of this process is unlikely with TNW given the limitations previously noted. Thus, as a supplement to the existing manual process in place, or a way to automate at least in part the payout calculation for the time being, the Finance Department should consider contacting IT to seek assistance with implanting a cap on the payout hours (560) in TNW that would require a special Supervisor or designee approval when higher payout hours (up to 1120) are deemed required as per the sick leave policy.¹⁶

While maintaining the manual calculation process, consideration should also be given to establishing a clear checklist or a procedure guiding through the calculation of the separation payouts based on the applicable sections of the Personnel Policies. When a policy appears unclear, guidance from the HR or the City Attorney's Office should be sought.
 - b. The LWOP accruals removal is a tedious manual process. Best practice would suggest it should also be automated in the payroll system based on the Personnel Policy parameters. This would limit human error and allow for consistency of application. While alternatives to TNW are being sought, staff should be retrained on the LWOP manual process as well as review of unusual hours and codes while employees are in the LWOP status. When a policy appears unclear, guidance (in writing for future reference) from HR or City Attorney's Office should be independently sought in addition to any directives provided by another department's payroll processing personnel.
 - c. Employee status changes (from active to terminated) could be processed close to the start of a new payroll week. Thus, consideration should be given to establishing a review process that checks the new payroll week's pre-populated list of active employees for identification of any such employees whose status just recently changed. Since it appears that HR notified

¹⁶ Since retirement cases over 20 years of service would be less frequent, the cap of 560 would ensure that retirements and separations below the 20 years mark are less likely to be overpaid.

the Finance payroll processing team via email of the status change of an employee a week before the new payroll opened, had such review been done, it is possible the error (finding #3) could have been caught.

Additionally, HR should ensure prompt processing of separation/termination IT Boss tickets so that timely status change is made in TNW and not just via an email notification. A procedure should be further established for a reasonable processing time.

Finally, consideration should be given to adding safeguards to prevent inadvertent reactivation of employees past their date of separation. Given the potential ease of reactivation in TNW of an employee following a separation date (see finding #3), the payment instructions should be removed, or at minimum suspended upon entry of the termination date. This would prevent payroll processed in error to be actually paid out and may increase the probability of early detection.

2. Other City Departments:

- a. The analysis of PTO assessed the reasonableness of very low hours taken during the year under audit. City's management should consider reviewing a similar report annually with the assistance and input of the department heads and supervisors. For departments that maintain an internal calendar to track who is on a leave (for scheduling purposes), such calendar could be used for an annual test to match against a sample of the Employee Leave forms that are kept on file at the department. When payroll is approved every pay-period, supervisors and final level approvers are expected to focus on said period only and may not see the bigger picture. Thus, conducting this annual review for completeness and accuracy of leave would be beneficial to identify any potential underreporting in PTO or corrections needed for missed Employee Leave forms.

On the same topic, City's management should consider encouraging employees in key positions to take time-off for at least a number of consecutive days annually (for instance five) or to establish opportunities for job rotation. This would force a substitute to step in and perform at least some key functions in their absence. Such practices are commonly encouraged as anti-fraud controls¹⁷ purposes and is also a great way to establish proper succession planning given high turnover over the years in some key roles and areas across the City.

- b. On the other end of the PTO analysis, this audit also revealed that in some departments and positions employees who have been with the City for a substantial number of years reach the point where they lose their accrued PTO. This could be due to inability to take time off, further driven by staffing shortages or too many responsibilities in the hands of said employee, where they feel obligated to remain working. City's management should consider reviewing a list of such employees who have lost significant PTO on an annual basis to provide the resources needed to said departments, in order to allow the employees to take their earned time off, and further encourage taking time away from work to boost employee morale.

¹⁷ See references to job rotation/mandatory vacation in the ACFE's Occupational Fraud 2022: A Report to the Nations: <https://acfe-public.s3.us-west-2.amazonaws.com/2022+Report+to+the+Nations.pdf>

- c. City's departments should ensure mechanisms are in place to maintain security of the storage of manual timesheets and Employee Leave forms that are to be retained by their area after payroll has been submitted along with signed Payroll Hours Register reports that get generated out of TNW as backup. Electronic copies are less likely to go missing if proper controls are in place around accessibility to the storage location.
- d. The Police Department should consider teaming-up with Finance and IT to automate tracking of the Holiday Options in TNW. This is a benefit established by the Police Collective Bargaining Agreement (CBA) and is separate from Holiday hours for other City employees. Thus, there should be a separate hours code created for it. As currently set-up, the balance of such leave hours is not tracked in TNW (similar to vacation, sick, FLSA). Instead, the Police Department payroll staff tracks the Holiday Options benefit by reviewing prior months' of payroll (via reports out of TNW) to determine Holiday Options that have been already used, and this information is analyzed to determine any balance left when additional requests are made and prior to the new pay period being approved.

If automation is not feasible, documented procedures need to be established for the manual process to ensure the accuracy and completeness of this benefit prior to its entry into TNW for payroll processing, as currently no such documentation exists.

Documentation of Policies and Procedures:

1. The Finance Department should formulate a robust policies and procedure manual for payroll processing as the existing narrative of the process is limited, and as noted in the findings, is not followed consistently by all departments. The procedures manual should include any checklist and steps to be followed for manual sub-processes. The procedures manual should also identify any departments using different systems, worksheets, and sub-processes (such as the approach to approve Employee Leave forms¹⁸) to enable proper training when changes take place due to turnover or the need for succession planning. Currently there are no such documented steps, checklists or any guidelines for the manual processes in payroll (Finance Department) or the payroll processes at the respective departments.
2. City's management, and the Finance Department specifically, should consider establishing a policy or guidelines regarding recovery of funds paid-out in error and adjustment of incorrect accruals. There should also be a provision for revisiting internal controls once a root-cause-analysis has been conducted on errors identified. The sheer volume of employees and transactions further increases the risk of error, and when overpayments are made, many may not be recovered. Thus, steps should be taken to document such occurrences and implement procedures to prevent them from reoccurring.
3. If it is the intention of City's management to allow continuation of leave and fringe benefit accruals while on LWOP or specifically for military leave on LWOP, there needs to be such policy documented. Section 7.6 Leave of Absence Without Pay should further clarify any unique benefit accrual and payout provisions for active military duty versus temporary military battle drills/assemblies or training. The policy revision should define specific types of military duty and further identify any State or Federal law that is relied upon. The specific

¹⁸ Employee Leave forms should include applicable instructions on the back or bottom of the form to alert the approver as to the proper process to follow, if this process remains in place.

fringe benefits that do or do not apply while on LWOP should also be clearly established and the consistent description should be added across the City Personnel Policies as well as any applicable CBA (currently the CBA do not address military leave provisions). A requirement to seek documented City Manager approval on any unique situations should further be considered given the findings identified in this report.

4. City's management should review the Personnel Policies (Section 4.7 Overtime Work and elsewhere, as applicable) regarding the provisions for exempt employees and further consider clarifying or establishing the following: 1) Department Director, the City Manager, or designee approval of time off when an exempt employee worked the occasional extraordinary hours should be in writing. 2) The statement regarding "take time off" should be further clarified to note whether this is entailing use of accrued leave or in lieu of, and whether this time is paid or unpaid.
5. City's management should consider establishing a policy for taxable moving expenses that is offered to new hires, to be consistently applied across all City departments. The policy should also establish some guidelines and limits for the amount of the benefit. For instance: based on distance of the move or seniority of the position. Benefits in excess of established guidelines should require City Manager approval.
6. There are differences in the way data is entered for payroll processing in TNW by the Fire and Police Departments. While Fire's bi-weekly pay period information in TNW for every employee (outside of Ocean Rescue) is entered as a lump sum of hours on the first Saturday of the pay period, per pay code, per employee. Police's bi-weekly pay period information in TNW is entered per day, per pay code, per employee, similar to the remaining City departments. Thus, if one looked at TNW payroll data, it would not be possible to tell on which day a Fire Department employee took vacation or sick leave, just the fact that an x number of hours were taken during that pay period. The details of the daily hours worked or leave taken would have to be looked up in Telestaff. Determination should be made whether the approach (lump sum posting of hours per pay period versus per day) enables enough oversight during the payroll review step and this process should be documented in established procedures for use by the respective departments.¹⁹

Additionally, consideration should be given to establishing a documented process for annual review or following a system upgrade of all time codes or changes related to approval of employee requests (i.e. self-approval by employees) in Telestaff to ensure proper configuration and system controls are in place. This would be especially valuable following the upgrade of the current Telestaff version. Based on inquiry with staff, it was noted that previously a code (military leave for training assemblies) was configured in a way that did not require supervisory approval of this request code in the Telestaff. The issue has since been resolved but others may remain. Thus, an annual review process of the hours codes would be beneficial.

¹⁹ Consideration should also be given to such variation in processes, when considering any future integration of Telestaff with a new payroll system.

Training

1. There should be periodic training (at least annually) of the payroll counterparts (Administrative Assistants) at the respective departments on the policies and procedures for payroll processing and any applicable forms or manual processes currently in place. While TNW is still in use, payroll counterparts should be further re-trained on the crucial internal control of the review of the TNW reports against the manual timesheets or timecard reports in their area.
2. The City should consider implementing an employee training as part of the annual ethics or other training, for reiteration of accountability and responsibility for public funds. This means for employees to alert their supervisor or the proper department of a system issue, a practice that is not formally documented, or approved, or other various errors they come across. Supervisors, Department Heads, and management collectively, should further receive training on the importance of the ‘tone at the top,’ since staff is less likely to follow policies if they observe their supervisor not doing the same (for instance, there is an increased likelihood of mimicking the practice of leaving early without proper use of leave time or approval if the staff member observes their boss doing the same). Finally, both employees and their supervisors should be encouraged and empowered to question past practice that may be inconsistent with documented policies and procedures.

Actionable Items

City’s management should review the findings in the report to further determine the course of action, if any, for the respective items. Internal audit will assist, as needed, in providing the necessary details and evidence gathered when documenting the findings²⁰, but will not opine on, or otherwise direct any disciplinary action to be taken.

Management Response

FINDING #1: Overpayment of Sick Pay – Separation

Management concurs with the finding.

Human Resources will revise the IT Boss Ticket - Employee Change Notice (ECN) to include an authorization section for terminating employees. The Department Administrative Assistant will enter the number of sick payout hours in accordance with the Personnel Policy and Procedures Manual or Collective Bargaining Agreements. Human Resources Management (HR) will verify that the hours are accurate and approve the ECN to comply with the policy prior to routing to Payroll for payment. Furthermore, Payroll will create an Employee Termination checklist to verify that the standard cap for sick leave is paid to the employee. Training will be developed for Administrative Assistants and Payroll staff requiring additional support in processing employee ECN and leave forms.

Corrective Action expected implementation (1): September 2022

FINDING #2: Inconsistent Accruals Practice of PTO and Other Fringe Benefits While on ‘Leave Without Pay,’ Resulting in Overpayments

Management concurs with the finding.

²⁰ At the request of management reference to employee id numbers within the findings noted was replaced with a generic numbering label.

The City's Administrative Policy PER-21 Military Leave Supplemental Pay and Benefits is being revised to provide more specific requirements for all aspects of pay and benefits for employees called to active duty and those in the military reserves. The policy will ensure the City follows Florida statute and USERRA and will eliminate the payment of benefits that are not due.

Additionally, Administrative Policy PER-19 Administrative Leave will also be revised to provide clear instructions in administering accruals and fringe benefits while employees are on leave without pay (LWOP), the Family and Medical Leave Act, military leave, and administrative leave for special circumstances. Training will be developed for Administrative Assistants and Payroll staff requiring additional support in processing employee ECN and leave forms.

Corrective Action expected implementation (2): September 2022

Finding #3: Overpayment of Regular- Pay Past Separation (After an Employee Passed Away)
Management concurs with the finding.

When Payroll Administrator receives an ECN to terminate an employee for any reason (dismissal, resignation, death), the Payroll Administrator will immediately delete that employee's work schedule in TNW. This action will prevent the inadvertent payment of their normal pay and will require hours to be entered manually. Monitoring of employee hours and entry of time is done at the department level. Therefore, Administrative Assistants and department managers will be retrained to understand their responsibilities to thoroughly match time entries in TNW with a corresponding timesheet for each employee.

Payroll will develop a process to document any payment made to an employee after termination and ensure that calculations are reviewed, checked for accuracy, and approved by Human Resources Management. Payroll in conjunction with HR will have created a process to ensure that any discovered overpayment is fully documented and reported; that the impacted party is notified and that a repayment plan is developed.

Corrective Action expected implementation (3): September 2022

Finding #4: Inconsistent Use of Employee Leave Forms Process
Management concurs with the finding.

HR and Payroll will revise and standardize the Leave form to include instructions for correct completion and submission for approval, which will be added to the Personnel Policy and Procedures Manual. Furthermore, training will be developed for Administrative staff and management on the leave form utilization and related instructions to ensure consistent application city-wide.

Corrective Action expected implementation (4): September 2022

Finding #5: Underreporting of PTO Hours
Management concurs with the finding.

Monitoring of employee hours and entry of time is done at the department level. Therefore, Administrative Assistants and department managers will be retrained to understand the importance that all time must be accurately reported and properly approved. Managers who approve a division payroll must utilize a calendar system that tracks time off. The Calendar system

must be matched up to the Leave Forms for each pay period to improve efficiency and mitigate underreporting of Paid Time Off.

Administrative Policy PER-23 Remote Work Assignments was created and implemented to provide clear guidance on the approval process for an employee requesting to work remotely.

Corrective Action expected implementation (5): September 2022

Finding #6: Missing Provision for Repayment of Taxable Moving Expenses upon Early Resignation

Management concurs with the finding.

HR and Payroll will research best practices for providing relocation allowances as a part of our recruitment process. The Exit Process form has already been revised to include a check-off for Human Resources to review the departing employee's offer letter to ensure that monies due back to the City are being recouped.

To assist in eliminating errors in paying out terminated employees, staff will schedule a separate, final paycheck for any leave time payouts. HR and Payroll will verify any payment to be made to an employee after termination and ensure that calculations are reviewed, checked for accuracy, and approved by Management. Payment must be authorized prior to the payroll run and documentation retained in the employee payroll file per the record retention schedule.

Corrective Action expected implementation (6): September 2022

General Observations and Comments

Management will explore the implementation of an alternative payroll system based on the needs of automation and most importantly, proper audit trail. Furthermore, Finance and Human Resources will also consider the implementation of a time and attendance system to eliminate the manual timesheets currently in place. Finally, Management will strive to implement the other recommendations listed in the report to strengthen the City's internal controls. As always, we appreciate the opportunity to strengthen procedures and controls.

Acknowledgments

It is important to recognize the significant accomplishments achieved by the staff processing Payroll. I commend them for working diligently to ensure timely and accurate entry into TNW considering the volume of entries and number of employees to be entered, as compared to the small number of employees tasked with Payroll processing in most departments.

Distribution of Report

This report is intended for the information and use of the Mayor and City Commission, management, and others within the City of Delray Beach. However, the report is a matter of public record and its distribution is not limited.

Appendix A – Relevant of City’s Policies, Military Leave Laws and Regulations

Pertinent Personnel and Administrative Policies of the City of Delray Beach:

- Section 7.6 (Leave of Absence Without Pay) states that “...employee shall be granted leave without pay, to be considered military leave, to serve in the armed forces of the United States by enlistment, draft or the call up of a reserve unit of which the employee is a member.” This policy further indicates the effects of being on LWOP as follows: “Any month in which an employee, while on leave of absence without pay, works less than half of the normal work days will not be considered for the purposes of accruing sick leave, vacation, or other fringe benefits [emphasis added], based on continues service. Employees who are on leave of absence without pay the day preceding or the day following a holiday shall not be compensated for the holiday.”
- Section 7.5 (Other Leaves of Absence With Pay) states that “...employees who are members of the reserves of any branch of the armed forces of the United States shall be entitled to up to 240 working hours of leave per fiscal year, with pay, to engage in training exercises. For periods in excess of 240 hours leave of absence, per fiscal year, the employee will be permitted to treat such additional leave of absence at the option of the employee, as: Vacation to the extent the employee is entitled to on the basis of time worked, or Leave of absence without pay.” As well as, “...under these provisions, with the exception of work-related leave (official training courses), leave of absence pay will not be considered as hours worked in computation of time and a half payment of overtime.”
- Section 7.3 (FLSA Days) states that ““FLSA” days are granted to City employees who are, as indicated on the City's Pay Plan, exempt from receiving overtime pay for hours worked in excess of forty (40) hours per week.” In addition, employees must take their designated FLSA days within each fiscal year (October 1 through September 30) or relinquish those days. Carry overs will not be permitted nor will cash payout be granted under any circumstances [emphasis added], including termination, resignation or retirement from City employment.”
- PER-21 (Military Leave Supplemental Pay & Benefits) states that “The City Manager is authorized to provide the following to the City of Delray Beach full-time employees who are members of the United States Military Reserve or Florida National Guard who are called to active duty at the Government’s request. The first thirty (30) days the employee will be with full pay and the employee is entitled to preserve all benefits.”
- Administrative Policies and Procedures EB-15 (3% Management Match) states that “City and employee contributions shall cease upon the date the employee no longer works for the City as a regular full-time employee.”

Pertinent Provisions of the CBA (Lieutenants):

- Article 11(Holidays): Section 1: “Lieutenants shall have twelve (12) holidays (96 hours), per fiscal year, the dates for which may be selected in advance by the employee.” Section 2: “Lieutenants, a maximum of 48 hours can be used for pay out of holiday options, and a minimum of 48 hours must be used for time off.”
- Article 12 (Vacation): Section 3: “Absence due to military service... shall not serve to interrupt continuous service unless the employee was employed by another employer during such period of absence. Absence due to leave without pay shall not be construed as an interruption of

continuous servicer but vacation benefits shall not be accrued during such leave [emphasis added].”

- Article 13 (Sick Leave): Section 2.C.: *If an employee works less than half the normal work days during a month for reasons other than vacation, sick leave shall not be credited for that month [emphasis added].”*
- Article 14 (Leave of Absence With Pay): No provisions specific to military leave are noted.
- Article 15 (Leaves of Absence Without Pay): No provisions specific to military leave are noted. *“Upon written request of an employee and approval by the Police Chief, the City Manager may grant a leave of absence without pay when it will not result in undue prejudice to the interests of the City.”*
- Article 34 (Sick and Vacation Pay-out Accruals): *“...employees who properly notify the City with the intent to retire, at least two years prior to Retirement date, the ability to have above noted accruals paid in payments of not more than one-third per year of total amount authorized at date of designation of retirement.”*

Florida Statutes, USERRA & Federal Code of Regulations Title 20:

Florida Statutes Chapter 115²¹, and the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA), chapter 43 of Title 38 U.S.C.²² are intended to protect service members’ rights and establish the guidelines preserving seniority, pension benefits, healthcare insurance, and for reemployment upon return from service. Federal Code of Regulations (CFR) Title 20 further provides for helpful interpretation of seniority rights and benefits to uniformed service members.

Pertinent Provisions of Florida Chapter 115:

- **115.07 Officers and employees’ leaves of absence for reserve or guard training.**
 - (1) *“...employee of the municipalities of the state are entitled to leaves of absences from their respective duties, without loss of vacation leave, pay [emphasis added], time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.”*
 - (2) *Leaves of absence granted as a matter of legal right under the provisions of this section may not exceed 240 working hours in any one annual period [emphasis added]. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character shall be without pay [emphasis added] and shall be granted by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating.”*
- **115.12 Rights during leave.**
 - (1) *“During such leave of absence such official shall be entitled to preserve all seniority rights, efficiency ratings, promotional status and retirement privileges.”*

Pertinent Provisions of USERRA:

²¹ <https://www.flsenate.gov/Laws/Statutes/2011/Chapter115/All>

²² <https://uscode.house.gov/view.xhtml?path=/prelim@title38/part3/chapter43&edition=prelim>

- **§4302 (a) and (b)** provide that this law allows for establishment of more beneficial benefits that go beyond USSERA to individuals subject to its rights, as determined by their employer supersedes any State law. But no other State law or contract or policy can reduce or limit any of the benefits outlined by USSERA (it supersedes them).
- **§4316 (d)** states that a person “... shall be permitted, upon request of that person to use during such a period of service vacation, annual, or similar leave with pay accrued by the person before the commencement of such service.”

Pertinent Provisions of CFR Title 20:

- **§1002.150²³**

a. “The non-seniority rights and benefits to which an employee is entitled during a period of service are those that the employer provides to similarly situated employees by an employment contract, agreement, policy, practice, or plan in effect at the employee's workplace.”

c. “As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employer to an employee on a military leave of absence only if the employer provides that benefit to similarly situated employees on comparable leaves of absence [Emphasis added].”

- **§1002.153²⁴**

a. If employment is interrupted by a period of service, the employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the employee is not entitled to use sick leave that accrued with the civilian employer during a period of service in the uniformed services, unless the employer allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave [Emphasis added]. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

²³ <https://www.ecfr.gov/current/title-20/chapter-IX/part-1002/subpart-D/subject-group-ECFR445761424bb812c/section-1002.150>

²⁴ <https://www.ecfr.gov/current/title-20/chapter-IX/part-1002/subpart-D/subject-group-ECFR445761424bb812c/section-1002.153>

Summary of the Known Details:

Employee #2 began active duty military service on 06/18/2017²⁵, with the most recently updated orders set to expire on January 31, 2024. Based on the active military order the employee was placed on LWOP. Per the policy (7.6) no accruals should continue of sick leave, vacation leave, or other fringes while on LWOP. The policy does not appear to contradict the CBA or diminish any benefit specified by USERRA. Furthermore CFR §1002.150.c. further supports the fact that accrual of vacation is a non-seniority benefit that would not otherwise be required (unless offered to other City employees who are on a similar leave, i.e. LWOP).

Prior to the start of the military leave in June of 2017, the employee sent an email to their Department Head asking if it was possible to “... use my accrued leave while on these extended orders. Thanks in advance for your assistance and for prior approving me using sick leave.” This was next addressed with the HR Department. HR’s review of the policies and the CBA did not identify a City policy or a CBA limitation on using-up the accumulated accruals (i.e. what has been accrued through that date) once employee #2 went on the active military leave. It was memorialized in an email between the Department Head, HR and the CBA representative that this was a unique situation and would not set a precedent. In all of the communications reviewed by Internal Audit, the reference to the “accrual” leave was in past tense (accrued), which is understood as “has been accrued” or “accumulated” until that point in time and ahead of the commencement of the active duty leave (LWOP) on 06/18/2017.

City policies are silent on whether the leave previously accrued and earned (before the start of the active duty) can be used during the full-time, extended active duty military leave. While USERRA §4316 (d) specifically provides for the ability to use vacation, annual or similar leave that was earned prior to the start of the military service, it does not specify sick leave. CFR §1002.153.a. notes that sick leave is not usually comparable with vacation leave and that an employee is not entitled to the use of sick time during a period of uniformed service unless the employer permits use of sick time for any reason or such use is permitted to other employees who are on a LWOP.

As of June of 2017, employee #2 has already worked for the City for over 20 years. This means the employee would have been entitled to the full payout of the 1,111 hours of sick time balance (which is below the 1,120 hours max), and the 56 hours of vacation time balance (which is below the 288 hours max), if they had separated or retired from the City at that time. Since the employee was going on a full-time military leave, these earned hours would have been fully preserved until they either returned to work or separated/retired from the City, at which point the payout of the unused hours would have been made. Thus, it appears that the “uniqueness” of the request discussed earlier, and approval thereof was tied to the timing of the sick hours payout. The employee was approved to use or get them paid out “early” during the LWOP (since this is an unpaid status code) while on active military duty. It was also unique in a sense that sick time is different from vacation and is intended to be used for the active employee’s injury, illness or that of immediate family (as per Section 7.1 Sick Leave). Therefore, although not technically paid out for the intended use, or in accordance with established policies and regulations, the payout is of legitimately earned hours that would have been paid out at retirement or separation.

The issue in this case comes down to all of the accruals and other fringe benefits that incorrectly continued, due to staff’s misinterpretation of the June 2017 email request. It appears that the

²⁵ The 2017 Military Order stated as follows: “Type of Duty: Active guard reserve initial tour. Purpose: Full-time duty. Itinerary: 18 June 2017 – 31 Dec 2021”

respective department payroll administrators misinterpreted the June 2017 communications regarding payment of already-accumulated accruals verses ongoing accruals, and also assumed such one email to suggest that all of the fringe benefits were to continue (Exempt day, Holiday Option payout, Police Education and Career stipend, Cell Phone Allowance, and the 3% 457 Plan Management Match). However, given the fact that the employee only submitted requests for sick time payout from 06/18/2017 (commencement of the active military leave) and through 10/05/2017, further suggests the June 2017 email's intention was to only obtain approval for the use of sick time hours the employee had accumulated in their leave "bank" prior to the start of the LWOP.

It was not until August 2020 that questions came about the payout of temporary military leave for training (up to the 240 hours or 30 days) while on the active duty military leave. It appears that August 12, 2020 was the first time HR was contacted regarding this employee's benefits (since 2017), at which point questions and concerns were raised on the approval process of the employee's payroll and the military leave (training) requests. In May of 2021, the Interim City Manager made a determination on this matter that took away the remaining balance in the sick leave "bank," which was subsequently a subject of a grievance. The resolution of the military training hours payouts came in February 2022, and the sick leave "bank" hours were reinstated. However, it appears that none of the communications and inquires throughout the years address the issue of the continued accruals of sick leave, vacation leave, and other fringe benefits.

Analysis of Sick and Vacation Accruals:

According to PER-21, the first 30 days following the start of an active duty (i.e. 06/18/2017 – 07/18/2017), would be processed as full pay with all benefits. Thus, leave accruals and other fringe benefits remained as usual during this period only.

Policy section 7.5 and Florida Statute 115.07 provide an enhanced benefit on top of USERRA for military training exercises of up to 240 hours or 30 days in any annual period. Such period is to be paid (Leave with Pay), and accruals of leave benefits remain. However, such a leave is not considered as hours worked for purposes of payment of overtime (as per Section 7.5), thus no FLSA benefit is applicable since it is tied to the act of working verses being on a leave with pay.

In summary, after the first 30 days from the start date of the active duty, accruals of sick leave, vacation leave, and other fringe benefits (as applicable) should have only been done for the military training exercise time (up to 240 hours or 30 days per year). This means accruals done correctly should not have exceeded 8 hours of sick and 12 hours of vacation per year, while on active military leave following the first year of active duty (assuming training exercises in accordance with Florida Statute 115.07 were indeed substantiated). This maximum assumption on the "correct accruals" was used in determining the estimates below and the split of accruals between correct and incorrect, along with the corresponding payouts²⁶ taken, with the goal of determining what the balance of the accrued leave would have been as of April 2022 (date of most recent accrual reports available), had it been done correctly.

²⁶ The last date for which requests and payouts of sick leave were made was 10/05/2017 (there was a separate 1/3 sick payout in July of 2020, in accordance with CBA Article 34). The last date for which requests and payouts of vacation time were made was 01/26/2021. No further payouts of sick or vacation leave were made since, however, the accruals continued with the last ones posted in April 2022.

| | Sick Hours | Vacation Hours |
|--|------------|----------------|
| Beginning Balance (06/18/2017): | 1,111 | 56 |
| Correct accruals (first 30 days & annual 30 days max.) | 56 | 84 |
| Incorrect accruals | 408 | 612 |
| Payout ("hours used") | (608) | (574) |
| Donation of time | (8) | 0 |
| Payout ("hours used") - sick 1/3 payout | (264) | 0 |
| Ending Balance per TNW (04/08/2022): | 695 | 178 |
| Less Incorrect Accruals: | (408) | (612) |
| What Ending Balance Should Be: | 287 | (434) |

Conclusion:

Based on these calculations, it appears that the vacation leave “bank” has been overdrawn by 434 hours (overpayment of approx. \$25,054.68), while the sick leave “bank” had enough hours to be paid out based on sick time accumulated prior to the commencement of the active duty leave (but would require adjustment to the hours “bank” accordingly).

Analysis of Other Fringe Benefits:

The analysis and estimates below begin after the first 30 days of active military leave (i.e. July 2017) and as such only consider accruals, where applicable, for a maximum of one month per year (under the assumption that military training, separate from the active military leave is valid and supported).

1. **Exempt Days (“FLSA Days”):**

Employee #2 was promoted on 01/01/2017 to a position that was exempt from overtime pay and as such, entitled to 32 hours of FLSA/Exempt pay per year. The first lump sum of the 32 hours was added to this employee’s “bank” of hours on in July of 2017, following six months in the promoted role (a waiting period required by the FLSA/promotion policy). Furthermore, the 32 hours per year continued to be added to the employee’s “bank” at the start of each fiscal year, and got paid out within the same year as to not get lost. This practice continued through the beginning of the current fiscal year (10/01/2021). A total of 128 hours (equal to \$7,339.20) were paid out, and the last date the employee submitted a request for payout of FLSA was 02/24/2021.

While the 30 days of annual military training are with pay, such a leave is not considered as hours worked for purposes of payment of overtime (per Section 7.5), further suggesting no FLSA is applicable, as this is a benefit tied to the act of actually working verses being on a leave with pay. In addition, per policy (7.3) no cash payout is granted for FLSA hours under any circumstances, thus such benefit could not be paid out and it also does not carryover. There are no provisions in the CBA or any other regulation that require this fringe benefit to be paid out. It remains unclear why staff interpreted the policy as such and allowed for this benefit to continue being offered as well as paid out while the intended benefit was for employees working for the City in excess of 40 hours a week, and employee #2 was not working.

Conclusion: It appears the 128 hours (approx. \$7,339.20) of FLSA should not have been paid out.

2. Holiday Options:

Article 11, section 1 of the CBA establishes 12 days (or 96 hours) per fiscal year for Holiday pay that can be taken on days other than an established Holiday (in lieu of City's Holiday pay). Section 2 further permits a maximum of half (or 48 hours) of such Holiday time to be paid out (Holiday Options) instead of being used as time off.

Employee #2 received a payout for 376 Holiday hours (totaling \$21,542.40) between fiscal year starting 10/01/2017 and through the fiscal year ending 09/30/2021 (the last date this benefit was requested for payout was 02/12/2021). The payout of all Holiday hours instead of the maximum of half the hours per year (because the other half is to be actually used for time off) appears to be against the CBA provisions.

Conclusion: It appears that 184 hours (approx. \$10,542) of Holiday Options should not have been paid out.

3. Police Career and Education Stipend:

Prior to the commencement of the active military leave, employee #2 received a monthly stipend for Police Career (\$50) and Police Education (\$80). These payouts continued on a monthly basis and totaled \$7,410 (through March 2022, the most recent month posted). No provision was found in the City's policies, the CBA, or the pertinent regulations for this benefit. It is unclear why an employee on a LWOP would be entitled to these stipends while not working for the City, and given that the Cell Phone stipend was stopped in December 2017 (see #5 next). These stipends are also not subject to the 3% deferred compensation City match (which matches 3% of regular pay and other approved pay codes).

Conclusion:

It appears that the \$7,410 of the stipend should not have been paid out. Only if this stipend is intended to constitute a form of "regular pay" could it be paid during the up-to-30 days per year of military training, and the estimate of the overpayment would be reduced by \$130 per every 30 days of training, annually.

4. Deferred Compensation 3% 457 Plan Match:

A deferred compensation match totaling \$3,622.23 was processed for employee #2 through 02/13/2021. This benefit represents taxable portion of the percentage (3%) match from the City that is applied to regular pay, vacation, sick and holiday time used, as well as the military training hours (up to 240 hours or 30 days per year). In addition, as noted per administrative policy EB-15, contributions of both the employee and the City cease when the employee stops working for the City as a regular full-time employee. Thus it would appear this benefit was overmatched by the 3% on the substantial payouts of sick, vacation, and FLSA and Holiday leave hours.

Conclusion: It appears this benefit has been overmatched and should be reviewed for potential adjustment.

5. Cell Phone Stipend:

Employee #2 received a cell phone stipend through December of 2017, totaling \$225. It is unclear why an employee on a LWOP would be entitled a cell phone stipend while not working for the City.

Conclusion: It appears \$225 of the cell-phone stipend should not have been paid out.



CITY OF DELRAY BEACH

100 N.W. 1ST AVENUE ~ DELRAY BEACH, FLORIDA 33444 ~ (561) 243-7010



MEMORANDUM

To: Terrence Moore, City Manager
 From: Julia Davidyan, Internal Auditor
 Date: February 15, 2022
 Subject: Review of Section 4.05(C) of the City of Delray Beach Charter (Budget Document)

In response to your request, I conducted a limited-scope review of section 4.05 of the City of Delray Beach Charter, titled *Budget Procedure*. Specifically, I compared of the requirements noted in section 4.05(C)(1) and 4.05(C)(3), as they pertain to the expenditures and income information, and whether these were presented as part of the 2021-2022 annual budget document prepared and issued by the City of Delray Beach (Adopted Budget). Below are the conclusions and recommendations stemming from this review.

Section 4.05(C)(1):

This section requires the budget document to at least include the following information:

“Detailed estimates of all proposed expenditures for each department and office of the City, showing the expenditures for corresponding items for the last preceding and current fiscal years with reasons for increases and decreases recommended, as compared with appropriations for the current year.”

The Adopted Budget appears to be deficient in this regard. Two departures from the budget requirements of this section are noted:

1. Although detailed proposed expenditures by type and program are provided for each department and office, the corresponding reasons for these recommended increases and decreases are missing.

For instance, in reviewing pages 107 and 110 of the Adopted Budget, pertaining to the City Manager’s Office, there are helpful charts, performance measures and prior year accomplishments (see excerpt in Figure 1). However, no discussion by line item is provided for the increase or decrease.

The closest resemblance to such a discussion is on page 13 (see excerpt in Figure 2), where a General Fund Expenditure Summary table provides by department the changes in expenditures, followed by a brief indication for the reason of the overall change. As per this table, the City Manager’s Office (inclusive of Administration, Economic Development, Education, Communication, and Sustainability) reported a 14.92% decrease and it was noted that the majority of the decrease related to the elimination of the Assistant City Manager position and decrease in professional fees. However, this is at the overall office/department level and pertains to the main change, while the charter requirement appears to be more specific in regards to the detail needed.

2. Although proposed '2022 Budget' expenditures are correctly compared with '2020 Actual' (*last preceding fiscal year*), with regards to 2021 (*current fiscal year*), the comparison of the '2020 Budget' is with '2021 Revised' budget/proposed figures only, while the Charter provision also requires to provide the expenditure for 2021 (i.e. actual year-to-date or estimate).

Refer to Figure 1, for an excerpt of these column headings on pages 107 and 110 of the Adopted Budget, pertaining to the City Manager's Office.

In a separate file titled 'Approved Budget Worksheet Report (Budget Year 2022),' the proper actual year comparison column headings are provided (see excerpt in Figure 3). However, there is no reference in the Adopted Budget document to refer to these worksheets for further detail, and it does not appear that the Charter provision allows for a separate worksheet file to include this detail.

Recommendation: The Finance Department should revise the Budget document to comply with the provisions of the Charter. In conducting an online search of budget documents, I have identified an example that appears to align with the section 4.05(C)(1) provision as to the level of detail, reasons for increases or decreases in expenditures, and current year expenditures and budget columns presentation (see excerpt in Figure 4).

Figure 1: Excerpt from Page 107 and Page 110 of the Adopted Budget

*City of Delray Beach, Florida
2021-22 Annual Budget*

City Manager's Office

The City Manager's Office Consists of five divisions: City Manager, Communications, Education, Economic Development and Sustainability.

| Expenditures by Type | 2019 Actual | 2020 Actual | 2021 Revised | 2022 Budget |
|---------------------------|--------------------|--------------------|--------------------|--------------------|
| Personnel Services | \$1,211,704 | \$1,477,949 | \$1,694,640 | \$1,454,235 |
| Operating Expenses | \$330,883 | \$169,983 | \$728,578 | \$620,605 |
| Capital Outlay | \$0 | \$0 | \$0 | \$0 |
| Grants | \$0 | \$0 | \$139,000 | \$105,000 |
| Total Expenditures | \$1,542,587 | \$1,647,933 | \$2,562,218 | \$2,179,840 |
| Per Capita | \$24.11 | \$25.04 | \$38.48 | \$32.45 |

| Expenditures by Program | 2019 Actual | 2020 Actual | 2021 Revised | 2022 Budget |
|---------------------------|--------------------|--------------------|--------------------|--------------------|
| City Manager | \$1,258,560 | \$1,247,918 | \$1,406,754 | \$966,817 |
| Communications | 106,534 | 222,900 | 222,854 | 215,281 |
| Economic Development | 177,267 | 66,123 | 273,927 | 281,890 |
| Education | 0 | 907 | 349,248 | 380,653 |
| Sustainability | 225 | 110,085 | 309,435 | 335,199 |
| Total Expenditures | \$1,542,587 | \$1,647,933 | \$2,562,218 | \$2,179,840 |

| Expenditures by Type | 2019 Actual | 2020 Actual | 2021 Revised | 2022 Budget |
|---------------------------|--------------------|--------------------|--------------------|------------------|
| Personnel Services | \$1,146,805 | \$1,180,647 | \$1,055,690 | \$807,841 |
| Operating Expenses | 111,755 | 67,270 | 351,064 | 158,976 |
| Capital Outlay | 0 | 0 | 0 | 0 |
| Total Expenditures | \$1,258,560 | \$1,247,918 | \$1,406,754 | \$966,817 |
| Per Capita | \$19.67 | \$18.96 | \$21.13 | \$14.39 |

2020-21 Accomplishments

- ◆ **Pride Intersection:** The City Manager's Office and Public Works Department successfully installed the all-inclusive LGBTQIA+ Pride intersection in Pineapple Grove. A well-attended ribbon cutting event was held on June 12, 2021 during Pride month. This was the first City event held in approximately one year due to the pandemic

Figure 2: Excerpt from Page 13 of the Adopted Budget


General Fund Expenditure Summary

| Department | 2020-21 Revised Budget | 2021-22 Adopted | \$ Change FY 21 to 22 | % Change FY 21 to 22 | % of Total Expenditures |
|---------------------------------|------------------------|-----------------------|-----------------------|----------------------|-------------------------|
| City Commission | \$ 524,679 | \$ 535,727 | \$ 11,048 | 2.11% | 0.35% |
| City Manager | 2,562,218 | 2,179,840 | (382,378) | -14.92% | 1.43% |
| Finance | 2,046,650 | 2,113,257 | 66,607 | 3.25% | 1.39% |
| City Attorney | 1,350,158 | 1,454,225 | 104,067 | 7.71% | 0.95% |
| City Clerk | 802,956 | 644,212 | (158,744) | -19.77% | 0.42% |
| Information Technology | 5,246,059 | 5,231,602 | (14,457) | -0.28% | 3.43% |
| Human Resources | 926,151 | 1,073,373 | 147,222 | 15.90% | 0.70% |
| Purchasing | 716,009 | 758,163 | 42,154 | 5.89% | 0.50% |
| Police | 39,080,846 | 41,179,734 | 2,098,888 | 5.37% | 27.02% |
| Fire | 38,414,105 | 39,273,018 | 858,913 | 2.24% | 25.77% |
| Neighborhood and Community Svcs | 2,847,425 | 3,389,798 | 542,373 | 19.05% | 2.22% |
| Development Services | 4,617,866 | 1,993,101 | (2,624,765) | -56.84% | 1.31% |
| Parks & Recreation | 14,526,184 | 15,404,177 | 877,993 | 6.04% | 10.11% |
| Public Works | 9,755,901 | 9,733,465 | (22,436) | -0.23% | 6.39% |
| Debt Service | 387,565 | 387,565 | - | 0.00% | 0.25% |
| Miscellaneous | 6,040,288 | 2,320,417 | (3,719,871) | -61.58% | 1.52% |
| Transfers | 25,128,848 | 24,712,410 | (416,438) | -1.66% | 16.22% |
| Total | \$ 154,973,908 | \$ 152,384,084 | \$ (2,589,824) | | 100.00% |

City Commission: \$535,000 (0.35% of total expenditures)
 The City Commission's budget increased by 2.11% over FY 2020-21. The increase of \$11,048 was driven by an increase in Commissioner's salaries approved in April 2021.

City Manager (CMO): Administration, Economic Development, Education, Communications, and Sustainability: \$2,179,000 (1.43% of total expenditures)
 The overall CMO's department decreased by \$382,000 or 14.92% in FY 2021-22. The majority of the decrease is attributed to the elimination of an Assistant City Manager position and decrease in professional fees.

Figure 3: Excerpt from Page 20 of the 'Approved Budget Worksheet Report (Budget Year 2022)'



Budget Worksheet Report

Budget Year 2022

| Account | Account Description | 2018 Actual Amount | 2019 Actual Amount | 2020 Actual Amount | 2021 Amended Budget | 2021 Actual Amount | 2022 Department Entry | 2022 Adopted |
|---|--|--------------------|--------------------|--------------------|---------------------|--------------------|-----------------------|--------------|
| Fund 001 - General Fund | | | | | | | | |
| EXPENSE | | | | | | | | |
| Department 12 - City Manager | | | | | | | | |
| Division 000 - Administration | | | | | | | | |
| Activity 512 - Executive | | | | | | | | |
| <i>Operating Expenditures/Expenses</i> | | | | | | | | |
| 54-90 | Books Pubs Subs & Memberships Other Books/Membership Costs | .00 | 970.00 | .00 | .00 | .00 | .00 | .00 |
| <i>Operating Expenditures/Expenses Totals</i> | | \$77,267.70 | \$111,755.38 | \$67,270.30 | \$351,064.00 | \$86,746.02 | \$108,976.00 | \$158,976.00 |
| <i>Capital Outlay</i> | | | | | | | | |
| 64-10 | Machinery & Equipment Office Furniture / Fixtures | 2,196.32 | .00 | .00 | .00 | .00 | .00 | .00 |
| <i>Capital Outlay Totals</i> | | \$2,196.32 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| <i>Activity 512 - Executive Totals</i> | | \$967,199.49 | \$1,258,560.29 | \$1,247,917.66 | \$1,406,754.00 | \$967,000.44 | \$1,253,686.00 | \$966,817.00 |
| Division | 000 - Administration Totals | \$967,199.49 | \$1,258,560.29 | \$1,247,917.66 | \$1,406,754.00 | \$967,000.44 | \$1,253,686.00 | \$966,817.00 |

Ties to Figure 1

Figure 4: Excerpt from the FY 2022 Adopted Budget – City of Fairfax, Virginia (Page D-23)

FUNCTION: General and Financial
DEPARTMENT: City Manager's Office
DIVISION OR ACTIVITY: City Manager

BUDGET COMMENTS:

An increase of \$91,976 (15.8%) from the FY 2021 Adopted Budget is necessary to fund the FY 2022 Adopted Budget. Notable adjustments include:

- **Salaries, increase of \$52,799 (11.5%)**
 - The increase in Salaries is due primarily to the 2% Merit increase in FY 2021 (beginning May 1, 2021), the merit increase for FY 2022 (3.5% beginning January 1, 2022), the market rate adjustments in FY 2021 (2.6%) and FY 2022 (2.3%), increase due to M/CC approved City Manager merit (\$24.8k) and grade realignment for Chief Financial Officer (\$5.1k) and Chief of Staff/City Clerk (\$4.5k).
- **Fringe Benefits, increase of \$24,983 (11.5%)**
 - Fringe costs increased due to the merit increases, a market rate adjustments as stated above in the Salaries comment, an increase due to M/CC approved City Manager merit (\$24.8k) and grade realignment for Chief Financial Officer (\$5.1k) and Chief of Staff/City Clerk (\$4.5k).
- **Internal Services, increase of \$10,693 (10.0%)**
 - Increase due to reduction in wastewater & transit allocation.
- **Other Charges, increase of \$3,501 (51.1%)**
 - Increase due to restoration of Travel & Training (\$2.3k) and Association dues (\$1.2k).

| Cost Center 415110: City Manager | | | | | | |
|----------------------------------|-------------------|-------------------|---------------------|--------------------|--------------------------|-------------------------|
| Title | FY 2020 Actual | FY 2021 Budget | FY 2021 Estimate | FY 2022 Adopted | Variance to Budget \$ | Variance to Budget % |
| Salaries | \$ 475,359 | \$ 458,052 | \$ 460,444 | \$ 510,850 | \$ 52,799 | 11.53% |
| Fringe Benefits | 176,376 | 216,711 | 216,894 | 241,694 | 24,983 | 11.53% |
| Purchased Services | 110,044 | - | 234,620 | - | - | 0.00% |
| Internal Services | (138,513) | (107,127) | (107,127) | (96,434) | 10,693 | 9.98% |
| Other Charges | 10,218 | 6,844 | 8,028 | 10,345 | 3,501 | 51.15% |
| Supplies & Materials | 3,731 | 7,350 | 7,350 | 7,350 | - | 0.00% |
| Capital Outlay | - | - | - | - | - | 0.00% |
| Total | \$ 637,216 | \$ 581,830 | \$ 820,209 | \$ 673,805 | \$ 91,976 | 15.81% |

Source: <https://www.fairfaxva.gov/government/finance/budget>

Section 4.05(C)(3):

This section requires the budget document to at least include the following information:

“Detailed estimates of all anticipated income of the City from sources other than taxes and borrowing, with a comparative statement of the amounts received by the City from each of the same or similar sources for the last preceding and current fiscal years.”

The Adopted Budget appears to be deficient in this regard. Two departures from the budget requirements of this section are noted:

1. Although some detailed estimates of 2022 budget income from other sources are provided, it is not done for all anticipated income sources (other than taxes and borrowing), as the Charter requires. In addition, the comparative figures are presented at a much higher level of aggregation, which means that in order to obtain the same level of detail, one would need to look at a prior year budget document, but with no ability to obtain actual amounts received.

For instance, I attempted to understand and follow in the Adopted Budget, details pertaining to *Franchise, Licenses, and Permits*. In reviewing page 47, there is a total listed of \$8,301,500 in other revenue projections within the General Fund for 2022 for *Franchise, Licenses, and Permits* (with corresponding detail listed by line item for Roof Permits, Tenant/Landlord, Franchise Fees, Misc. Permits/Fees). The narrative further provides estimates for sub categories such as the Beach Equipment Vendor Service, Car Towing Service and so forth (see excerpts provided in Figures 5 and 5a).

Additionally, the comparison to prior years is presented in aggregation for *Franchise, Licenses, and Permits* (without the corresponding detail). Thus, one needs to open the prior year budget document to identify at least the prior year (*current fiscal*) budget amounts. In looking at the 2021 Adopted Budget document, there were other sources of income presented, such as Electrical and Plumbing Permits, and A/C & Heating Permits, which are no longer presented in the 2022 Adopted Budget document, thus limiting the ability to compare changes in sources of income year-over-year. Regardless, the actual amounts received in prior years (*last preceding* and *current fiscal*) for these detailed sub categories are not available (see excerpts provided in Figures 5, 5a, 6 and 6a).

Finally, in a separate file titled ‘Approved Budget Worksheet Report (Budget Year 2022),’ the detailed line items (by account) for other revenue sources are provided. For instance, one is able to identify the Roof Permits budgeted for \$500,000 in 2022, with comparison to prior year actual expenditures (wee excerpt provided in Figure 7). However, there is no reference in the Adopted Budget document to refer to these worksheets for further detail, nor does it appear that the Charter provision allows for a separate worksheet file to include this detail.

2. Although in total (all funds) the aggregated other income categories’ estimates for the 2022 budget are properly compared to actual receipts for 2020 (*last preceding*) and 2021 (*current fiscal*), the comparison of same information at the general fund level is missing 2021 actuals and only compares with ‘2021 Amended’ (budgeted but not actual). However, the Charter

provision requires to present comparative amounts received, not just budgeted or amended (see excerpts provided in Figures 6 and 6a).

A separate file titled ‘Approved Budget Worksheet Report (Budget Year 2022),’ provides the detailed line items (by account) for other revenue sources along with comparison to the prior year actual expenditures (see excerpt provided in Figure 7). However, the totals per category in the prior year columns of the Worksheet Report appear to differ from the total presented in the Adopted Budget (see excerpt provided in Figure 6a). For instance the *Franchise, Licenses, and Permits* total for 2021 actual reflects expenditures in the General Fund alone totaling \$16,015,675.93 (see bottom row of Figure 7), while the corresponding year total for all funds presented in the Adopted Budget for the same revenue category is only \$15,964,699 (see highlighted row in Figure 6a). Finally, there is no reference in the Adopted Budget document to refer to these worksheets for further detail, nor does it appear that the Charter provision allows for a separate worksheet file to include this detail.

Recommendation: The Finance Department should revise the Budget document to comply with the provisions of the Charter. In conducting an online search of budget documents, I have identified an example that appears to align with the section 4.05(C)(3) provision as to the level of detail and comparative presentations for sources of income other than taxes and borrowing (see excerpts in Figures 8 and 8a).

Figure 5: Excerpt from Page 10 of the Adopted Budget

Franchise and Permit Fees

In FY 2021-22, building permit revenues related to any activities required by the City Code and South Florida Building Code was transferred to a separate special revenue fund, which is attributed to a decrease of \$6 million or 42.18%. Franchise fees increase by \$158,000 or 3.07% due to population growth. Other permits decreased by \$644,000 or 17.64% over FY 2020-21 due mostly to fire inspection fees budgeted in FY 2020-21 compared to FY 2021-22 while plumbing and roof permits are anticipated to increase by \$217,000.

| Franchise and Permit Fees | 2019-20 Actual | 2020-21 Revised | 2021-22 Adopted | % Change FY 21 to 22 |
|---------------------------|-------------------|--------------------|--------------------|-------------------------|
| Franchise Fees | \$ 5,114,527 | \$ 5,136,350 | \$ 5,294,000 | 3.07% |
| Permit Fees | \$ 2,487,384 | \$ 3,651,500 | \$ 3,007,500 | -17.64% |

\$8,301,500

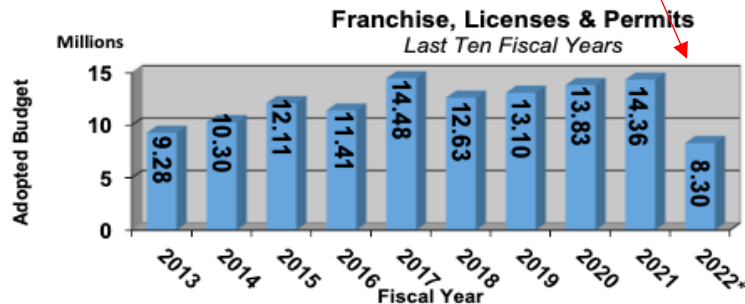
Figure 5a: Excerpt from Page 47 of the Adopted Budget

Franchise, Licenses and Permits

Revenues from Franchise Fees, Licenses, and Permits are based on the sale of electrical energy to residential, commercial, and industrial customers (\$4.7 million), the total net revenue of the gas company (\$150,000), a vendor supplying cabana and beach equipment rental (\$350,000), and a vendor providing car towing service (\$90,000), and other miscellaneous for parking (\$4,000). The basis for the Franchise Fees is provided for in long-term agreements for payment to the City based upon their gross revenue derived from accounts within the City limits. Projected Franchise Fees for FY 2021-22 based on electricity reflect a 3% increase over the FY 2020-21 Adopted Budget.

| Source | Adopted FY 2021-22 | % of Total |
|-------------------------------|-----------------------|-------------|
| Roof Permits | 500,000 | 6% |
| Tenant/Landlord | 680,000 | 8% |
| Franchise Fees | 5,290,000 | 64% |
| Miscellaneous Permits/Fees | 1,831,500 | 22% |
| Total | \$8,301,500 | 100% |

A registration fee is available to those who do not have a permanent location within the City and wish to do business in the City. Licenses are issued for one year and expire in September 30th of each year. Additionally, a variety of miscellaneous permits are also required such as paving, pool installation, tree removal, etc. Revenue projections are provided by the Development Services Department and are anticipated to increase 3.8% overall based primarily on an increase in related permits.



*The Building Permit and related Permit fees were transferred to the Building Permit Fund in FY 2021-22.

Figure 6: Excerpt from Page 52 of the Adopted Budget (General Fund Revenues Forecast)

| CATEGORY/DEPARTMENT | 2020 Actuals | 2021 Amended | 2022 Budget | 2023 Projection | 2024 Projection | 2025 Projection |
|----------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| REVENUES | | | | | | |
| Taxes | 83,379,622 | 87,549,943 | 91,556,560 | 97,690,850 | 104,236,136 | 111,219,958 |
| Franchises, Licenses and Permits | 12,890,624 | 14,357,850 | 8,301,500 | 8,857,701 | 9,451,166 | 10,084,395 |
| Intergovernmental | 9,293,144 | 9,206,871 | 15,006,584 | 16,012,025 | 17,084,831 | 18,229,514 |
| Charges for Services | 13,269,353 | 15,920,716 | 15,767,358 | 16,823,771 | 17,950,964 | 19,153,678 |
| Fines and Forfeitures | 1,068,002 | 1,426,998 | 1,033,500 | 1,102,745 | 1,176,628 | 1,255,462 |
| Miscellaneous | 11,035,803 | 11,504,556 | 11,639,782 | 12,419,647 | 13,251,764 | 14,139,632 |
| Transfers In | 3,742,226 | 3,769,342 | 5,238,800 | 5,589,800 | 5,964,316 | 6,363,925 |
| Total Revenues | 134,678,774 | 143,736,276 | 148,544,084 | 158,496,538 | 169,115,806 | 180,446,565 |

Figure 6a: Excerpts from Pages 59-60 of the Adopted Budget (All Funds – Consolidated Budget Summary Fiscal Year 2022)

| | GENERAL FUND | DEBT SERVICE FUNDS | DOWNTOWN DEVELOPMENT FUND | ENTERPRISE FUNDS | SPECIAL REVENUE FUNDS | INTERNAL SERVICE FUNDS | TOTAL | | |
|-------------------------------|--------------------|-----------------------|---------------------------------|---------------------|-----------------------------|------------------------------|--------------------|--------------------|--------------------|
| | | | | | | | 2019-20 ACTUAL | 2020-21 ACTUAL | 2021-22 BUDGET |
| BEGINNING BALANCE | 50,397,368 | | 163,080 | 175,910,831 | 7,776,826 | 13,901,522 | 248,149,626 | 238,688,537 | 248,149,626 |
| REVENUES: | | | | | 0 | | | | |
| Property Taxes | 80,607,097 | 2,133,871 | 1,242,688 | | 0 | | 72,489,426 | 77,730,967 | 83,983,656 |
| Sales & Use Taxes | 0 | | | | 1,448,428 | | 1,302,132 | 1,389,177 | 1,448,428 |
| Utility Taxes | 7,025,000 | | | | 0 | | 6,804,426 | 6,954,040 | 7,025,000 |
| Other Taxes | 3,924,463 | | | | 0 | | 3,901,832 | 3,897,969 | 3,924,463 |
| Franchise, Licenses & Permits | 8,301,500 | | | | 6,320,000 | | 12,942,583 | 15,964,699 | 14,621,500 |
| Intergovernmental | 15,006,584 | | | 814,800 | 957,289 | | 12,382,069 | 11,353,036 | 16,778,673 |
| Charges for Services | 15,767,358 | | | 45,560,875 | 65,150 | 22,979,321 | 74,237,454 | 82,125,461 | 84,372,704 |
| Fines & Forfeitures | 1,033,500 | | | | 140,000 | | 1,390,810 | 1,130,502 | 1,173,500 |
| Miscellaneous Revenues | 11,639,782 | 3,434,450 | | 402,603 | 516,899 | 2,955,640 | 18,537,341 | 13,867,375 | 18,949,374 |
| Other Financing Sources | 5,238,800 | | | 123,068 | 5,067,499 | 0 | 4,986,275 | 6,738,857 | 10,429,367 |
| TOTAL REVENUES | 148,544,084 | 5,568,321 | 1,242,688 | 46,901,346 | 14,515,265 | 25,934,961 | 208,974,347 | 221,152,083 | 242,706,665 |
| TOTAL FUNDS AVAILABLE | 198,941,452 | 5,568,321 | 1,405,768 | 222,812,177 | 22,292,091 | 39,836,483 | 457,123,973 | 459,840,620 | 490,856,291 |

$\$8,301,500 \text{ (General)} + \$6,320,000 \text{ (Special Revenue)} = \$14,621,500 \text{ Total Budget (All Funds)}$

Figure 7: Excerpts from Page 2 of the ‘Approved Budget Worksheet Report (Budget Year 2022)’

| Account | Account Description | 2018 Actual Amount | 2019 Actual Amount | 2020 Actual Amount | 2021 Amended Budget | 2021 Actual Amount | 2022 Department Entry | 2022 Adopted |
|--|--|------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------|-----------------------|
| Fund 001 - General Fund | | | | | | | | |
| REVENUE | | | | | | | | |
| Department 00 - Administration | | | | | | | | |
| Division 000 - Administration | | | | | | | | |
| <i>Permits Fees and Special Assessments</i> | | | | | | | | |
| 329-007 | Permits Gas Permits | 53,229.50 | 62,358.00 | 63,668.00 | 45,000.00 | 67,766.00 | 60,000.00 | 60,000.00 |
| 329-011 | Permits Seawall/Dock Permits | 14,833.00 | 103,356.00 | 81,182.00 | 60,000.00 | 105,306.00 | 85,000.00 | 85,000.00 |
| 329-012 | Permits Tent Permits | 2,550.00 | 3,075.00 | 2,700.00 | 5,000.00 | 1,200.00 | 3,000.00 | 3,000.00 |
| 329-020 | Permits Paving Permits | 280,758.50 | 230,585.00 | 133,564.00 | 140,000.00 | 131,264.20 | 125,000.00 | 125,000.00 |
| 329-025 | Permits Roof Permits | 606,448.00 | 512,380.00 | 423,890.00 | 475,000.00 | 494,448.00 | 500,000.00 | 500,000.00 |
| 329-030 | Permits Tenant/Landlord Permits | 631,725.00 | 673,050.00 | 631,950.00 | 680,000.00 | 642,600.00 | 680,000.00 | 680,000.00 |
| 329-033 | Permits Tree Permits | 32,657.50 | 30,365.00 | 25,325.00 | 27,000.00 | 22,855.00 | 25,000.00 | 25,000.00 |
| 329-034 | Permits Landscape Permits | 70,099.00 | 106,133.60 | 61,878.00 | 75,000.00 | 70,303.00 | 70,000.00 | 70,000.00 |
| 329-035 | Permits Miscellaneous Permits | 470,410.20 | 378,563.40 | 378,788.00 | 375,000.00 | 528,724.00 | 450,000.00 | 450,000.00 |
| 329-037 | Permits Trailer Construc / Permits | 2,500.00 | 4,000.00 | 750.00 | 1,000.00 | 250.00 | 1,000.00 | 1,000.00 |
| 329-039 | Permits Foundation Only Permits | .00 | 9,200.00 | 5,400.00 | 1,000.00 | 5,300.00 | 4,000.00 | 4,000.00 |
| 329-040 | Permits Custom Bathtub Inspections | 4,350.00 | 5,550.00 | 2,400.00 | 2,000.00 | 4,250.00 | 4,500.00 | 4,500.00 |
| 329-041 | Permits Overtime Inspections | 3,200.00 | 1,200.00 | 2,000.00 | 2,000.00 | .00 | 1,000.00 | 1,000.00 |
| 329-042 | Permits Pool Permits | 104,563.00 | 107,696.00 | 119,358.00 | 80,000.00 | 178,305.00 | 130,000.00 | 130,000.00 |
| 329-043 | Permits Food Truck Permits | 150.00 | 4,875.00 | 3,975.00 | 4,000.00 | .00 | .00 | .00 |
| 329-050 | Permits CO/Tree/Renewal Ext Applic. Fees | 14,026.00 | 4,100.00 | 150.00 | 20,000.00 | 450.00 | 3,000.00 | 3,000.00 |
| 329-051 | Permits Change of Contractor/Cert of Occ | 26,725.00 | 34,450.00 | 65,650.00 | 20,000.00 | 41,900.00 | 37,000.00 | 37,000.00 |
| 329-052 | Permits Change of Contractor/Rev Drawing | 20,437.00 | 19,344.00 | 19,380.00 | 20,000.00 | 16,997.00 | 19,000.00 | 19,000.00 |
| 329-053 | Permits Revised Draw/No Final Insp Fees | 66,378.00 | 80,268.00 | 55,732.00 | 30,000.00 | 60,909.00 | 55,000.00 | 55,000.00 |
| 329-054 | Permits Custom Bathtub Insp/No Final Ins | 35,150.00 | 39,450.00 | 29,650.00 | 3,000.00 | 24,200.00 | 25,000.00 | 25,000.00 |
| 329-055 | Permits Early Submission Fees | 1,400.00 | 200.00 | .00 | 1,500.00 | .00 | 1,000.00 | 1,000.00 |
| 329-056 | Permits Engineer Affidavit/Inlieu | 23,100.00 | 18,950.00 | 7,600.00 | 10,000.00 | 6,100.00 | 5,000.00 | 5,000.00 |
| 329-057 | Permits Open Permit/Prop Search | 28,080.00 | 33,640.00 | 30,700.00 | 20,000.00 | 45,045.00 | 40,000.00 | 40,000.00 |
| 329-058 | Permits Medical Gas Installation | .00 | .00 | .00 | .00 | 240.00 | .00 | .00 |
| 329-059 | Permits Special Events Appl Fees | 13,279.42 | 33,100.00 | 4,716.00 | 7,000.00 | 4,400.00 | 5,000.00 | 5,000.00 |
| 329-062 | Permits Fire Inspection Fee | 68,775.83 | 224,967.29 | 212,450.09 | 1,436,000.00 | 527,803.71 | 575,000.00 | 575,000.00 |
| <i>Permits Fees and Special Assessments Totals</i> | | \$14,144,510.24 | \$14,670,378.28 | \$12,890,623.80 | \$14,357,850.00 | \$16,015,675.93 | \$8,301,500.00 | \$8,301,500.00 |

Ties to Figure 5a

Figure 8: Excerpt from the FY 2022 Adopted Budget – City of Fairfax, Virginia (Page C-4)

| General Fund Revenue Summary | | | | | | | |
|---|-----------------------------------|---------------------|---------------------|---------------------|---------------------|-----------------------|----------------------|
| Account # | Account Title | FY 2020 Actual | FY 2021 Budget | FY 2021 Estimate | FY 2022 Adopted | Variance to Budget \$ | Variance to Budget % |
| Licenses, Permits & Fees | | | | | | | |
| 313202 | Building Permits | \$ 226,401 | \$ 250,000 | \$ 315,147 | \$ 250,000 | \$ - | 0.00% |
| 313203 | Electrical Permits | 95,571 | 100,000 | 228,985 | 100,000 | - | 0.00% |
| 313204 | Plumbing Permits | 46,391 | 90,000 | 90,000 | 90,000 | - | 0.00% |
| 313205 | Mechanical Permits | 88,760 | 100,000 | 126,399 | 100,000 | - | 0.00% |
| 313206 | Elevator Inspection | 60,351 | 70,000 | 70,000 | 70,000 | - | 0.00% |
| 313225 | Rental Housing Occupancy | 5,700 | 2,000 | 2,000 | 2,000 | - | 0.00% |
| 313226 | Fire Marshal Permit | 83,260 | 115,000 | 115,000 | 115,000 | - | 0.00% |
| 313227 | Fire Protection System Permit | 23,927 | 70,000 | 70,000 | 70,000 | - | 0.00% |
| 313231 | Fire Marshal Development Fees | 11,423 | 30,000 | 30,000 | 30,000 | - | 0.00% |
| 313233 | Public Safety Fee | 48,859 | 50,000 | 50,000 | 50,000 | - | 0.00% |
| 313234 | Reinspection Fees | 7,537 | 12,000 | 1,120 | 12,000 | - | 0.00% |
| 313240 | State Levy - Construction Permits | (4) | 1,300 | 1,324 | - | (1,300) | -100.00% |
| 313308 | Sign Permits | 18,153 | 20,053 | 16,000 | 19,400 | (653) | -3.26% |
| 313309 | Occupancy Permits | 20,115 | 25,821 | 25,821 | 23,717 | (2,104) | -8.15% |
| 313310 | Soil & Erosion Fees | 10,520 | 12,880 | 12,880 | 13,012 | 132 | 1.02% |
| 313323 | Zoning Fees | 73,050 | 123,808 | 58,808 | 61,968 | (61,840) | -49.95% |
| 313328 | Special Use Permits | 84,975 | 77,093 | 25,000 | 57,143 | (19,950) | -25.88% |
| 313329 | Variances | 3,035 | 2,100 | 2,100 | 3,692 | 1,592 | 75.81% |
| 313411 | Cemetery Interments | 74,030 | 70,000 | 70,000 | 70,000 | - | 0.00% |
| 313412 | Columbarium Interments | 2,135 | - | 2,135 | - | - | 0.00% |
| 313420 | Street Opening Permits | 50,900 | 50,000 | 84,525 | 50,000 | - | 0.00% |
| 313440 | Public Right of Way Use | 142,552 | 305,000 | 130,000 | 150,000 | (155,000) | -50.82% |
| 313442 | Mobility Pilot Permit Fee | 15,980 | 17,000 | 17,000 | 16,000 | (1,000) | -5.88% |
| 313510 | Animal Licenses | 10,827 | 8,000 | 5,000 | 5,000 | (3,000) | -37.50% |
| 313512 | Peddlers Permits | 6,350 | 10,000 | 10,000 | 10,000 | - | 0.00% |
| 313620 | Transfer Fees | 116,089 | 125,000 | 125,000 | 125,000 | - | 0.00% |
| 313630 | Cellular Comm | 12,322 | 13,500 | 13,500 | 13,500 | - | 0.00% |
| Total Licenses, Permits & Fees | | \$ 1,339,208 | \$ 1,750,555 | \$ 1,697,744 | \$ 1,507,432 | \$ (243,123) | -13.89% |

Figure 8a: Excerpt from the FY 2022 Adopted Budget – City of Fairfax, Virginia (Page C-22)

| Licenses, Permits, and Fees | | | | |
|------------------------------------|---------------------|---------------------|---------------------|---------------------|
| | FY 2020 Actual | FY 2021 Budget | FY 2021 Estimate | FY 2022 Adopted |
| Licenses, Permits, and Fees | \$ 1,339,208 | \$ 1,750,555 | \$ 1,697,744 | \$ 1,507,432 |

The City reviews its licenses, permits and fees rates and levies annually to ensure each is on par with other jurisdictions in the region. The adopted budget for FY 2022 projects an 11.2% decrease from the FY 2021 estimate primarily due to the timing of construction-related permits for several large commercial projects.

Source: <https://www.fairfaxva.gov/government/finance/budget>

Additional Feedback and Concluding Remarks:

The creation of the Budget is a significant undertaking and the Finance Department has been successful in putting together a document that lives up to the standards of the Government Finance Officers Association (GFOA), for which the Distinguished Budget Presentation Award was previously received and will likely be further granted for the 2022 Budget. I commend them for their efforts. However, the standards of review employed by the GFOA are separate from the provisions of the City Charter, and while may be equally important, do not supersede Charter requirements.

In conducting online searches for comparable municipal Charters and Budgets in Florida and other states, I was able to identify the exact provisions of sections 4.05(C)(1) and (3) in their exact form in Charters of municipalities in the States of Michigan and Wisconsin. It appears that in Florida, only the City of Delray Beach has a prescriptive provision for the content and requirements of the Budget document. The Charters of Delray's neighboring cities of Boca Raton and Boynton Beach are silent as to the content of the Budget document. Thus, I have to defer to the City Attorney as to any background information on these provisions in Delray's Charter (section 4.05) as per the original ordinance (No. 62-01, passed 1/8/02) or subsequent ordinance (No. 35-12, passed 10/16/12).

In addition to the above comment, section 4.05(C)(1) and (3) do not define the terms of *Detailed Estimates* in regards to the expenditures or income sources. Adding the additional required presentation and data into the body of the Budget document will likely require additional staff time and resources. Keeping some of the detail in the separate 'Approved Budget Worksheet' file does not appear to be an option per the current wording of the Charter provision (per section 4.05(C)(6), other supporting schedules may be included, but it appears all should be part of the Budget document). Thus, in this regard, I also have to defer to the City Attorney as to what constitutes detailed vs. not when the City presents line items for expenditures and income in the Adopted Budget document, and whether some or all of the detail can remain in the 'Approved Budget Worksheets' file.

Question and Answers for Bid #RFP 2023-064 - Internal Auditor Services

Overall Bid Questions

Question 1

Item 2.2.b of the RFP states that the proposing firm or individual is properly licensed for practice as a certified public accounting firm/certified public accountant in the State of Florida.

Is there flexibility to this requirement? Specifically, can the engagement Partner and Director possess a CIA (Certified Internal Auditor) or other relevant certification issued by the Institute of Internal Auditors? Alternatively, if the firm is not a CPA firm, would having a CPA in the service team be acceptable? **(Submitted: Jul 20, 2023 4:05:01 PM EDT)**

Answer

- An engagement partner or director (or any member of the engagement team) may possess a CIA, so long as this individual is affiliated with a proposing firm that is licensed to practice public accountancy, as defined in Chapter 473 of the Florida Statutes. **(Answered: Jul 31, 2023 8:24:32 AM EDT)**

Question 2

1. What is the budget allocated each year for internal audit and risk assessment activities?
2. How many hours do you anticipate will be included annually in the scope of this contract?
3. Is there a current service provider you utilize for internal audit work? If so, what was the total expense for the most recent full fiscal year?
4. Do you anticipate this engagement to be performed on-site or remotely?
5. Approximately how many hours do you allocate to each internal audit?
6. Are there any specific scope areas you know you would like contemplated in the internal audit plan?
7. What are the strengths and weaknesses of your current or most recent service provider?
8. What do you look for in a service provider? **(Submitted: Aug 1, 2023 10:47:41 AM EDT)**

Answer

- (1) \$100,000/yr
 (2) See attached most recent audit plan
 (3) The City currently does not have a service provider for internal audit services. The expense for the most recent fiscal year was that of \$36,680.00. (4) Both.
 (5) See most recent audit plan attached.
 (6) The City expects the successful Proposer to conduct a risk assessment to help determine areas that are most in need of audit.
 (7) The most recent service provider reported directly to the City Commission and any appraisal of the provider's past performance would be conducted by the City Commission. The minutes to the City Commission meetings are available at the City's website at <https://www.delraybeachfl.gov/government/city-departments/city-clerk/agendas-and-minutes>
 (8) The successful Proposer will be selected based upon criteria that are outlined in the solicitation document, namely (a) demonstrated relevant experience with similar audit engagements; (b) references; (c) staff qualifications and experience; (d) audit approach/methodology; and (e) fee proposal; and (f) oral presentations, if requested. **(Answered: Aug 8, 2023 2:25:27 PM EDT)**

Question 3

What is the ERP system utilized by the City? **(Submitted: Aug 1, 2023 10:48:23 AM EDT)**

Answer

- Tyler New World is the City's current ERP System. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 4

With the systems listed of Tyler and SunGard, does the City host these applications on premise, or are they software as a service hosted in the cloud? (Submitted: Aug 2, 2023 10:59:40 AM EDT)

Answer

- The City has multiple Tyler products, some are hosted and some are on premise. Central Square now owns and provides support for the systems that were once Sungard. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 5

Scope lists a minimum of 4 annual internal audit projects. How many audits were performed in 2022 and 2023 respectively? (Submitted: Aug 2, 2023 10:59:56 AM EDT)

Answer

- See attached audit reports. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 6

What has been the budgeted cost/hours on average per internal audit project over the past couple years? (Submitted: Aug 2, 2023 11:00:09 AM EDT)

Answer

- The budget for this service has been approximately \$100,000/year. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 7

Is the current risk assessment available for review? (Submitted: Aug 2, 2023 11:00:19 AM EDT)

Answer

- Please see most recent audit plan attached. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 8

Will prior risk assessments and audit reports be shared with the selected provider? (Submitted: Aug 2, 2023 11:00:31 AM EDT)

Answer

- See response to Question No. 7. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 9

Section 3.1.2(a) Audit Services states to conduct an annual risk assessment. "This assessment shall also include in-person interviews." Is the expectation that the in-person interviews will be onsite at the City, or would virtual interviews suffice for in-person communication? (Submitted: Aug 2, 2023 8:09:19 PM EDT)

Answer

- Virtual interviews may be allowed; however, the City reserves the right to request in-person interviews when

deemed in the best interest of the City. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 10

Section 3.1.2(d) Audit Services states reports of findings will be submitted to the City Commission and the City's independent auditor.

- a. Is there a separate Independent Auditor that the successful proposer will report to, or will the successful proposer be the Independent Auditor?
- b. If there is a separate Independent Auditor, how long is the current term? (Submitted: Aug 2, 2023 8:10:17 PM EDT)

Answer

- : (a) The successful Proposer will report directly to the City Commission. The successful Proposer will serve as the City's Internal Auditor.

(b) The current contract with our existing independent expires with the completion of the FY2024 fiscal year audit. This contract allows for 2 additional two-year renewals, which if exercised will extend the contract through completion of the Fiscal Year 2028 audit. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 11

Section 4.2, Tab 4, I, states to include in the proposal financial statements and a certified statement or business income tax return. Our financial statements and tax returns are proprietary and confidential. Would the City consider accepting other information about our financial status besides financial statements and income tax return, such as from Dun & Bradstreet? (Submitted: Aug 2, 2023 8:10:39 PM EDT)

Answer

- The respondent must provide their most recent certified business financial statements as of a date not earlier than the end of the Respondent's preceding official tax accounting period. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable. The Dun & Bradstreet information will not be accepted. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 12

Section 4.2, Tab 7, Group A, should the "lump sum" provided be for the entire contract term of three years? (Submitted: Aug 2, 2023 8:10:57 PM EDT)

Answer

- Please state the lump sum amount for the initial 3-year term as well as the 2 1 yr renewal options. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 13

Is there currently a whistleblower hotline?

- a. If yes, will the successful proposer be responsible for oversight and associated investigations?
- b. If no, is there an expectation that the successful proposer will establish and oversee a hotline? (Submitted: Aug 2, 2023 8:11:17 PM EDT)

Answer

- The City currently does not have a whistleblower hotline. The City expects each Proposer to clearly outline its best and most comprehensive resources in its response, because all services identified will be awarded to the selected proposer. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 14

Does the City have a documented risk assessment? If yes, when was it last updated? (Submitted: Aug 2, 2023 8:11:36

PM EDT)

Answer

- Yes. The last risk assessment was completed in 2019 (incorporated as part of the audit plan as attached).

(Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 15

For what fiscal year is the most current audit plan for? (Submitted: Aug 2, 2023 8:11:56 PM EDT)

Answer

- For Fiscal Year 2019 (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 16

Who would the Proposer report to at the City during the contract term? (Submitted: Aug 2, 2023 8:12:11 PM EDT)

Answer

- See Response to Question No. 10. (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 17

Would a summary of the risk assessment and audit plan be presented to the City Commission prior to starting the individual audits? (Submitted: Aug 2, 2023 8:12:29 PM EDT)

Answer

- Yes (Answered: Aug 8, 2023 2:25:27 PM EDT)

Question 18

When will your selection process be completed and successful bidder notified? (Submitted: Aug 2, 2023 8:12:49 PM EDT)

Answer

- The deadline for the proposal submittal for this RFP is August 16, 2023. A Notice of Recommended Ranking is typically issued within 45 days of this date. (Answered: Aug 8, 2023 2:25:27 PM EDT)