Agenda Report

2725 Judge Fran Jamieson Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1. 12/22/2020

Subject:
Board Direction RE: Expiring CARES Act Funding Impact on Cleaning Services

Fiscal Impact:
$ 297,840.00

Dept/Office:
Public Works/Facilities

Requested Action:
It is requested that the Board of County Commissioners provide direction to staff regarding expiring CARES Act funding and continuation of COVID-19 essential services for the period of January 1, 2021 through June 30, 2021. Additionally, authorize the County Manager to sign any necessary paperwork to effectuate approved changes.

Summary Explanation and Background:
At the request of Court Administration, the Chief Judge and consistent with the attached direction provided by the Chief Justice of the Florida Supreme Court, Brevard County Facilities Management Office is currently utilizing CARES Act funds to execute on-going, unbudgeted and unscheduled COVID-19 related services. Currently, CARES Act funding is set to expire on December 31, 2020; consequently, Facilities requires additional funds from another source or will need to reprioritize and defer other planned budgeted items.

Staff is seeking Board approval to utilize the newly established Public Safety fund or, if the Board so directs, Facilities will reprioritize and defer other planned budgeted items to continue the services identified below. Alternatively, the Board can direct a reduction of the below COVID-19 related services:

Janitorial Services

- Supplemental Nighttime cleaning of courtrooms $14,289.00 per month;
- Daytime courtroom sanitizing (11am-1pm) $11,905.00 per month (29 courtrooms);
- Daily disinfecting of common areas $3,896.25 per month (three courthouses);
- Daily disinfecting/fogging of Law Library ($600 per month).

AUE Staffing (temperature screening employees - 2 at each Courthouse)

- +/- $11,520.00 per month (depending on hours requested)

Sutherland Party Rentals

- Tent rentals for temperature screeners $7,429.75 monthly (all 3 Courthouses).

Total Monthly Cost = $49,640.00

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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December 23, 2020

MEMORANDUM

TO: Marc Bernath, Public Works Director

RE: Item J.1., Board Direction for Expiring CARES Act Funding Impact on Cleaning Services

The Board of County Commissioners, in regular session on December 22, 2020, directed staff to extend essential cleaning services for the period of January 1, 2021, through June 30, 2021 for continuation of COVID-19; authorized using inmate labor for cleaning services, offered by Brevard County Sheriff's Office; and authorized the County Manager to sign any necessary paperwork to effectuate the changes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell

Kimberly Powell, Clerk to the Board

cc: Sheriff Ivey
County Manager
County Attorney
Facilities
Finance
Budget

COVID-19 WORKGROUP

CONTINUITY OF COURT OPERATIONS & PROCEEDINGS DURING AND AFTER

Court Operations Subgroup

Requirements, Benchmarks, and Guidelines Governing Operational Phase Transitions[1, 2, 3, 4, 5, 6, 7, 8]

~~October~~ November ~~9~~8, 2020

Background

In Fla. Admin. Order No. AOSC20-28, ~~T~~the Court Operations Subgroup (COS) was tasked with developing findings and recommendations on the continuation of all court operations and proceedings statewide in a manner that protects health and safety and that addresses each of the following phases of the pandemic, which are currently ~~as~~ defined as ~~in Fla. Admin. Order~~

[1] On May 20, 2020, the Health and Safety Requirements section was modified to clarify symptoms and comport with the latest Centers for Disease Control and Prevention (CDC) guidance.

[2] On June 12, 2020, the Benchmarks for Transition from Phase 1 to Phase 2 and the Requirements and Guidelines sections were modified to clarify Benchmark 3 and to clarify the health and screening requirements, modify personal protective equipment requirements, and clarify the enforcement of requirements.

[3] On June 16, 2020, a modification was made to the Requirements and Guidelines section to clarify requirement and guideline exemptions for activities inside of the separate offices of constitutional officers in a multi-use building.

[4] On July 2, 2020, a modification was made to update the symptoms of COVID-19 to comport with the latest CDC guidance, clarify inmate and detainee screening, incorporate the benchmarks governing the transition to Phase 3, and clarify the requirements for reverting to and returning from a previous operational phase.

[5] On August 6, 2020, modifications were made to: amend the benchmark criteria for transition from Phase 1 to Phase 2 (note that these benchmark criteria are also incorporated by reference for the transition from Phase 2 to Phase 3); require a human resources policy to address potential COVID-19 exposure for court employees and judges; update the health screening requirements for entry into a courthouse; provide that a return to Phase 3 following a reversion does not require spending one month in Phase 2; amend the requirements for reverting to and returning from a previous operational phase; make conforming changes for the amendments throughout the document; and add Appendices A and B.

[6] On August 11, 2020, modifications were made to: correct a cross-reference; clarify that a court, which reverts from Phase 3 to Phase 1, must return to Phase 2 before returning to Phase 3; and clarify that specified reversion requirements apply not only to trial courts but also to district courts of appeal.

[7] On October 8, 2020, modifications were made to require a court to determine if a "change in court operations" is necessary when the court no longer meets one or more of the other benchmarks required for the phase and to add a definition for the phrase "change in court operations."

[8] On November 9, 2020, Phase 3 was modified to specify that an effective vaccine be adequately available, and the provision providing for the relaxation of protective measures in that phase was deleted. The Phase 3 benchmark that previously required continual operation in Phase 2 for one month prior to proceeding to Phase 3 was deleted. References to the Chief Justice and the supreme court were included in the requirements and guidelines governing phase transitions. Additional non-substantive language clarifications were also incorporated. Further, on November 19, 2020, "and in use" was added to the new description of Phase 3.

~~No. AOSC20-28~~: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare; b) ~~limited~~ in-person contact is authorized for certain purposes but ~~and/or~~ requires use of protective measures; c) an effective vaccine is adequately available and in use and in-person contact is more broadly authorized ~~and protective measures are relaxed~~; and d) COVID-19 no longer presents a significant risk to public health and safety.

The recommendations below specifically address Charge 3 articulated in Fla. Admin. Order No. AOSC20-28, to:

> Propose guidance – based on the advice of public health experts, medical professionals, or others with expertise in the management of a pandemic and the latest health advisories and safety guidelines – for protective measures that will allow the progressive and safe return of judges, personnel, parties, counsel, jurors, and the public to court facilities[.]

The COS conducted an extensive literature review, discussed state and national court reopening practices and guidelines, and consulted with medical professionals.[9] The COS recognizes that the COVID-19 situation remains dynamic and that the benchmarks and guidance offered below may have to be modified as more information regarding the pandemic and best practices becomes available. Local community needs, resources, and the specific public health conditions by county are important considerations and may have a direct bearing on implementation of the benchmarks and guidance offered below. Court reopening protocols and practices shall be guided by Centers for Disease Control and Prevention (CDC) and Florida Department of Health recommendations and align with guidance provided by county health departments and local medical professionals.[10]

The COS recognizes that funding and the availability of certain equipment and supplies may impact the readiness of a court to move to Phase 2 or Phase 3. The COS recommends exploring local, state, federal, and grant funding opportunities to ensure the necessary supplies are available to protect the health and safety of all those entering the courthouse building.

Introduction

[9] The COS met with two medical professionals to discuss their professional opinions related to precautions courts should take in order to open their doors to the public and conduct in-person proceedings: Erin Kobetz, PhD, MPH, Professor of Medicine and Public Health Sciences at the University of Miami Miller School of Medicine, and Cindy Prins, PhD, MPH, CIC, CPH, Clinical Associate Professor in the Department of Epidemiology at the University of Florida College of Public Health and Health Professions and College of Medicine. The Subgroup extends its thanks and appreciation for their invaluable input and expertise.

[10] The CDC's guidance as of June 26, 2020, listing the symptoms of COVID-19 and recommending at least six feet for social distancing has been included in this report at pages seven through nine and page eleven. Staff of the Office of the State Courts Administrator will routinely monitor the CDC guidance and notify the chief judges of the appellate and trial courts of any significant changes in the future.

Florida is a very diverse state, and health and operational conditions vary greatly even at the local level. Precautions and safeguards necessary in one area of the state may not be necessary, appropriate, or feasible in another. Further, variations in caseloads, dockets, facilities, resources, and available employees make it difficult to establish functional and effective statewide directives. The plans and measures for resuming in-person proceedings may vary out of necessity. However, it is important that lawyers, litigants, victims, witnesses, jurors, and the public know what to expect when they interact with the courts, regardless of where that court is located within the state.

As courts consider additional in-person proceedings and more judges and court staff return to the courthouse,[11] it is imperative that judges, court staff, justice partners, and the public feel confident that their safety and welfare are the primary considerations on which decisions are made. The requirements and benchmarks provided will establish some uniformity in approach, while the operational guidelines provide needed flexibility for courts to adjust for local conditions.

To the extent possible, and consistent with Fla. Admin. Order No. AOSC20-109, as may be amended, and Fla. Admin. Order No. AOSC20-23, as amended, courts shall continue to use technology of all types (such as teleconferencing, videoconferencing, or other means) to facilitate the remote conduct of proceedings as an alternative to in-person proceedings. Courts should continue to innovate, increase the use of technology, and take other measures to expand remote capacity while limiting person-to-person contact when not necessary.

Benchmark Criteria for Transition from Phase 1 to Phase 2

The Supreme Court has identified four phases of the pandemic: a) in-person contact is inadvisable, court facilities are effectively closed to the public, and in-person proceedings are rare (Phase 1); b) ~~limited~~ in-person contact is authorized for certain purposes but ~~and/or~~ requires use of protective measures (Phase 2); c) an effective vaccine is adequately available and in use and in-person contact is more broadly authorized ~~and protective measures are relaxed~~ (Phase 3); and d) COVID-19 no longer presents a significant risk to public health and safety (Phase 4). Using the benchmarks provided, courts may consider moving from Phase 1 to Phase 2, wholly or in-part, based on local conditions and resources. If local conditions deteriorate, or resources become strained, it may be necessary for a court to revert to Phase 1 or adjust facets of how it is operating in Phase 2 to meet the current public health situation or the needs of the court. Additional information regarding reverting to and returning from a previous operational phase is found later in this document.

[11] References in this document to a courthouse should be read to extend to any facility or building that houses courtrooms, hearing rooms, court staff or where court business is conducted, whether or not that building is formally called a courthouse.

The following benchmark criteria must be met prior to any court transitioning from Phase 1 to Phase 2 and expanding in-person activities:

1. No confirmed or suspected cases of COVID-19 in the court facility within a 14-day period; or if confirmed or suspected cases have occurred in the court facility, deep cleaning and disinfecting of exposed areas have been completed and applicable employees have been directed to self-isolate or quarantine.

2. No local or state restrictive movement or stay-at-home orders that limit the ability of individuals to leave their homes during the daytime.

3. Improving COVID-19 health conditions over a 14-day period in the community. The public health data[12] necessary to determine whether this benchmark has been met will be provided on an Intranet page maintained by OSCA that will be updated on a weekly basis. This data will provide seven-day averages at the county level for the most recent four-week period for the following four measures:
    a) The daily number of new positive COVID-19 cases ("new cases");
    b) The daily percentage of positive tests based on the total number of tests ("positivity rate");[13]
    c) The daily number of hospitalizations for COVID-19 ("hospitalizations"); and
    d) The daily number of emergency department visits for COVID-like illness ("ED visits").

    To ensure uniformity statewide, courts must use this data and the following methodology in determining whether this benchmark has been met. For purposes of the methodology, the phrase "two consecutive weeks of decline or stabilization" with respect to new cases, hospitalizations, and ED visits means that the measure's seven-day average for:
    a) The most recent week is lower than or equal to the seven-day average for the measure for the prior week; and
    b) The prior week is lower than or equal to the seven-day average for the measure for the week that is two weeks prior to the most recent week.

    To meet this benchmark, condition a) or b) below must be met:

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[12] The data source for the daily number of new positive COVID-19 cases, daily number of hospitalizations for COVID-19, and daily number of emergency department visits for COVID-like illness is: Florida COVID-19 Case Line Data from the Florida Department of Health, https://open-fdoh.hub.arcgis.com/datasets/florida-covid19-case-line-data/data. The data source for the daily percentage of positive tests based on the total number tests is: Daily county reports from the Florida Department of Health, http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/. The data dictionary for these sources may be found at: Florida Department of Health, https://fdoh.maps.arcgis.com/sharing/rest/content/items/efffb9350de948ac9d67f9d74190413d/data.

[13] In using the positivity rate data for purposes of determining whether to transition to Phase 2 or 3 or for reversion, as discussed later in this document, the percentages may not be rounded to the nearest whole number.

a) Both of the seven-day averages for new cases for the most recent two-week period must be 20 or fewer[14] and both of the following measures must demonstrate two consecutive weeks of decline or stabilization:
   i. The seven-day averages for hospitalizations for the most recent two-week period; and
   ii. The seven-day averages for ED visits for the most recent two-week period.

b) If either of the seven-day averages for new cases for the most recent two-week period exceed 20, then both of the following criteria must be met:
   i. The seven-day averages for new cases for the most recent two-week period must demonstrate two consecutive weeks of decline or stabilization; and
   ii. Both of the seven-day averages for the positivity rate for the most recent two-week period must be less than 10 percent. If not, then both of these averages must be less than 11 percent and both of the following measures must demonstrate two consecutive weeks of decline or stabilization:
      a. The seven-day averages for hospitalizations for the most recent two-week period; and
      b. The seven-day averages for ED visits for the most recent two-week period.

A decision matrix illustrating the methodology above is attached as Appendix A.

Courts that meet the criteria for this benchmark based on declining or stabilizing new cases and positivity rates less than 10 percent may also wish to consider the data for hospitalizations and ED visits as well as other public health data that may be available before determining whether to transition to the next phase. Given the evolving science and dynamic nature of the pandemic, other factors may weigh against transitioning even when this benchmark is met based on the referenced measures. For example, hospitalizations or ED visits may be increasing or hospital bed or intensive care unit capacity may be decreasing although the numbers of new cases and positivity rates have declined. Moreover, resource constraints, such as insufficient personal protective equipment (PPE) or a shortage in staffing, or other operational issues may exist. In any of these instances, the Chief Justice or chief judge should consider delaying a transition until health conditions improve or operational or other issues are resolved.

4. Sufficient availability of COVID-19 tests to meet community needs.

[14] Due to the lower rates of testing in smaller counties, positivity rates can be significantly increased by only one or two positive test results. To account for this effect, the methodology authorizes counties having 20 or fewer new cases weekly for the most recent two-week period to consider the hospitalization and ED visit measures instead of positivity rates.

5. Consultation with other building occupants (for multi-tenant courthouses or buildings) and with justice system partners (including, but not limited to clerk of court, state attorney, public defender, law enforcement, local bar, and others necessary to resume certain case types, such as the Department of Children and Families).

It is important to ensure capacity exists for increasing or modifying operations and that all health and safety concerns are met.

Operational Plan for Transition from Phase 1 to Phase 2

Prior to expanding operations beyond Phase 1 as outlined in Fla. Admin. Order No. AOSC20-109, as may be amended, and Fla. Admin. Order No. AOSC20-23, as amended, each court shall develop an operational plan. Broadly, the plan should describe the court's planning process and use of the benchmark criteria, detail those involved in the planning, and identify the steps to be taken in order to increase operations. Further, the court must ensure that its plan addresses all requirements discussed below and may wish to also address the guidelines specified below in that plan.

Once the plan has been finalized and approved by the Chief Justice or chief judge, as applicable, a copy shall be provided to OSCA for informational purposes.[15] As the plan is updated, revised copies shall be submitted.

While operating in Phase 2, public health data and local conditions shall be monitored at least weekly to determine if a change in court operations, meaning a modification to operations, an amendment to the operational plan, or a reversion in phases, is necessary.

Requirements and Guidelines for Transition from Phase 1 to Phase 2[16]

The following requirements provide the key elements that must be included in each court's Phase 2 operational plan. Guidelines are also provided for each court's consideration. Each court may develop a single plan that encompasses all facilities and operations or may develop a separate plan for each facility or operational or functional area. Many of these requirements and guidelines may still apply when transitioning from Phase 2 to Phase 3. ~~As noted in the Phase 3 benchmarks, courts must identify any modified or relaxed Phase 2 requirements and guidelines, as well as any public health and safety practices planned for Phase 3.~~

[15] In current practice, courts are required to file their Continuity of Operations Plan and other emergency preparedness plans with the General Services Unit.

[16] In the case of a multi-use building, these requirements and guidelines are not intended to govern activities inside of the separate offices of other constitutional officers.

In developing the operational plan, courts shall engage and consult with judges, court administrators, law enforcement, other justice partners, county administrators, other building occupants, if any, and county health departments or local health experts. The plan will need to be updated on a regular basis to keep pace with advancements in best practices and to adjust for lessons learned. Courts are encouraged to establish an ongoing relationship and communication with county health departments or local health experts. Those relationships will help inform recommendations regarding the local court's readiness to authorize ~~limited~~ in-person contact for certain purposes and institute any appropriate measures to further safeguard public health and safety.

Remote Hearings and Remote Work

To the extent possible, consistent with Supreme Court administrative orders or similar guidance, the Chief Justice and the chief judges shall take all necessary steps to support the conduct of proceedings with the use of technology ~~all proceedings shall occur remotely~~ (such as by teleconferencing, videoconferencing, or other means) ~~unless litigants or other court participants are unable to successfully participate in a remote hearing for reasons beyond the court's control~~. Courts may need to conduct hybrid hearings (concurrently in-person and remotely) in certain instances. Further, all employees should be allowed to work remotely to the extent their work can be effectively done remotely ~~throughout Phases 1-3~~. Particular effort should be made to ensure that vulnerable employees, and those that are caregivers for someone that is vulnerable, are able to work remotely until at least Phase 4.

Human Resources Policy

A human resources policy shall be developed that addresses potential COVID-19 exposure in the workplace, which shall apply to court employees, including judicial assistants, ~~and~~ judges, and justices who enter a court facility to perform all or part of their work. The policy must address requirements for judicial officers and court employees ~~to notify their supervisors and for judges to notify the chief judge~~ to provide notice if they have tested positive for or have been diagnosed with COVID-19; are experiencing symptoms consistent with having COVID-19; or have been in close contact with an individual who has tested positive for COVID-19 or who is exhibiting symptoms. The policy must also define the court's responsibilities for contact tracing and for notifying persons who may have been exposed.

Health and Safety Screening

General Considerations

- Take precautions to ensure no one enters the courthouse when there is a likelihood that they may have COVID-19.[17, 18]
- Direct justices, judges, and employees, at a minimum, to self-check for symptoms. If they present symptoms, they must remain home and should consult their doctor or other medical professional. Law enforcement personnel, working within the courthouse or acting in their official capacity visiting the courthouse, whose agency has a policy that requires self-checking for symptoms and remaining home if they present symptoms are not subject to the health screening described below.[19] Other employees working within a courthouse, who are authorized to enter the courthouse with a security badge or other means that allows entry without the security screening applicable to the general public, are not subject to the health screening described below if the employee's employing agency has a policy that requires self-checking for symptoms and remaining home if they present symptoms.
- Require all others entering the courthouse to undergo health screening with a required temperature check.[20] A person who refuses the health screening, who has a fever of 100.4 degrees or greater, who answers affirmatively to any of the symptoms in Question 1, or who answers affirmatively to Question 2, 3, or 4 shall not be allowed to enter the facility. Alternative arrangements should be made for this person, such as handling their business over the phone, rescheduling a hearing, or other means as appropriate. The screening shall include the following questions:
    - Question 1: Do you have any of the following symptoms (excluding those due to a known medical reason other than COVID-19):
        a) Cough

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[17] As of June 26, 2020, the CDC lists the symptoms of COVID-19 to include cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, fatigue, headache, sore throat, new loss of taste or smell, congestion or runny nose, nausea or vomiting, or diarrhea.

[18] For purposes of this document, entry into a courthouse in a multi-use building refers to the security point at which individuals are screened before entering the courthouse.

[19] Workgroup member Public Defender Dimmig, who represents the Florida Public Defender Association, dissents from the portion of this recommendation that would allow a law enforcement officer, who is entering the courthouse for purposes of testifying as a witness in a jury trial, to bypass the health screening. Public Defender Dimmig expressed concern that a juror, who will later hear the officer's testimony, may see the officer receive the differential treatment that may improperly influence the juror who must, pursuant to the jury instructions, treat the officer's testimony the same as any other witness with respect to credibility. Public Defender Dimmig is also concerned that defendants, and some members of the public at large, will question the fairness of a court system that gives preferential treatment to certain witnesses simply because they are law enforcement officers. Workgroup member Chief Judge Bonner of the Twelfth Judicial Circuit concurred in Public Defender Dimmig's dissent and also noted that it will be overly cumbersome to distinguish at the courthouse entrance who is on or off duty and who has already been screened. Further, Chief Judge Bonner noted that the likelihood of substantially longer lines because of officer screenings seems minimal given that in-person proceedings are limited in Phase 2 and that creation of a "line cut" gives a public optic that certain professions are exempt from a screening with which the public must comply.

[20] The responsibility for conducting the health screening and temperature check should be defined within the local operational plan.

b) Shortness of breath or difficulty breathing
c) Fever or chills
d) Fatigue
e) Muscle or body aches
f) Headache
g) Sore throat
h) New loss of taste or smell
i) Congestion or runny nose
j) Nausea or vomiting
k) Diarrhea[21]

- Question 2: Are you currently awaiting the results of a test to determine if you have COVID-19 based on symptoms or suspected exposure?
- Question 3: Are you under instructions to self-isolate or quarantine due to COVID-19?
- Question 4: Within the past 14 days, have you had close contact with someone with a COVID-19 diagnosis or who is awaiting test results for COVID-19 based on symptoms or suspected exposure? ~~(Note: Close contact is defined as contact that is less than 6 feet for 15 minutes or more, irrespective of whether a cloth face covering or respiratory PPE was worn.[22])~~

- Establish a process to safeguard against release of sensitive health information in communicating to the court that a person was not allowed to enter the facility (e.g., a checkbox form solely indicating non-admittance based on refusal to comply with the guidelines or based on the screening/temperature check).
- Consider whether special attention needs to be given to how inmates or detainees from jail and juvenile facilities who may be transported to a courtroom will be screened, including consideration of a lower threshold temperature as an indicator of symptoms. At a minimum, if inmates and detainees do not undergo a health screening and temperature check prior to being transported to the courthouse, they are subject to the health screening and temperature check requirements that are applicable to members of the public for entry into the courthouse.

Social Distancing

Social distancing guidelines shall be established and strictly enforced during Phases 1 and 2. This includes all areas of the courthouse, including areas of private circulation. Current CDC social distancing guidance recommends staying at least six feet from other people.

[21] https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html
[22] https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html

- Ensure social distancing in public common areas, galleries and wells of the courtroom, hallways, elevators, restrooms, or other locations where the public might gather.
    - Some areas may need to be reconfigured or have chairs, benches or other furniture removed to ensure social distancing.
    - Special attention should be given to scheduling hearings on a staggered schedule as common areas such as hallways, restrooms, and elevators may become crowded in such a way that it is impossible to maintain appropriate social distancing.

Hygiene Protocols and Personal Protective Equipment (PPE)

- Establish hygiene protocols, such as hand washing and covering coughs and sneezes.
- Post readily visible signage[23] throughout the courthouse reminding individuals of hygiene protocols, including hand washing, as well as social distancing, directional guidance and any changes to processes due to the pandemic.
- Establish guidelines for the purchase and use of hand sanitizer and PPE.
    - Hand sanitizer should be widely available throughout the courthouse, including inside courtrooms.
    - Face masks covering the nose and mouth are required for everyone entering the courthouse building, with no exceptions. Face masks shall be worn at all times throughout the public areas of the courthouse building, including inside the courtroom if two or more individuals are in the courtroom. If visitors do not have a face mask, one should be provided to them at no cost. The following exclusions apply to wearing face masks in a courthouse:
        a) Justices, judges, and court staff do not have to wear a mask in their private chambers or office as long as social distancing is possible. If they do not have a private office, and ample social distancing is not observed, a mask should be worn while at their desk.
        b) Present medical advice advocates that adequate face masks offer the best protection. However, the Chief Justice or a chief judge may adopt a policy allowing the use of a face shield or other face covering protocol as an alternative to a face mask during a court proceeding if the court determines, based on consultation with the county health department or other local health experts, that scientific guidance supports use of the alternative as a reasonable means to protect participants in the proceeding. If a court adopts such a policy, it shall apply the policy consistently across all court proceedings in the same courthouse.

[23] Any signage used should (at a minimum) be in English and Spanish and shall comply with the Americans with Disabilities Act.

- Consider other PPE, such as gloves and face shields, for use as appropriate. Health experts have noted that proper hand hygiene is generally preferable to gloves. An example where multiple types of PPE (mask, gloves, face shield or goggles, and apron or other covering) may be required is during the fingerprinting process.

Judge and Court Staff Training

- Provide training or other technical assistance to justices, judges, and court staff, if necessary, on changes required by the operational plan.

Other Building Occupants

- Collaborate with other building occupants and law enforcement to ensure agreement on health, safety, cleaning and disinfecting,[24] and related issues to avoid contamination by other occupants in a multi-tenant courthouse.

Vulnerable Populations[25]

- Provide accommodations to reduce the need for vulnerable individuals to appear in-person at the courthouse, when feasible.

Courthouse Facility and Security

Exterior

- Consider ingress and egress as well as queuing areas and the need to temporarily close some entry points or designate for entry or exit only.
- Use tape, paint, or other means to demark the floor and/or walls, to the extent possible, at six-foot intervals as a social distancing aid.
- Provide directional signage, if necessary.

Interior

- Reconfigure queueing areas, if needed.
- Determine if any occupancy limits or constraints are necessary to allow for maximum social distancing within the building. Some courts may consider only admitting persons with scheduled proceedings or appointments with a person or office in the courthouse, even for non-court matters. If a person does not have an appointment, provide information on how to set one. Also, limit their entry to, for example, 10 minutes prior to the scheduled appointment or proceeding time.

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[24] CDC guidance on cleaning and disinfecting public spaces, workplaces, and other public locations is available here: https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html.
[25] CDC guidance on people who need to take extra precautions is available here: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html.

- Use tape, paint, or other means to demark the floor and/or walls, to the extent possible, at six-foot intervals as a social distancing aide.
- Review all space within the courthouse to determine any mitigation measures that can be taken and reconfiguration that may be necessary to allow for proper social distancing. Open office areas, in particular, may require reconfiguration or movement of employees to other areas.
- Close or reconfigure areas such as break rooms, waiting areas, cafeterias, and other spaces where people tend to congregate, as needed.
- Consider installing physical barriers, such as sneeze guards and partitions, in spaces where an employee might come into close contact with large numbers of people, such as an information desk. While such a barrier may protect from droplets caused by a sneeze, it is not a replacement for wearing a mask.
- Limit the number of persons allowed in a shared restroom.

Security

- Determine what security practices or policies may require modification.
- Reconfigure the security screening station, if needed.
- Develop policies, training, and/or other technical assistance for security personnel if they are charged with health screening visitors.
- Establish a policy regarding persons who refuse to follow health and safety requirements and guidelines, such as not wearing a mask.[26]

Cleaning and Disinfecting

- Establish and enforce detailed cleaning and disinfecting protocols for all areas.
- Make adequate supplies of cleaning and disinfecting products available throughout the facility.
- Clean and disinfect high traffic areas and frequently touched surfaces multiple times per day.
- Perform enhanced nightly cleaning and disinfecting of all areas.
- Make hand sanitizer and sanitizing or disinfecting wipes readily available throughout the facility for use by employees and visitors.
- Clean or disinfect shared equipment, such as copiers, before every use.

Courtroom/Hearing Room

- Establish a courtroom maximum occupancy based on the size and configuration of the room and social distancing protocols.

[26] The Workgroup recognizes that law enforcement's primary responsibility is the provision of security. Court employees and law enforcement/security officers shall make reasonable efforts to enforce these health and safety requirements and guidelines, consistent with the local operational plan and judicial direction as applicable.

- Consider a courtroom admittance policy to limit persons from entering with family members or friends that are not essential to the proceeding. Limit those physically permitted in the courtroom to the parties, attorneys, victims, witnesses, court reporter, court interpreter and other persons whose presence is essential.
- Determine potential waiting area(s) to ensure social distancing while parties wait for their proceeding.
- Follow and enforce strict social distancing protocols.
- Make hand sanitizer and sanitizing or disinfecting wipes available for use.
- Clean or disinfect shared surfaces, such as counsel tables and podiums, after every proceeding or similar court event at which they are used.

Other Business Process Considerations

- Consider a staggered schedule for court appearances and employee schedules to minimize the number of people in the building at any time and prevent crowding.
- Prioritize certain proceedings or events, if needed.
- Consider dividing employees into shifts so that there is no overlap in scheduling. If a member from one shift tests positive for COVID-19, it will be easier to identify potentially exposed colleagues.
- Take adequate steps to ensure the public is provided a reasonable means of access to the proceeding, for those proceedings in which the public's right to in-person access is appropriate.
- Live-stream or record the proceeding, if practicable, and make the recording available as soon as possible following the conclusion of the proceeding.
- Develop a process or protocol for handling paper, both from the public and from employees. Use of a drop box may be prudent for some public submissions. Creation and use of electronic documents is a preferable practice. When paper has been submitted, scanning of all paper and transmitting electronically is a preferable practice.
- Consider staffing strategies, such as redeployment of personnel, to meet staffing needs and social distancing requirements.

All aspects of the operational plan should be applied evenly throughout each courthouse. It is understood that differences in locations or facilities may necessitate modified practices at a different courthouse within the same county or circuit.

The operational plan should provide the court with the guidance and structure necessary to navigate moving from Phase 1 to Phase 2, once the benchmark criteria have been met. All pertinent aspects of the plan should be shared broadly to ensure employees and the public are aware of the precautions being taken and are on notice of what to expect when conducting business at the courthouse. In addition to providing such information in hearing notices or other case-related postings, courts are encouraged to utilize their court's public information officer to share the information.

Benchmark Criteria for Transition from Phase 2 to Phase 3

The COS recognizes the importance of mitigating the negative effects of the public health crisis, while keeping courts operating to the fullest extent possible based on the latest recommended public health and safety measures and scientific guidance. Each court must carefully examine and balance increasing court operations with ensuring public health and safety in making a determination to transition to Phase 3. ~~In Fla. Admin. Order No. AOSC20-28,~~ Phase 3 is defined as "an effective vaccine is adequately available and in use and in-person contact is more broadly authorized ~~and protective measures are relaxed~~." Phase 3 represents a more significant "reopening" of the courts where the nature of case types and the volume of cases being heard in-person will increase, with protective measures in place consistent with science-based health guidance.

In addition to an effective vaccine being adequately available and in use, ~~T~~the following benchmark criteria must be met prior to any court transitioning from Phase 2 to Phase 3 and further expanding in-person activities:

~~a. Continual operation under Phase 2 for at least one month before proceeding to Phase 3 unless returning to Phase 3 after reversion to a prior phase. Additional information regarding reverting to and returning from a previous operational phase is found later in this document.~~

~~b.~~a. Confirmation that the court continues to meet each of the five Phase 2 benchmark criteria.

~~c.~~ Confirmation of the availability of adequate resources, supplies, and capacity to accommodate the authorization of broader in-person contact in Phase 3, consistent with national, state, and local public health guidance.

~~d.~~b. ~~Identification of any modified or relaxed Phase 2 requirements and guidelines, as well as any public health and safety practices planned for Phase 3.~~

The COS notes that benchmarks for the transition to Phase 3 may need to be reevaluated based on the availability and efficacy of a vaccine, additional guidance and reports from health officials, and experience gained while operating in Phase 2.

Operational Plan for Transition from Phase 2 to Phase 3

The court shall develop a Phase 3 operational plan that addresses the satisfaction of the criteria listed in a. and ~~through~~ b~~d~~. above. The plan shall be reviewed by the county health department or a local health expert and such consultation with the department or expert must be documented in the plan. The plan must be submitted to OSCA upon completion.

For trial courts, the chief judge must certify to the Chief Justice that a compliant Phase 3 operational plan has been submitted and that the circuit or a county within a circuit is ready to transition on a specified future date to Phase 3. Prior to such transition, the Chief Justice must approve the certification.

While operating in Phase 3, public health data and local conditions shall be monitored at least weekly to determine if a change in court operations, meaning a modification to operations, an amendment to the operational plan, or a reversion in phases, is necessary.

The subgroup recognizes the following with respect to the transition from Phase 2 to Phase 3:

- Both Phase 2 and Phase 3 involve courts allocating limited resources to needs that exceed capacity. Transition to Phase 3 will not be uniform across courts due to differing needs and resources.
- Any requirements for operations in ~~benchmarks for moving to~~ Phase 3 may need to be reevaluated based on further guidance and reports from health officials.

~~Per AOSC20-28, Phase 3 includes the relaxation of protective measures. The subgroup recognizes that the details of any relaxation of or changes to protective measures will need to be prescribed closer to the anticipated transition of courts to Phase 3 to ensure access to the most current and accurate guidance and information about COVID-19. The relaxation of protective measures in Phase 3 may differ by county due to local public health circumstances and resources.~~

Reverting to and Returning from a Previous Operational Phase

As previously indicated in this document, while operating in Phase 2 or Phase 3, public health data and local conditions shall be monitored at least weekly to determine if a change in court operations, meaning a modification to operations, an amendment to the operational plan, or a reversion in phases, is necessary.

For purposes of the methodology below addressing the requirement for a court to determine if a change in court operations is necessary when the criteria for Benchmark 3[27] are no longer met, the phrase "two consecutive weeks of increase" with respect to new cases, hospitalizations, and ED visits means that the measure's seven-day average for:

a) The most recent week is higher than the seven-day average for the measure for the prior week; and
b) The prior week is higher than the seven-day average for the measure for the week that is two weeks prior to the most recent week.

With respect to Benchmark 3, a court shall determine if a change in court operations is necessary if condition a) or b) below applies:

[27] Benchmark 3 for Phase 2 applies in both Phase 2 and Phase 3 as indicated on pages four and fourteen of this report.

a) Both of the seven-day averages for new cases for the most recent two-week period are 20 or fewer and either of the following measures demonstrate two consecutive weeks of increase:
    i. The seven-day averages for hospitalizations for the most recent two-week period; or
    ii. The seven-day averages for ED visits for the most recent two-week period.
b) Either of the seven-day averages for new cases for the most recent two-week period exceed 20 and any one of the circumstances described in i., ii. a., or ii. b. below has occurred:
    i. The seven-day averages for new cases during the most recent two-week period demonstrate two consecutive weeks of increase; or
    ii. Either of the seven-day averages for the positivity rate during the most recent two-week period is:
        a. 11 percent or higher; or
        b. 10 percent or higher, but less than 11 percent and either of the following measures demonstrate two consecutive weeks of increase:
            - The seven-day averages for hospitalizations for the most recent two-week period; or
            - The seven-day averages for ED visits for the most recent two-week period.

A decision matrix illustrating the methodology above is attached as Appendix B.

Further, if the county health department or local health expert advises, or data or other information establishes, that local health or other conditions have deteriorated or changed to the point that the court no longer meets one or more of the other benchmarks required for the phase, the court shall determine if a change in court operations is necessary to comply with health and safety requirements.

Additionally, due to resource constraints or other issues, a court may want to make a change in court operations in order to adjust to the ongoing nature of the public health crisis.

If a court is required to determine if a change in court operations is necessary, the court shall document and maintain locally its reasons in writing for a determination that no change or a modification to operations is necessary.

If the court amends its operational plan or reverts to a prior phase, the court must notify OSCA of this circumstance and of any changes to its operational plan. If a court reverts

from Phase 3 to Phase 1, it must return to Phase 2 before returning to Phase 3. After a reversion, to return to:

- Phase 2, the Chief Justice or chief judge must ensure that the court satisfies all Phase 2 benchmark criteria and has an operational plan as required by this document. The court must notify OSCA of the return to Phase 2.
- Phase 3, the Chief Justice or chief judge must ensure the court satisfies all Phase 3 benchmark criteria~~, except for Benchmark a. of that criteria,~~ and has an operational plan as required by this document. The chief judge of a circuit court must also recertify to the Chief Justice that the circuit or a county within the circuit is ready to return on a specified future date to Phase 3. Before the return, the Chief Justice must approve the recertification.

Resource Items to Consider Having Available as Phase Transitions are Considered

The following is a non-exclusive list of items that courts may need as part of their operational plans. The COS recommends that local, state, federal, and grant funding opportunities be explored to address COVID-19-related equipment and supply needs. The list below is provided as a starting point for each court's consideration.

Hygiene, Cleaning, and Disinfecting

- Hand Sanitizer
- Dispensers for hand sanitizer (touchless preferred)
- Sanitizing or disinfecting wipes
- Dispensers for wipes (touchless preferred)
- Disposable masks
- Dispensers or storage containers for masks
- Gloves
- Face shields
- Goggles
- Thermometers (touchless)
- Appropriate cleaning supplies (soap, cleaning or disinfecting spray, etc.)
- Handwashing or hand sanitizing stations outside of the facility
- Tissues/paper towels (in addition for use to cover sneezes, can be used to open doors, etc.)
- Cleanable or disposable covers for commonly touched or used items, such as microphones

Facilities, Security, Queuing, Social Distancing

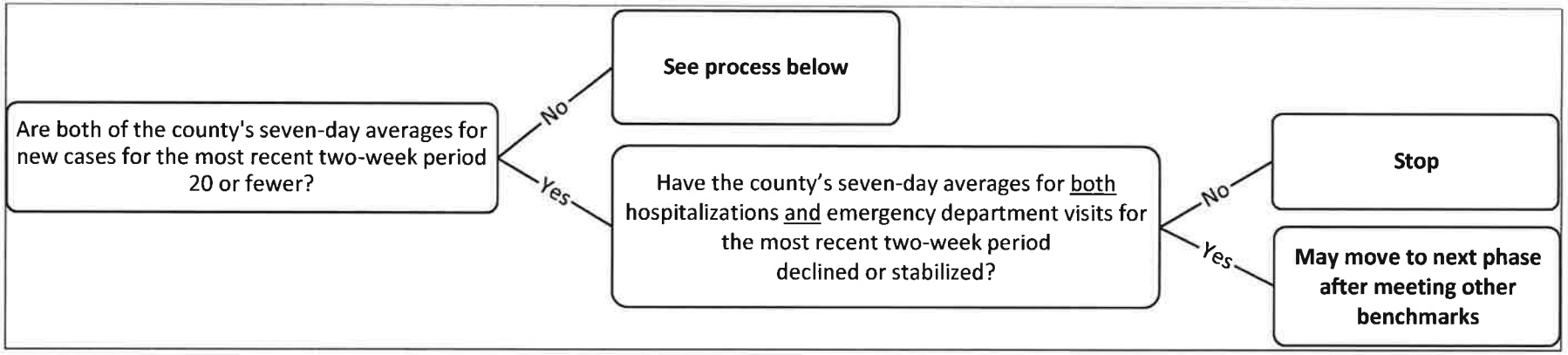
- Clip Boards
- Writing Utensils
- Barricades

- Stanchions
- Gaffer's or other type of tape to demark spacing
- Folding tables/chairs
- Radios or other communication devices
- Laptop/tablet for data collection
- Portable document scanners
- Large format monitors
- Medical grade or waterproof keyboards, mice and similar computer accessories (to allow for proper cleaning and disinfecting of shared accessories)
- Fingerprinting pads
- Portable podiums (to limit sharing of existing podium during a proceeding)
- Acrylic partitions or other barrier in spaces like information desks
- Wrist bands or other means for indicating a person has been screened (for example, to allow for them to leave for lunch and return without having to undergo expanded screening again)

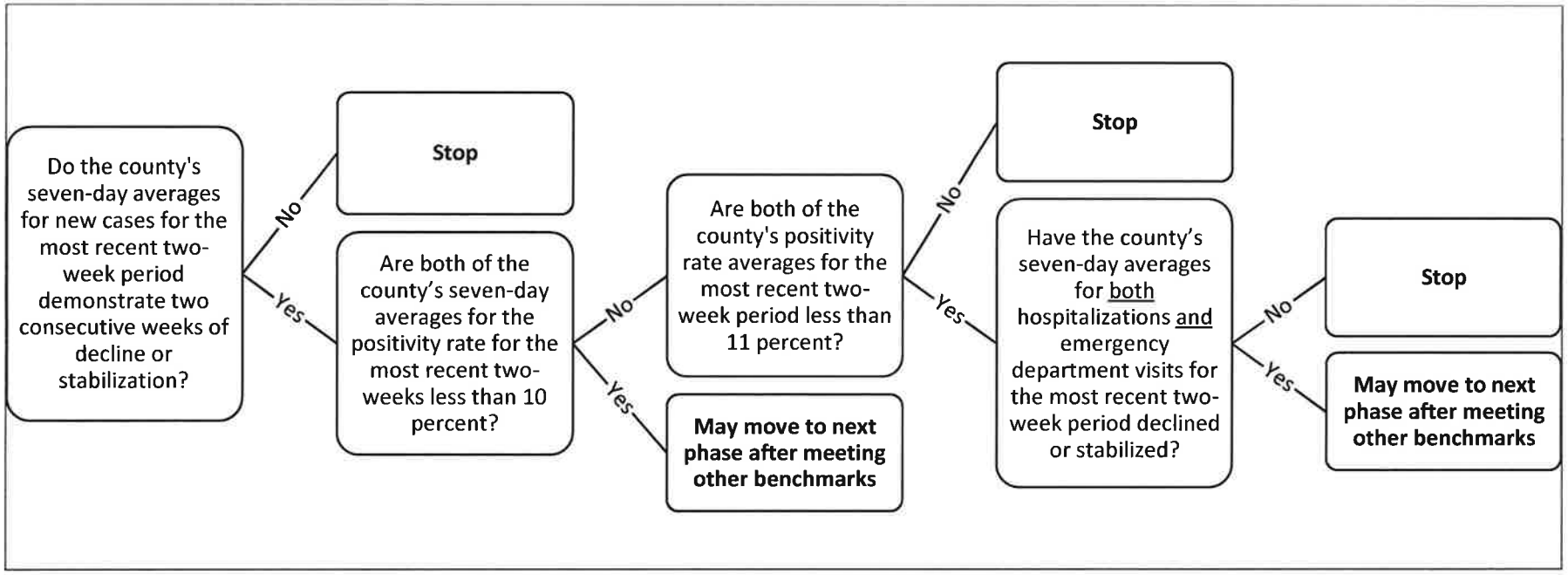
Signage

- Hygiene protocols (hand washing, hand sanitizer, etc.)
- Social distancing reminders
- Markings to notate distance
- Directional signage
- Instructions/reminders for new procedures
- Admittance/Health screening notice
- Requirement to wear mask

Appendix A: Benchmark 3 Transition to Next Phase Decision Matrix

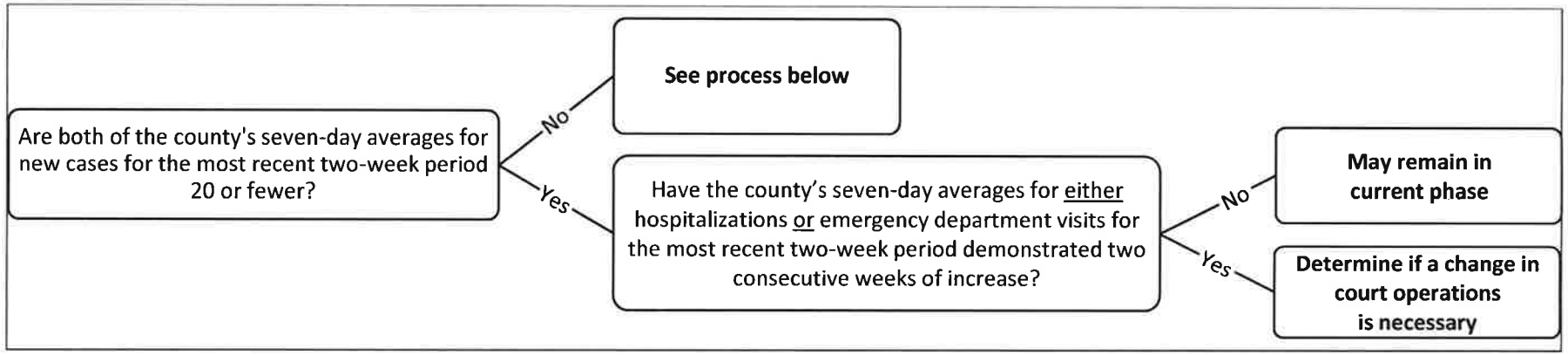


Condition a) to meet Benchmark 3 (as identified on pp. 4-5 of the report)

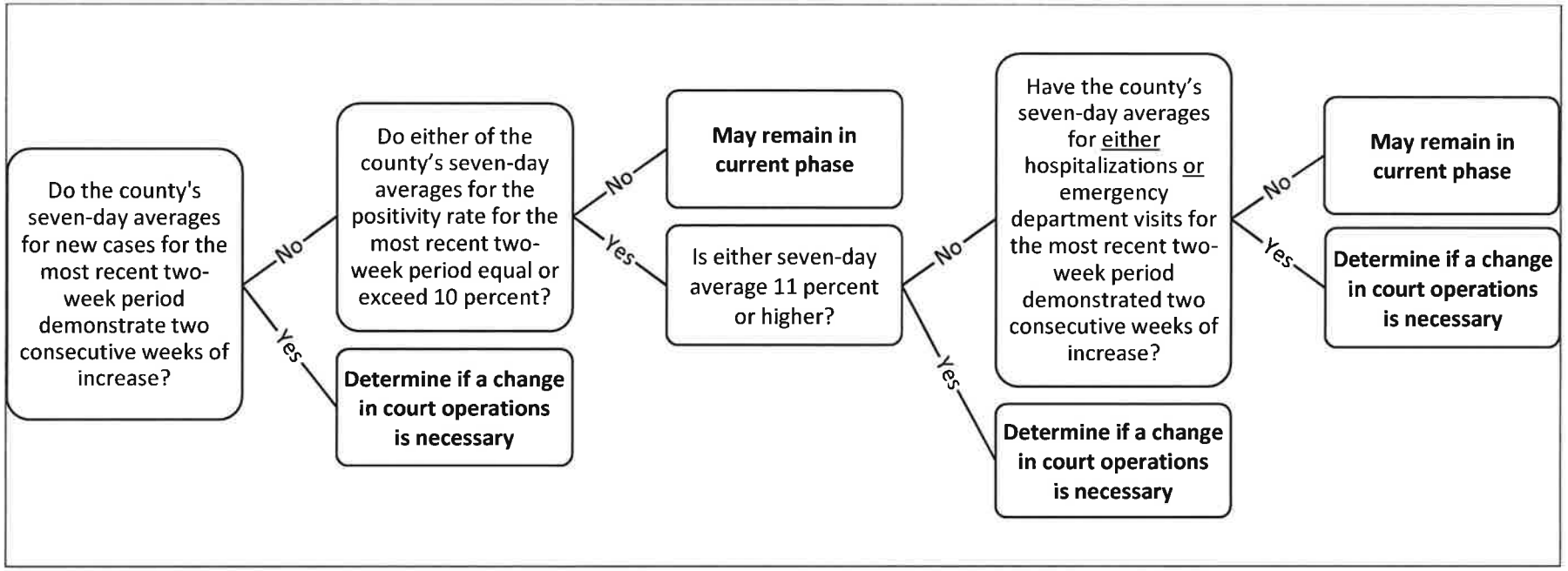


Condition b) to meet Benchmark 3 (as identified on pp. 4-5 of report)

Appendix B: Benchmark 3 Operational Plan Amendment/Phase Reversion Decision Matrix



Condition a) to determine if a change in court operations is necessary (as identified on p. 15-16 of the report)



Condition b) to determine if a change in court operations is necessary (as identified on p. 15-16 of the report)

J1

Below is the proposed plan as we discussed for the Brevard County Sheriff's Office to assume responsibility for the disinfecting and enhanced sanitizing at each of the three courthouses: Moore Justice Center, Melbourne Courthouse and the Titusville Courthouse. The BCSO work crews will continue to provide, and even exceed, the level of service currently being provided by the contracted vendor and at a monthly savings of ***$30,690.25***. (***This proposed plan does not include assuming the staffing of temperature screenings at each of the courthouses or providing tents for screening.)**

- Two BCSO Crew Supervisors and inmates would be assigned to the Moore Justice Center, with one Crew Supervisor and inmates each assigned to the Melbourne Courthouse and Titusville Courthouse.

- What is currently being done as "supplemental nighttime disinfecting" which includes the disinfecting of 29 courtrooms, the law library and inmate holding cells, to include wiping down of judges bench, Clerk area, attorney desks, podium, BCSO desk, as well as the Law Library fogging and inmate holding cell fogging, will now be completed in the early morning hours prior to court being in session or the law library opening to the public.

  - Each of the BCSO work crews will make sure the daily disinfecting of high touch surfaces is done twice daily 1x morning/1x afternoon – and includes wiping all stairwell handrails, elevator buttons, restroom doors and hallway door handles.
  - Includes daytime courtroom fogging of all 29 courtrooms between 11 am-1pm daily – Fogging of the entire courtroom (this does not include spraying of electronic/sensitive equipment). Our work crews will continue to follow the current courtroom fogging schedule that is currently being used. The Titusville and Melbourne fogging will continue to take place from 12pm-1pm daily. Moore Justice Center Daily Schedule: 2nd floor between 11:00 am and 11:40 am daily, 3rd floor between 11:40 am and 12:20 pm daily and the 4th floor between 12:20 pm and 1:00 pm daily

- The BCSO shall provide these disinfecting services; however, *the County shall be responsible for funding/providing the Sheriff with all the necessary equipment and disinfectant supplies to complete the critical services*. The Sheriff will be responsible for staffing, inmate supervision and scheduling of the sanitizing services.

- The Sheriff shall continue to provide disinfecting services at the County Jail to include the two Jail courtrooms as it has maintained since the inception of the pandemic.

Please let me know if you have any additional input or questions. Thanks!

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

SUMMARY

This operational audit of the City of Melbourne (City), the Melbourne Community Redevelopment Agency (Downtown CRA)[1] and the Olde Eau Gallie Riverfront Community Redevelopment Agency (Riverfront CRA) focused on selected processes and administrative activities. Our audit disclosed the following:

CITY OF MELBOURNE

Finding 1: The City did not always follow City policies when making donations to external organizations.

Finding 2: City records did not always demonstrate that the City appropriately monitored the use of City donations to external organizations.

Finding 3: The City did not periodically obtain and compare the fair market lease values of City-owned properties leased to or used by external organizations to the value of public services provided by the organizations using the property. Additionally, the City reimbursed an external organization leasing a City building for utility costs without City Council approval, contrary to City Council directives.

Finding 4: City records did not demonstrate that the acquisition of land for pollution remediation purposes was prudent and appropriate, that the City Council was provided the necessary information to make an informed decision, or that the acquisition was the most cost-effective or advantageous option for the City.

Finding 5: The City had not established effective land acquisition policies and procedures. Absent such, there is an increased risk that the City may acquire land that either cannot be used for City-intended purposes or requires significant remediation costs.

Finding 6: City records did not document that a systematic and rational methodology was used to allocate City costs to the City CRAs.

Downtown CRA AND Riverfront CRA

Finding 7: The Downtown CRA and the Riverfront CRA each lacked comprehensive policies and procedures governing all aspects of CRA operations.

Finding 8: For the 2018 calendar year, the published meeting notices for the Downtown CRA and Riverfront CRA meetings were included in the notice for City Council meetings. However, since the City

[1] City personnel refer to the Melbourne CRA as the Downtown CRA to distinguish it from the City's other two CRAs (i.e., the Olde Eau Gallie Riverfront CRA and Babcock Street CRA).

Council did not always convene as the governing body for the CRAs at the meetings, the notice did not sufficiently identify when CRA public meetings would be held.

Finding 9: The Riverfront CRA Plan did not comply with the provisions in State law requiring identification of up-to-date, publicly funded capital projects to be undertaken and detailed statements of the projected costs of redevelopment.

Finding 10: Contrary to State law, the Downtown CRA and Riverfront CRA adopted budgets for the 2017-18 and 2018-19 fiscal years did not account for balances brought forward from prior fiscal years. In addition, CRA budget transparency could be improved.

Finding 11: Downtown CRA and Riverfront CRA records did not demonstrate that moneys remaining in the CRA trust funds on the last day of the 2016-17 and 2017-18 fiscal years was disposed of in accordance with State law.

Finding 12: For the 2016-17 and 2017-18 fiscal years, the City transferred Downtown CRA and Riverfront CRA resources to City capital projects funds before the City expended amounts for capital projects. As a result, the CRA trust funds did not report any expenditures, reducing transparency of CRA operations to the public and possibly affecting the determination of whether a CRA met the statutory threshold for a separate financial audit.

Finding 13: Downtown CRA procedures were not sufficient to ensure that project developers provided letters of credit, performance bonds, or other forms of security necessary to protect CRA interests.

Finding 14: The Downtown CRA and Riverfront CRA need to enhance policies and procedures to ensure that funds donated to external organizations are used for their intended public purposes.

BACKGROUND

CITY OF MELBOURNE

The City of Melbourne (City) was formed in 1969 as a result of the unification of the former cities of Melbourne and Eau Gallie.[2] The City is located in Brevard County and has an estimated population of 83,349.[3] The City is governed by the City Council composed of six elected Council members and an elected Mayor. The City Council is responsible for enacting ordinances, resolutions, and policies governing the City, as well as appointing the City Manager. The City Manager serves as the Chief Administrative and Executive Officer and is responsible for the administration of all City affairs.

[2] Chapter 69-879, Laws of Florida.

[3] *Florida Population Estimates for Counties and Municipalities, April 2019*; Florida Office of Economic and Demographic Research.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

The City provides a full range of services including general government administration; police and fire protection, public works, water and sewer service; a stormwater utility; recreational activities, including two golf courses; and an airport.

DOWNTOWN CRA AND RIVERFRONT CRA

State law[4] authorizes the creation of community redevelopment agencies (CRAs) by counties and municipalities for the purpose of redeveloping slums and blighted areas that are injurious to the public health, safety, morals, and welfare of residents and for which there is a shortage of housing affordable to residents of low or moderate income, including the elderly. CRA funding is accomplished through tax increment financing provided by applicable taxing authorities and expenditures from such funding must be in accordance with an approved plan. In addition, CRA revenues and expenditures must be accounted for in a separate trust fund.

The Melbourne CRA, referred to as the Downtown CRA,[5] was created as a dependent special district of the City of Melbourne on August 24, 1982, under the authority granted by State law[6] and City ordinances.[7] The Downtown CRA's boundaries include approximately 322 acres and its activities are accounted for by the City within the Downtown Redevelopment Fund.

The Olde Eau Gallie Riverfront CRA (Riverfront CRA) was created as a dependent special district of the City of Melbourne on May 22, 2001, under the authority granted by State law,[8] County resolutions,[9] and City ordinances.[10] The Riverfront CRA's boundaries include approximately 297 acres and its activities are accounted for by the City within the Eau Gallie Redevelopment Fund.

The governing bodies of the Downtown CRA and Riverfront CRA are composed of the Melbourne City Council, and the City manages the CRAs' operations. In addition, each CRA has a CRA Advisory Committee, which is tasked with reviewing projects and programs and making recommendations to their respective CRA Boards. The CRA Advisory Committees are composed of seven members and two alternate members appointed by the City Council and are either City residents or people who conduct business or own property within the CRA.

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[4] Chapter 163, Part III, Florida Statutes, also known as the Community Redevelopment Act of 1969.

[5] City personnel refer to the Melbourne CRA as the Downtown CRA to distinguish it from the City's other two CRAs (i.e., the Olde Eau Gallie Riverfront CRA and Babcock Street CRA).

[6] Chapter 163, Part III, Florida Statutes, also known as the Community Redevelopment Act of 1969.

[7] City of Melbourne Ordinance No. 1982-38.

[8] Chapter 163, Part III, Florida Statutes, also known as the Community Redevelopment Act of 1969.

[9] Brevard County Resolution No. 2000-249.

[10] City of Melbourne Ordinance No. 2001-23.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
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FINDINGS AND RECOMMENDATIONS

CITY OF MELBOURNE

Finding 1: Donation Policies

The Attorney General has opined[11] that a local government public purpose may be carried out through donations to external organizations provided the local governmental entity determines that an entity purpose is served by such donations and proper safeguards are implemented to assure the accomplishment of that purpose. To exercise controls over City donations, the City adopted policies[12] for the Grants-in-Aid Program (GIA Program) that limit donations to $10,000 per organization and require that:

- Funds donated to external organizations be used to benefit City residents.
- External organizations seeking donations complete and submit applications to the City.
- A City review committee rank each applicant based on preselected criteria, determine the amount to recommend for donation to each organization, and prepare a formal recommendation and present it to the City Council for approval.
- Organizations approved by the City Council to receive donations sign a contract[13] with the City prior to the organizations' receipt of the donated funds; the contracts establish applicable activities or services to be performed by the external organization as well as reporting, record retention, and audit requirements.

While the City adopted policies for exercising controls over donations, the City Council occasionally made donations apart from the GIA Program. During the period October 2017 through March 2019, the City made 21 donations totaling $167,973 to 16 different external organizations, including $100,000 to 13 organizations following the GIA Program requirements and $67,973 to the other 3 organizations. However, donations to the 3 organizations were made without a City review committee ranking applicants, determining a recommended donation amount, and preparing a formal donation recommendation to the City Council. In addition, for 1 of the 3 organizations, City donations exceeded

[11] Attorney General Opinion No. 2002-18.

[12] City of Melbourne Council Policy No. 10.

[13] The standard grant funding agreement (contract) requires the recipient of the donated funds to provide the City an annual program synopsis identifying outcome data that reflects evidence-based practices, including activities performed and number of persons assisted. In addition, the contract provides that the expenditure of the donated funds "may require periodic auditing to ensure that such funds will be used only for a municipal purpose." Although not specified in the contract, in this context, "auditing" could include examinations by designated City personnel of the external organization's records.

$10,000[14] and, for another organization, the City did not establish a contract when donating $7,000 to partially offset the costs to organize a parade.

Although we requested, City personnel did not provide an explanation as to why donations to the 3 organizations were not subject to the GIA Program requirements. Compliance with GIA Program requirements, or subjecting donations to other procedures established for donations apart from the GIA Program, would help ensure and demonstrate that City donations are distributed fairly to interested external organizations and used by such organizations only for intended purposes.

Recommendation: To ensure that donations to external organizations are distributed fairly and used for intended purposes, the City should comply with the requirements of the GIA Program or, alternatively, establish effective procedures for donations made apart from that Program.

Finding 2: Donation Monitoring

As noted in Finding 1, the City made 21 donations totaling $167,973 to 16 different external organizations during the period October 2017 through March 2019. Generally, standard contracts executed by the City with external organizations require the organizations to submit to the City quarterly and annual progress reports identifying the activities performed using donated funds and the number of persons assisted. The contracts also require the organizations to maintain adequate supporting documentation to account for the expenditure of City-donated funds, including financial accounts, client demographic records, descriptions of activities or services, and other related documents and records. The standard contracts further provide the City the right to examine such documentation at any time during the term of the contract and for a period of 5 years after the contract's expiration. Periodic examinations of such documentation by City personnel are essential to effectively monitor City-donated funds to ensure that the funds are used for the intended public purposes.

To determine whether the City effectively monitored the external organizations that received City donations during the period October 2017 through September 2018, we examined City records and activities for selected donations totaling $57,500 made pursuant to the GIA Program to 10 organizations, and selected donations totaling $64,454 made to 3 other organizations.[15] For 11 of the 13 organizations,[16] the contracts required the organizations to submit quarterly or annual progress reports, as applicable, to the City by October 2018 and authorized the City to examine organization documents and records supporting the contracted activities. Our examination disclosed that, for

[14] The organization received $50,000 to assist homeless City residents pursuant to a City-approved contract.

[15] The donations to the 3 other organizations include amounts of $50,000 and $7,000, as discussed in Finding 1, and $7,454 of the $10,973 donated to the Melbourne Police Athletic League.

[16] For one organization, the terms of the City donation were contained and documented in a lease agreement executed by the City with the organization rather than a contract. For another organization, a contract was not used.

5 organizations, the City received organization records documenting the use of the City-donated funds or the City already had records of in-kind City services rendered to the organizations, such as City utilities or City facility use. However, as of July 2020, or 21 months after the October 2018 required date, City personnel had not received documents and records supporting and substantiating the use of City-donated funds for 8 organizations.

In response to our inquiry, City personnel indicated that the required annual and quarterly reports constitute sufficient documentation to evidence the expenditure of the donated funds for their intended purposes without City examination of organization documents and records supporting the contracted activities. In addition, City personnel indicated that they read the submitted reports for appropriateness to determine if the external organization operations are consistent with the request for funding and that the funds are used to support the organization operations. City personnel also indicated that there were no discrepancies identified in the review of the annual and quarterly reports and; therefore, it was not necessary to further examine the organizations' expenditures and uses of City-donated funds. Notwithstanding these responses, annual and quarterly reports provided to the City by external organizations only included a general overview of the organizations' activities during the 2017-18 fiscal year and, as such, lacked sufficient detail to demonstrate that the donations were expended in accordance with the contracts.

For example, one external organization received a $5,000 City donation during the 2017-18 fiscal year and provided statistics on the number of people served by a particular branch of the organization and quantitative indicators of success, such as the number of branch members who achieved a certain grade point average in school, but did not include records specifying how the City-donated funds were utilized. Absent periodic monitoring by City personnel of external organization documentation, as allowed by the contracts, there is an increased risk that donated funds may not be used for the intended public purposes.

In addition, we examined City monitoring efforts related to two City donations totaling $15,000 made to EO1, an external organization, in September 2015 and January 2016 for roof repairs on a City-owned building leased to the EO1. Our examination disclosed deficiencies in the City monitoring of these donations as:

- The terms of the lease agreement provided that the EO1 was responsible for repairs to the City-owned building. Notwithstanding that provision, in February 2015, the City Council approved

a motion presented by a City Council member,[17] who was also the President of the EO1 at the time, to donate $15,000 to the EO1 based on the understanding that an individual pledged $15,000 for roof repairs contingent upon the City matching that amount.

In March 2015, the then Director of Management Services[18] directed the then Facilities Operations Manager[19] to assess the overall condition of the City-owned building, inspect the roof, consult with a roofing contractor, and obtain an estimate for roof repairs. The Facilities Operations Manager estimated the cost of the roof repair to be $25,000. Based on e-mail communications between the City Clerk, City Attorney, and Director of Management Services, during the months of February through April 2015, the City initially intended to manage and oversee the roof repairs. Specifically, the e-mail communications indicated that the City Clerk and Director of Management Services intended for a City contract to be executed with the EO1 regarding the use of the donated funds, and that the City would contract with a roofing contractor,[20] monitor the project, inspect the roof repairs, and, if satisfactory, approve the project completion.

However, the EO1, rather than the City, hired the roofing contractor and scheduled work to begin in April 2015, 1 week after the Director of Management Services reported on the overall condition of the City-owned building to the then City Manager[21] and discussed strategies for City personnel managing the repairs. According to City personnel, the City went along with the EO1 hiring the roofing contractor and assuming project management duties since the EO1's lease agreement provided that the EO1 was responsible for repairs. Because the EO1 contracted with the roofing contractor directly, the City's competitive procurement requirements were not applicable and the City's ability to oversee and control the roofing repair project was diminished, possibly contributing to the other deficiencies and discrepancies we noted.

- In August 2015 and January 2016, EO1 personnel submitted two unpaid roofing contractor invoices totaling $30,600 to the City (a May 26, 2015, invoice for $15,800 and a December 9, 2015, invoice for $14,800). The City paid the EO1 $7,900 in September 2015 (the City's 50 percent share of the $15,800 invoice) and $7,100 in January 2016 (the remaining portion of the City Council-approved $15,000 donation). Our review of City records and discussions with City personnel disclosed that although City personnel inspected the roof repairs on May 7, 2015, (19 days prior to the invoice date) City records did not demonstrate whether the inspection

[17] This individual served on the City Council from November 2012 to November 2018. In August 2017, the City Council member was notified of a complaint filed with the Commission on Ethics (COE) for several alleged violations of State law, including Section 112.313(3), Florida Statutes, by serving concurrently as a City Council member and EO1 President when the City donation for the roof repair was approved. The COE determined that the complaint was legally sufficient and ordered a preliminary investigation. Based on the investigation, in April 2018 the Advocate to the COE recommended that the COE find probable cause to believe that the then City Council member violated Sections 112.313(3) and 112.313(7)(a), Florida Statutes. In June 2018, the COE voted to dismiss the complaint because the COE decided that the public interest would not be served by further proceedings due to: (1) the close, longstanding relationship between the City and the EO1; (2) steps the City Council member took toward remedying any conflict due to her public and private positions and the relationship between the City and the EO1; and (3) the City Council member's reliance on the advice of the then City Counsel.

[18] This individual separated from City employment as Director of Management Services on May 31, 2018.

[19] This individual separated from City employment as Facilities Operations Manager on March 7, 2016.

[20] The City's Purchasing Manual requires formal bid solicitations for contracts with estimated total expenditures exceeding $25,000; consequently, the City would have been required to solicit bids had it directly procured the roofing contractor services.

[21] This individual separated from City employment as City Manager on November 30, 2018.

included the work billed on the May 26, 2015, invoice, and City records did not evidence that City personnel inspected the work billed on the December 9, 2015, invoice. In response to our inquiries, City personnel confirmed that they did not verify whether inspections had taken place prior to paying the EO1. Inspecting and documenting the status of work performed prior to payment is essential to demonstrate that the work was of acceptable quality and satisfactorily completed.

- Our review of canceled checks obtained from the EO1 disclosed that the EO1 paid the roofing contractor subsequent to each of the City's donation payments. Specifically, the EO1 paid the roofing contractor $15,800 in September 2015 and $14,000 in March 2016. A Brevard County Sheriff's Office (Sheriff's Office) investigation found that the $14,000 paid to the roofing contractor in March 2016 differed from the $14,800 amount on the roofing contractor's December 2015 invoice as a result of the roofing contractor leaving a business card and note on the door of the EO1 requesting payment of $14,000. Without a written agreement documenting both parties' understanding as to payment terms, discrepancies in payment amounts occurred.

- In a letter dated March 24, 2017, the then Executive Director[22] of the EO1 wrote to the City that it had come to his attention that the roof repair costs were being questioned; however, he did not indicate who was questioning the costs. On March 27, 2017, a City Council member, who is also a Florida-licensed roofing contractor, inspected the roof repairs and identified substandard and incomplete repairs (i.e., peeling paint, broken tiles, and flashing[23] not installed at all required locations) and prepared an inspection report dated May 9, 2017.[24] The City Council member brought the issues to the attention of the City Manager and City Attorney, who referred the issues to the City Code Compliance Division. According to the City Council member's inspection report, the roofing contractor had not applied for a building permit before the work was done or prior to being paid. Subsequent to the inspection, but before the report was issued, the roofing contractor filed an application for a permit listing the value of the repairs at $14,800, or $15,800 less than the $30,600 the roofing contractor invoiced and $15,000 less than the $29,800 actually paid by the EO1. According to City Code Compliance personnel, although they verbally asked the roofing contractor why he listed the value of repairs on his application as $14,800 but invoiced the EO1 $30,600, the roofing contractor did not respond.

  In May 2017, an anonymous individual contacted the Sheriff's Office to report that potential fraud may have occurred involving the roof repair. The Sheriff's Office performed an investigation and, in March 2018, charged the EO1 Executive Director at the time of the roof repairs with several crimes related to fraud, including intercepting a $7,000 payment from the roofing contractor that was intended for the EO1.[25] The roofing contractor was not charged with a crime and the City and roofing contractor signed a settlement agreement in April 2018 by which the City agreed not to pursue civil remedies against the roofing contractor in exchange for return of $7,000 to the City,

[22] This individual served as EO1 Executive Director subsequent to the individual who served as EO1 Executive Director at the time of the roof repairs.

[23] Roof flashing is a thin material, usually galvanized steel, that professional roofers use to direct water away from critical areas of the roof, for example, where the roof plane meets a vertical surface like a wall, or around vents, chimneys, or skylights.

[24] *EO1 Roof Issue Summary Report dated May 9, 2017.*

[25] As of December 2020, the case was not yet resolved.

representing a portion of the $15,000 City donation for the roof repairs. Pursuant to the agreement, the roofing contractor paid the $7,000 to the City on April 9, 2018.

Subsequent to our inquiries, the City established a policy[26] in October 2019 requiring any repairs or maintenance to City property leased by an external organization and funded by City donations to be coordinated, procured, and managed by the City Department of Management Services' Facilities Management Division.[27] The policy also requires donation-funded work on City property to be overseen by a City-employed project manager, who shall coordinate with the Facilities Management Division to ensure that all City policies and procedures and building codes are followed.

Recommendation: To ensure that City-donated funds to external organizations are used for the intended public purposes, the City should:

- **Execute agreements with external organizations requiring those organizations to submit, as part of their annual report, documentation showing how the donated funds were expended to accomplish the intended public purpose of the donations.**
- **Periodically examine records maintained by the external organizations to verify that reports and documentation provided to the City are supported by organization records.**
- **Adhere to the October 2019 policy that requires all repair, maintenance, and improvement projects for City property leased to external organizations and funded by City donations to be coordinated, procured, and managed by the City Facilities Management Division in accordance with applicable City policies and procedures and building codes.**

Finding 3: City-Owned Properties

Periodically determining the fair market lease value of City-owned properties leased to external organizations for nominal amounts, or awarded through operation and use agreements with no lease payments, allows the City Council and members of the public to compare that value to the value of the public services provided by the organizations using that property. Such information is essential to the City Council in determining the best use of City-owned property.

As of March 2019, the City leased City-owned properties to 10 external organizations for nominal amounts, ranging from $1 to $500 annually, as provided by the associated lease agreements. The City also provided use of City-owned property to another external organization without payment through an operation and use agreement. The City established the free or nominal lease rates for the 11 external organizations in consideration of the public purposes served, and the City Council approved the leases and operation and use agreement. The organizations leasing and using the properties included, for

[26] City of Melbourne Administrative Policies and Procedures Manual, *Repairs, Maintenance or Improvements to City Property by Outside Parties.*

[27] City of Melbourne Administrative Policies and Procedures Manual, *Purchasing Manual.*

example, the Girl Scouts of Citrus Council, Disabled American Veterans, and the Melbourne Municipal Band. In these instances, the City largely donated the fair market lease value of the properties to the organizations.

Although we requested, City records were not provided, as of October 2019, to demonstrate periodic determinations of the fair market lease value of the properties leased to external organizations. Upon further inquiry, City personnel acknowledged that policies and procedures had not been established to require the documented determinations and that the City Council had approved the leases without such determinations. Consequently, the City Council is limited in its ability to make informed decisions regarding whether the best use of City-owned property is accomplished through the leases or operation and use agreements.

Recommendation: To assist the City Council in deciding the best use of City-owned property, the City should periodically determine the fair market lease values of City-owned properties leased to or used by external organizations to determine whether those values are comparable to the value of public services provided by the organizations using the property.

Finding 4: Land Acquisition Options

The City is responsible for establishing adequate controls relating to land acquisitions. City ordinances[28] provide that the City can acquire real property pursuant to terms and conditions deemed most advantageous to the City; however, as of November 2020, effective policies and procedures had not been established to ensure and document appropriate support for acquisition considerations, such as legal guidance, consultant reports, land appraisals, and negotiation efforts, and selection of the most cost-effective or advantageous option.

In January 2013, the Florida Department of Environmental Protection issued the Basin Management Action Plan (BMAP) for the Indian River Lagoon Basin - North Indian River Lagoon (Lagoon). Over 15 years, the BMAP required the City to reduce the amount of nitrogen flowing into the Lagoon per year by 44,923 pounds, with reductions to be made in three 5-year BMAP periods.[29] To help achieve the mandated reduction, in April 2016 the City acquired the Sherwood Park Pond (Sherwood) property for $315,000 to construct a stormwater retention pond for the purpose of removing contaminants from stormwater before discharge into the Lagoon. Our review of City records and discussions with City personnel disclosed that City records did not demonstrate that the process used to acquire the Sherwood property was prudent and appropriate, that the City Council was provided complete and accurate

[28] Section 2-633, City of Melbourne Code of Ordinances.

[29] The full nitrogen reductions of 44,923 pounds per year may not ultimately be required because the health of the Lagoon is periodically measured based on compliance with the seagrass depth limit targets and once these targets are achieved, additional nutrient reductions are not required.

information necessary to make an informed decision regarding the acquisition, or that the acquisition was the most cost-effective or advantageous option for the City.

In early 2013, the City first considered acquiring the Sherwood property, which was jointly owned by an individual and a limited liability company (LLC), of which the Mayor's husband was one of the three LLC members. Consequently, on June 25, 2013, the then City Engineer[30] consulted with the then City Attorney[31] regarding any conflict-of-interest concerns associated with the City's potential property acquisition. The City Attorney advised on June 26, 2013, that there would potentially be a conflict of interest based on State law[32] and, if the City Council were to vote on the acquisition, State law[33] provides that the Mayor would need to declare a conflict of interest and abstain from voting. The City Attorney also cited a Commission on Ethics (COE) opinion,[34] which refers to an exemption to State law regarding conflicts of interest for sole source purchases and recommended contacting the COE for clarification before contracting to acquire the Sherwood property. However, the City did not contact the COE for clarification and, in response to our inquiries, City personnel indicated that they did not know why the City did not act on the City Attorney's recommendation to request COE clarification.

Prior to receiving the BMAP for the Lagoon, the City hired a consultant to assist in the improvement of stormwater management within the City. The consultant reviewed all vacant properties along drainage ways to identify potential treatment sites and discussed the sites with a City engineering supervisor and the then City Engineer during Stormwater Quality Master Plan (Master Plan) development meetings. In November 2013, the consultant completed the Master Plan, which included options for improving stormwater management within or proximate to the City. The Master Plan also included a project priority matrix that ranked 46 potential projects, with the most effective and economically efficient projects receiving the highest rankings.

According to City personnel, to more quickly reach the goal of reducing the amount of nitrogen flow by 44,923 pounds per year, and to best use the City's stormwater utility resources, the City Engineer and

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[30] This individual transitioned from the City Engineer position to the Deputy City Manager position on February 25, 2019.

[31] This individual separated from City employment as City Attorney on November 30, 2014.

[32] Section 112.313(3), Florida Statutes, provides that no employee of an agency acting in his or her official capacity as a public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer's spouse is an officer, partner, director, or proprietor or in which such officer's spouse has a material interest.

[33] Section 112.3143(3)(a), Florida Statutes, provides that no county, municipal, or other local public officer shall vote in an official capacity upon any measure which he or she knows would inure to the special private gain or loss of a relative of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

[34] Commission on Ethics Opinion No. 06-28 refers to the "sole source" exemption as provided in Section 112.313(12)(e), Florida Statutes.

engineering supervisor decided to first focus on projects that could provide total nitrogen treatment efficiency (cost per pound)[35] less than $1,750. According to the Master Plan, only two properties, the Harbor City Boulevard Treatment Train (Harbor City) and the Sherwood property, ranked 4th and 14th in efficiency, respectively, provided total nitrogen removal of at least 1,000 pounds per year with a total nitrogen treatment efficiency of less than $1,750.

As the Harbor City property was ranked higher, we inquired of City personnel about any consideration given to acquiring that property. City personnel indicated there had been communications between City personnel and the property owner's representative, but the City had been unsuccessful in attempts to acquire the property. City records indicated that the City obtained appraisals valuing the property at $690,000 and $845,000 in March 2013 and March 2014, respectively, and the property owner had obtained an appraisal value of $1 million in June 2013. City records also evidenced that the City expressed interest in acquiring the property; however, City records provided to us did not evidence price negotiations, City price offers on the property, or counter offers from the property owner.

In September 2014, the City Director of Management Services informed the Harbor City property owner's representative that the City had no further interest in the property at that time but that the City would like to "keep the door open for further conversations." Seventeen months later, on February 15, 2016, the property owner sold the property to another party. Had the City chosen to pursue the Harbor City property and acquired it for $1 million, the estimated total nitrogen treatment efficiency would have been $1,393,[36] which would have been $83 less (i.e., more efficient) than the $1,476[37] estimated total nitrogen treatment efficiency for the Sherwood property project based on the $315,000 acquisition cost. Further, the City may have been able to achieve an even lower total nitrogen removal cost for the Harbor City property had it attempted to negotiate a lower price.

As previously mentioned, the City acquired the Sherwood property in April 2016. According to a handwritten note[38] attached to a Brevard County Property Appraiser "Property Details" report dated October 2014 from a City engineering supervisor to the then City Engineer, one of the Sherwood property owners "stopped by and said he thought the City may be interested in purchasing his property for

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[35] According to the Master Plan, "Nutrient treatment efficiency (cost per pound) is calculated by dividing the total project implementation costs by the annual nutrient treatment mass provided by the project. Lower cost per pound of nutrient treatment is more desirable (High Efficiency)."

[36] Using an adjusted estimated total project cost of $2,065,600, representing the estimated total project cost of $1,065,600 plus the potential purchase price of $1,000,000, divided by an annual total nitrogen removal mass of 1,483 pounds per year the total nitrogen treatment efficiency (cost per pound) would be $1,393.

[37] Using an adjusted estimated total project cost of $2,031,000, representing the estimated total project cost of $1,716,000 plus the purchase price of $315,000, divided by an annual total nitrogen removal mass of 1,376 pounds, the total nitrogen treatment efficiency (cost per pound) would be $1,476.

[38] City personnel provided us the handwritten note in July 2019.

stormwater" and that "he'd like to sell it to us (for the right price)." Subsequently, the City obtained three appraisals of the Sherwood property, with the two highest appraisal values being $270,000 and $288,000.

On August 14, 2015, the City Attorney[39] advised that the City could acquire the Sherwood property provided that a determination was made by City personnel that the property was uniquely situated to address City stormwater needs (i.e., the property would qualify for a sole source exemption provided in State law).[40] To demonstrate that the property was uniquely situated to address City stormwater needs, on August 27, 2015, a City engineering supervisor prepared a memorandum titled, "*Sole Source Justification for Sherwood Park Water Quality Project, Project No. 20113*," and provided it to the City Engineer. According to the memorandum, the Sherwood property was considered a sole source as it was the only parcel of land located in the "drainage basin"[41] that could provide total nitrogen removal of over 1,000 pounds per year. However, as the Master Plan identified multiple properties in drainage basins that could be used to help satisfy the City's pollutant reduction requirements, it is not apparent why City personnel decided to utilize a 1,000 pound per year criterion, limit the City's land acquisition options to a specific basin, and conclude that the City could acquire the Sherwood property based on the sole source exemption. Although we requested, City personnel did not provide an explanation as to why the land acquisition option was limited to the specific basin.

On September 23, 2015, the City submitted an acquisition offer of $288,000 for the Sherwood property, based on the highest appraisal obtained, to which the property owners submitted a counteroffer of $335,000. On October 26, 2015, the City submitted a counteroffer of $315,000 and the property owners accepted.

In response to our inquiry, City personnel indicated that it was their recollection, but there were no records to support, that the property owners obtained an appraisal on the property indicating a value "in the mid-$300,000 range" and showed a copy of the appraisal to someone in the City Engineering Department. However, the property owners were not willing to provide City personnel a copy of the appraisal. Given the importance of this appraisal in assessing an appropriate price to pay for the property, it is not apparent why the property owners would not provide a copy of the appraisal or why City personnel did not document efforts to obtain a copy. Treating this land acquisition as a sole source purchase may have placed the City in a weaker bargaining position and contributed to the City's inability to obtain a documented appraisal from the property owners and, ultimately, paying an acquisition price that was $27,000 more than the highest documented appraised value.

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[39] This individual began employment as City Attorney on December 11, 2014.

[40] Section 112.313(12)(e), Florida Statutes.

[41] According to City personnel, the term "drainage basin" as used in the memorandum referred to the area that drains to the open conveyance system, to which the Sherwood property drains, and is connected to the Lagoon.

The then City Manager placed the Sherwood property acquisition as an action item on the January 26, 2016, Council meeting agenda. A memorandum from a City engineering supervisor through the City Engineer titled *Purchase of Property for the Sherwood Park Water Quality Project, Project No. 20113* (purchase memorandum) was presented to the City Council as part of the meeting agenda. We noted:

- Although the purchase memorandum indicated that "the location of the property makes the property unique in meeting the City's stormwater quality treatment needs," the City Council was not provided the aforementioned memorandum describing the basis for concluding that the Sherwood property was a sole source purchase, and City personnel's decision to limit the land acquisition option to a specific basin was not otherwise communicated to the City Council.
- An audio recording of the January 26, 2016, Council meeting disclosed:
  - The City Engineer indicated that there were only "a few sites" that could provide the benefit of removing 1,000 pounds of nitrogen per year; however, information from the entire Master Plan was not presented to the City Council for consideration and the City Council was not otherwise informed that the consultant identified other properties that could have been purchased to help achieve a reduced amount of nitrogen flow. According to City personnel, it had not been past practice to present stormwater, water distribution, water production, wastewater collection, water reclamation facility, and reclaimed water distribution plans to the City Council.
  - A City Council member asked the City Engineer why City personnel proposed paying $27,000 more than the highest appraised value. In response, the City Engineer indicated that the City had its appraised value, the property owners had their appraised value, and the City negotiated from that point. However, the City Council was not advised that the City did not have a documented appraisal from the property owners or that the owners declined to provide the City a copy.
  - A City Council member asked the City Engineer if any other areas or locations were considered. In response, the City Engineer referred to the City's previous interest in acquiring the Harbor City property, indicating that property would have provided close to the amount of total nitrogen removal offered by the Sherwood property. The City Engineer further indicated that City personnel were unable to come to an agreement with the Harbor City property owner and that the owner wanted over $1 million. However, as previously noted, City records did not evidence purchase negotiations for the Harbor City property, which offered potentially more pounds of total nitrogen removal per year at a lower per pound removal costs than provided by the Sherwood property.

Relying upon the purchase memorandum and the City Engineer's statements, the City Council, with the Mayor abstaining as provided by State law,[42] approved acquiring the Sherwood property for $315,000.

Because of the City Engineer's statements and because other properties identified in the consultant study were not provided to the City Council for consideration, the City Council did not have complete and

[42] Section 112.3143(3)(a), Florida Statutes.

accurate information necessary to make an informed decision regarding the Sherwood property acquisition. As such, the City may not have acquired the property offering the most effective and efficient pollution removal option at the most economical cost to the City, contrary to City ordinances, which require the City to acquire real property pursuant to terms and conditions deemed most advantageous to the City.

Recommendation: The City should establish land acquisition policies and procedures that:

- **Require the City Council to solicit guidance, before and during the land acquisitions, from the City Attorney and document consideration of and necessary action based on that guidance.**
- **Ensure that the City Council is provided complete and accurate information, including relevant consultant reports, prior to land acquisitions.**
- **Require City personnel to obtain all significant information, including seller-obtained land appraisals, and document all land acquisition negotiation efforts.**

Finding 5: Land Acquisition Contracts

Effective land acquisition controls include policies and procedures that require, before taking title to real property, the conduct of due diligence to determine the existence of any potential air, water, or soil contamination. Among other things, such policies and procedures should require:

- Appropriate inquiries into the previous ownership and use of the land consistent with good commercial or customary practice, including contact with the Florida Department of Environmental Protection (DEP), or conduct of a Phase 1 Environmental Site Assessment (ESA)[43] to determine the existence of any potential contamination that may exist on or adjacent to the land.
- If there is any evidence of a discharge of pollutants or hazardous substances on, or adjacent to, land being considered for acquisition, the conduct of further investigation using a Phase II ESA.[44]
- City management and those charged with governance be informed about any contamination concerns identified through the inquiries or ESAs.
- Contracts for the acquisition of land establish the seller and buyer's responsibilities for remediating any air, water, or soil contaminations and not be amended or waived without City Council approval.

[43] The objective of a Phase 1 ESA is to identify conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to the subject property through a review of the site history and site reconnaissance. In addition, a Phase 1 ESA includes examination of United States Environmental Protection Agency and Florida Department of Environmental Protection records and inquiry of the property owner regarding knowledge of any pollutants.

[44] A Phase II ESA involves near-surface soil and groundwater testing for indicators of actual contamination resulting from the potential sources of contamination identified in the Phase I ESA.

As of November 2020, the City had not established effective land acquisition policies and procedures. As discussed in Finding 4, the City acquired the Sherwood property in April 2016 for $315,000 to build a stormwater retention pond. The land acquisition contract allowed the City 75 days (feasibility period) from the January 26, 2016, effective date of the contract,[45] to verify the soil conditions, existence of adverse environmental conditions or hazardous substances on or under the property, and the suitability of the property for use for stormwater retention purposes. The City contracted with an environmental firm to perform a Phase I ESA to determine potential sources of contamination to the land and received the results on March 24, 2016. The firm's Phase I ESA report indicated that there was potential contamination in the property's soil and groundwater due to past property uses and a railroad track along one of the property borders. The environmental firm recommended that a Phase II ESA be performed to explore the extent of the potential adverse environmental conditions.

In an e-mail dated March 29, 2016, the City Attorney referenced verbal conversations with the then City Engineer and notified the Sherwood property closing attorney that the City was waiving the remaining portion of the feasibility period, and wanted to close on the property in April 2016. Our examination of records and discussions with City personnel disclosed that, prior to closing on the property on April 13, 2016, City personnel did not inform the City Council that the Phase I ESA disclosed environmental conditions that could potentially result in additional project costs to prepare the property for its intended use. In response to our inquiry, City personnel indicated that Engineering Department personnel discussed the Phase I ESA results amongst themselves and with consultants, including the environmental firm that performed the ESA testing, and the consultants advised that the costs of remediation efforts to remove contaminated soil were projected to be minor. Notwithstanding this response, the discussions were verbal and not documented, and it is not apparent how it was determined that the remediation cost estimate would be minor since the City did not obtain an estimate of the amount of contaminated soil that would need to be excavated and removed until June 2020.

Subsequent to the land purchase, the environmental firm performed a Phase II ESA for $5,800, and the City received the ESA results on May 9, 2016. The results disclosed arsenic contamination levels exceeding the DEP's groundwater and soil cleanup target levels in two of the four groundwater samples and one of the four soil samples. The firm performed additional testing in October 2016 at a cost to the City of $14,375 and discussed the results with DEP representatives and City personnel in January 2017. Based on those discussions, the DEP representatives determined that any soil with elevated arsenic levels must be excavated and disposed of in a facility permitted by the DEP to treat, store, or dispose of hazardous waste. No remediation efforts were required for the contaminated groundwater.

[45] Pursuant to the land acquisition contract, the effective date is the date the City Council approved the contract.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

In response to our inquiries as to why the City waived the remaining portion of the feasibility period and closed on the property prior to receiving the results of the Phase II ESA, City personnel indicated that it was determined that the project was still viable for a stormwater retention pond because the soil would need to be removed from the site regardless of any contamination. Notwithstanding, according to City records documenting ESA consultant discussions with DEP representatives, contaminated soil must be disposed at a permitted facility, which is more costly than disposing uncontaminated soil.

At the time of our initial inquiry in November 2019, City personnel did not provide an estimate of the additional costs associated with disposal of the contaminated soil at a permitted facility because the cost of disposal varies based on the volume of soil disposed, and the volume of soil removed would not be known until the site was excavated. Subsequently, in May 2020, City personnel determined that it would be more prudent to test soil both prior to excavation and during excavation and directed the environmental firm to perform soil contamination testing at a total contracted cost not to exceed $13,900. On June 29, 2020, based on the preliminary results of the pre-excavation testing, the firm informed the City that an estimated 1,217 cubic yards of contaminated soil would need to be removed. Our inquiry with City personnel and review of City records disclosed that the expected net costs attributable to disposal of the contaminated soil was $46,246. As of October 2020, the soil contamination testing had been partially completed and $6,255 had been paid to the environmental firm. In total, subsequent to the March 24, 2016, Phase I ESA identification of potential contamination, the City expended $26,430 for the Phase II ESA and additional testing, $46,246 to dispose of contaminated soil, and anticipates spending another $7,645 for remaining testing, for a total expected cost of $80,321.

Absent effective land acquisition contracting policies and procedures, there is an increased risk that the City will acquire land that either cannot be used for City-intended purposes or requires significant remediation costs. Additionally, absent such policies and procedures, the City Council may lack sufficient information to make informed decisions regarding land acquisitions.

Recommendation: The City should establish policies and procedures that require, before taking title to land, documented inquiries with previous owners and the DEP about potential contamination on or adjacent to proposed site acquisitions, the conduct of ESAs, and communication of identified concerns to City management and the City Council. Such policies and procedures should also require that land acquisition contracts establish the seller and buyer's responsibilities for remediating any air, water, or soil contaminations and that the terms of the contracts not be amended or waived without City Council approval.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

Finding 6: City Salary and Benefit Costs Charged to Community Redevelopment Agencies

State law[46] provides that community redevelopment agencies (CRAs) may expend moneys in their redevelopment trust fund for administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan. Additionally, Government Finance Officers Association (GFOA) Best Practices[47] recommend that, when allocating indirect costs, such as shared administrative expenses, a systematic and rational methodology be used in the calculation of the amounts allocated.

Because the Melbourne Community Redevelopment Agency (Downtown CRA)[48] and Olde Eau Gallie Riverfront CRA (Riverfront CRA) do not have employees, City personnel perform CRA functions. For example, City personnel provide the CRAs with maintenance services; law enforcement services; and administrative services, such as developing CRA annual budgets, administering CRA programs, preparing and filing annual CRA reports, and managing CRA projects. The City recovers these costs from the CRAs by charging the CRAs a percentage of the salary and benefit costs of the City employees who perform CRA duties.

During the period October 2017 through March 2019, the City charged $312,244 to the Downtown CRA, and $102,411 to the Riverfront CRA for allocated City employee salary and benefit costs. To evaluate whether these costs were determined using a systematic and rational methodology, we examined City records and asked City personnel how the allocation percentages were determined and how often the percentages were adjusted for any changes in the services provided. Our audit procedures disclosed that:

- According to the City Manager, the City Parks and Recreation Department Director allocated 75 percent of the salary and benefits of two Maintenance Worker I positions to the Downtown CRA and 100 percent of a Maintenance Worker I position to the Riverfront CRA based upon an estimate of the hours needed to maintain each CRA's resources. The City Manager also indicated that the City does not charge the CRAs for any salary and benefits costs associated with City Parks and Recreation Department supervisory personnel, although those personnel perform administrative functions for the CRAs.
- The City charged 100 percent of the salary and benefits of a police officer stationed within the Downtown CRA.

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[46] Section 163.387(6)(c)1., Florida Statutes.

[47] GFOA Best Practice: *Indirect Cost Allocation*, February 2014.

[48] City personnel refer to the Melbourne CRA as the Downtown CRA to distinguish it from the City's other two CRAs (i.e., the Olde Eau Gallie Riverfront CRA and Babcock Street CRA).

- The salary and benefit costs for City Community Development Department personnel were charged to the Downtown CRA and Riverfront CRA using the allocation percentages shown in Table 1.

Table 1
Allocation of City Community Development Department Salaries and Benefits by Position and CRA
During the period October 2017 through March 2019

Position	Downtown CRA	Riverfront CRA
Community Development Director	10 percent	5 percent
Economic Development Manager	25 percent	15 percent
Planner	35 percent	15 percent
Administrative Assistant	25 percent	25 percent

Source: City records.

According to the City Manager, the Community Development Department personnel allocation percentages were estimated conservatively to save costs for the overall administration, management, and compliance efforts of the CRAs, and included activities such as developing the CRAs' annual budgets, complying with the CRAs' Web site transparency requirements, and administering the CRAs' grant programs. Notwithstanding, although we requested, a cost allocation plan or other records, such as records evidencing City employee time and effort spent on CRA activities, were not provided to demonstrate how the percentages were determined. Additionally, in response to our inquiry regarding how often City personnel review and adjust the allocation percentages used to charge City personnel salary and benefit costs to the CRAs, the City Manager responded that, "management has periodically reviewed and concluded that the CRAs have not been overcharged, since utilizing percentages of employees with a particular area of expertise was less expensive than hiring dedicated [full-time] CRA administrators." However, no records were provided to us evidencing that periodic reviews were conducted, the allocated costs were reasonable, or the allocation percentages were periodically adjusted for any changes in the services provided.

Absent a documented systematic and rational basis for allocating administrative and maintenance costs to the CRAs, the City cannot demonstrate that employee salaries and benefits allocated to the CRAs are commensurate with the actual time and effort spent by those employees on CRA activities.

Recommendation: The City should develop a reasonable and systematic cost allocation methodology to support the salary and benefit costs charged to the CRAs and periodically adjust the charges allocated as necessary to reflect the actual cost of City services provided to the CRAs.

PRELIMINARY AND TENTATIVE AUDIT FINDINGS
NOT AN AUDIT REPORT

MELBOURNE (DOWNTOWN) COMMUNITY REDEVELOPMENT AGENCY AND OLDE EAU GALLIE RIVERFRONT (RIVERFRONT) COMMUNITY REDEVELOPMENT AGENCY

Finding 7: CRA Policies and Procedures

Given the significant public resources received and expended by the Downtown CRA and the Riverfront CRA, it is incumbent on the City and CRAs to ensure that the CRAs establish policies and procedures to promote the safeguarding of CRA resources, including the effective, efficient, appropriate use of those resources in accordance with applicable State and local laws.

Consistent with State law,[49] the CRAs are required to procure goods and services in accordance with City ordinances.[50] However, although we requested, as of September 2020 City personnel had not provided records evidencing that the CRA Boards had established policies and procedures governing the various other aspects (e.g., budgets, investments, revenue processing, disbursement processing) of the CRAs' operations.

City personnel indicated that they believe the CRAs are part of the City and are thereby required to comply with City policies and procedures; consequently, the CRAs have always followed City policies and procedures. However, because the CRAs are separate legal entities established pursuant to State law,[51] specific action by the CRA Boards is required to make City policies and procedures applicable to the CRAs. Additionally, as special districts, CRAs are subject to State laws[52] that include provisions that do not apply to municipalities and may not be addressed by City policies and procedures. Conversely, certain City policies and procedures based on State laws applicable to municipalities may not apply to CRAs.

Established policies and procedures addressing the various aspects of CRA operations would provide additional assurance that the CRAs conduct business in an effective, efficient, and appropriate manner consistent with CRA Board intent and the CRAs' approved Plans.

Recommendation: The Downtown CRA Board and Riverfront CRA Board should establish policies and procedures governing all aspects of CRA operations. Such policies and procedures should be developed, as appropriate, based on State law specifically applicable to CRAs and generally applicable to special districts.

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[49] Section 163.370(5), Florida Statutes.

[50] Chapter 2, Article VI, City of Melbourne Code of Ordinances.

[51] Section 163.356, Florida Statutes.

[52] For example, Chapter 163, Part III, and Chapter 189, Florida Statutes.

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Finding 8: CRA Board Meeting Notices

State law[53] requires the governing body of each special district, including CRAs, to file quarterly, semiannually, or annually, a schedule of its regular meetings with the local governing authority. The schedule is to include the date, time, and location of each scheduled meeting and shall be published in a newspaper of general paid circulation.

According to City personnel, the City complies with the statutory CRA public meeting notice requirements by annually publishing in a newspaper a schedule of City Council meetings accompanied by a statement that the City Council serves as the governing body for each CRA and, therefore, the meeting schedule for the CRAs "mirrors the City Council meeting schedule." Notwithstanding the City statement published in the newspaper, the CRA Boards do not conduct business at every City Council meeting and, consequently, the meeting schedule did not sufficiently communicate when CRA Board meetings would be held. The schedule of meetings the City published for the 2018 calendar year included 23 City Council meetings and during only 8 of those meetings did the Downtown CRA Board, the Riverfront CRA Board, or both CRA Boards meet.[54]

Accordingly, the annual published notice did not provide proper public notice of the CRA Board meetings and parties interested in attending the CRA Board meetings, but not the City Council meetings, were not adequately informed of the date and time of each CRA Board meeting.

Recommendation: To provide appropriate notice of CRA Board meetings to interested parties, the Downtown CRA and Riverfront CRA should comply with State law by publishing in a newspaper of general paid circulation meeting schedules that include the date, time, and location of each scheduled CRA Board meeting.

Finding 9: CRA Plans

Pursuant to State law,[55] CRAs must expend tax increment financing money in accordance with an approved CRA Plan, which must include information prescribed by State law.[56] For example, CRA Plans must:

- Contain a legal description of the boundaries of the CRA and the reasons for establishing such boundaries.

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[53] Section 189.015(1), Florida Statutes.

[54] Both the Downtown CRA and the Riverfront CRA Boards met on September 11, September 25, and November 27, 2018. In addition to those dates, the Downtown CRA Board met on February 13, July 10, August 14, and October 9, 2018; and the Riverfront CRA Board met on June 12, 2018.

[55] Section 163.387(1)(a), Florida Statutes.

[56] Section 163.362, Florida Statutes.

- Identify any publicly funded capital projects to be undertaken within the community redevelopment area.
- Contain a detailed statement of the projected costs of the redevelopment, including the amount to be expended on publicly funded capital projects in the community redevelopment area.

We examined the Downtown CRA and Riverfront CRA Plans in effect during the period October 2017 through March 2019 to determine whether the Plans included the information prescribed by State law and provided for the Downtown and Riverfront CRAs' expenditures during the same period. We found that the Downtown CRA Plan included all of the statutorily required information; however, although the Riverfront CRA Plan included information about planned goals and objectives for redevelopment and proposed capital improvements, the Plan did not include up-to-date specific identification of publicly funded capital projects to be undertaken[57] or detailed statements of the projected costs of redevelopment.[58] Our examination of the CRA Plans and CRA-project expenditure records disclosed that:

- The Riverfront CRA Plan did not include a cost estimate for the Highland Avenue Lighting Project; rather, the project was included as part of a larger project, the Highland Avenue Streetscape Project, which had an estimated total cost of $1.4 million according to the Riverfront CRA Plan. During the period October 2017 through March 2019, the Riverfront CRA transferred $125,000 to the City General Construction Fund, a capital projects fund (as discussed in Finding 11) and incurred $12,000 in expenditures for the Highland Avenue Lighting Project.

  According to City personnel, subsequent to the $1.4 million cost estimate in May 2001,[59] the entire Highland Avenue Streetscape Project was determined to be financially unfeasible; however, the Highland Avenue Lighting Project component of the Highland Avenue Streetscape Project[60] was continued. Insofar as no revisions were made to the $1.4 million cost estimate in the CRA Plan, it was not apparent that the Highland Avenue Streetscape Project would not be completed in its entirety or, alternatively, what component(s) of the project were anticipated to be completed. Also, the portion of the $1.4 million cost estimate attributable to the Highland Avenue Lighting Project was not apparent.

- During the same period, the Riverfront CRA paid:
  - $82,500 to an external organization for the Main Street America Program to encourage the development of private funding sources for the purchase and installation of streetscape enhancements in the CRA; assist in the implementation of the Facade Improvement Grant

[57] Section 163.362(4), Florida Statutes.

[58] Section 163.362(9), Florida Statutes.

[59] The cost estimate was originally included in the CRA Plan that was adopted by City Ordinance No. 2001-23 on May 22, 2001.

[60] According to the most recent CRA Plan available, dated August 11, 2015, the Highland Avenue Streetscape Project was composed of stormwater retrofitting, on-street parking, sidewalks, landscaping, site furnishings, decorative lighting, decorative paving and crosswalks, and an irrigation system.

Program; and support CRA capital projects and programs through design, review, and facilitation of project information to stakeholders.

- $14,739 to lease land for public parking.
- $10,000 to provide a grant[61] as part of the Olde Eau Gallie Riverfront Melbourne Facade Improvement Program.

Although the CRA Plan included the Main Street America Program, the acquisition of additional public parking, and Facade Improvement Program loans and grants, the CRA Plan did not provide cost estimates for those activities.

According to City personnel, the Riverfront CRA Plan contains long-range and complex initiatives, for which estimates are "difficult and arbitrary." Notwithstanding the City's response, as State law[62] allows CRA plans to be amended or modified when necessary or desirable, it is not apparent why the CRA did not periodically amend the Riverfront CRA Plan to reflect changes in circumstances or as additional information became available.

Including accurate CRA redevelopment activity information, including up-to-date cost estimates, in the CRA plan provides valuable information to the taxing authorities required to contribute to the CRA and to the general public.

Recommendation: The Riverfront CRA should include detailed estimates of projected redevelopment costs and periodically amend the CRA Plan to reflect changes both in the scope of planned redevelopment activities and in the associated cost estimates.

Finding 10: CRA Budgets

Pursuant to State law,[63] the Downtown CRA Board and Riverfront CRA Board must each adopt a budget by resolution each fiscal year, and the total amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total appropriations for expenditures and reserves. The adopted budgets must regulate CRA expenditures, and it is unlawful to expend or contract for expenditures in any fiscal year except pursuant to the adopted budgets.

Our examination of records and discussions with City personnel disclosed that the CRA budgetary process could be improved. Specifically, we noted that:

- The Downtown CRA and Riverfront CRA Board-adopted budgets for the 2017-18 and 2018-19 fiscal years did not include balances brought forward from prior fiscal years as resources available for expenditure in the subsequent fiscal year. Specifically, the Downtown CRA budgets for the

[61] The Riverfront CRA paid $10,000 directly to the grantee, and the City paid an additional $7,500 to the same grantee from the City's General Construction Fund using moneys previously transferred from the Riverfront CRA.

[62] Section 163.361(1), Florida Statutes.

[63] Section 189.016(3), Florida Statutes.

2017-18 and 2018-19 fiscal years did not include the prior fiscal year-end balances totaling $340,999 and $540,873, respectively, and the Riverfront CRA budgets for those fiscal years did not include the prior fiscal year-end balances totaling $383,204 and $529,236, respectively.

The City Council-approved City budget documents for the 2017-18 and 2018-19 fiscal years included a Summary of Revenues, Expenditures, and Changes in Fund Balances Schedule (Summary Schedule) for the Downtown CRA and Riverfront CRA, which presented summarized budgeted totals for each expenditure category included on the CRA Board-adopted budgets and budgeted beginning and ending fund balances. However:

- The Summary Schedules were not included in the CRA Board-adopted budgets, and the exclusion of beginning fund balance from the CRA Board-adopted Downtown CRA and Riverfront CRA budgets for the 2017-18 and 2018-19 fiscal years was contrary to State law and did not provide for transparency of all available sources.
- City personnel routinely develop the next fiscal year budget before the current fiscal year ends on September 30, and the budgeted beginning fund balance for the next fiscal year must be estimated. To estimate the budgeted beginning fund balance for the Summary Schedules, the actual ending fund balance from the second preceding fiscal year's audited financial statements was used. For example, for the Summary Schedule for the Downtown CRA's 2017-18 budget, the 2015-16 fiscal year ending balance was used for the budgeted beginning balance. However, under this methodology, budgeted beginning fund balance amounts were significantly understated[64] and City personnel did not attempt to amend the estimated budgeted beginning fund balances to reflect actual balances once the CRAs' accounting records were closed. Without utilizing the most current financial information available to estimate and, as applicable, amending the budgeted beginning fund balances, the usefulness of the budget as a financial management tool is diminished.

- The Downtown CRA Board and Riverfront CRA Board each approved resolutions[65] adopting budgets for the 2017-18 and 2018-19 fiscal years. The adopted budgets presented budgeted expenditures at the object level within specified expenditure categories (e.g., personnel services, operating expenses, debt service). However, the resolutions did not include language specifying the legal level of budgetary control and, as noted in Finding 7, the CRAs had not established policies and procedures governing CRA operations, including CRA budgets. In the absence of a CRA policy establishing a legal level of budgetary control, the established level of control was the level at which budgeted expenditure amounts were presented in the adopted budgets. Although the adopted budgets presented budgeted expenditures at the expenditure category and object level, budgeted expenditures reported for the CRAs in the City's 2017-18 and 2018-19 fiscal year audited financial statements for the CRAs were presented at the function level (e.g., general

[64] Budgeted beginning fund balances of $209,914 and $340,999 presented in the Summary Schedules for the Downtown CRA's 2017-18 and 2018-19 fiscal year budgets were $131,085 and $199,874, respectively, less than the actual prior fiscal year ending fund balances. Budgeted beginning fund balances of $217,417 and $383,203 presented in the Summary Schedules for the Riverfront CRA's 2017-18 and 2018-19 fiscal year budgets were $165,786 and $146,033, respectively, less than the actual prior fiscal year ending fund balances.

[65] City of Melbourne Resolution Nos. 3678 and 3782 adopted the Downtown CRA's 2017-18 and 2018-19 fiscal year budgets, respectively. City of Melbourne Resolution Nos. 3680 and 3784 adopted the Riverfront CRA's 2017-18 and 2018-19 fiscal year budgets, respectively.

government). As a result, financial statement users could not readily determine whether the CRAs' resources were expended within budgeted amounts at the expenditure category and object level consistent with CRA Board intent.

- State law[66] requires that the CRAs' final adopted budgets be posted on the CRAs' official Web site within 30 days after adoption and must remain on the Web site for at least 2 years. The CRAs do not maintain their own Web sites; rather, the City Web site includes a Web page for each CRA. Our examination of the Downtown CRA and Riverfront CRA Web pages in August 2020 disclosed that City efforts to promote transparency of the CRAs' budgets could be improved as:
  - The CRAs' Web pages included links to the Summary Schedules located under the heading "Budget and Budget Amendments" but did not include a direct link to the CRA Board-adopted budgets.
  - Although it was possible to access the CRA Board-adopted budgets, included within the City Council-adopted City budget documents, from the CRAs' Web pages by clicking "City of Melbourne's budget page" links under the heading "General Financial Information," the links are not conspicuously identified as links to the CRA Board-adopted budgets, and the CRAs' Web pages do not otherwise inform users of how the CRA budgets may be viewed.

  Providing clear instructions on the CRA Web pages on how to access the CRA Board-adopted budgets would facilitate access to those budgets and increase public awareness.

Recommendation: The Boards of the Downtown CRA and Riverfront CRA should establish budget policies and procedures for their respective CRAs that:

- **Ensure that future CRA Board-adopted budgets include all balances brought forward from prior fiscal years as required by State law, and that City personnel estimate and amend the budgeted beginning fund balances to reflect using the most current information available.**
- **Establish the desired legal level of budgetary control for CRA budgets and ensure that budgeted expenditures reported on the financial statements accurately reflect the established legal level of budgetary control to enable financial statement users to readily determine whether resources were expended within budgeted amounts consistent with CRA Board intent.**
- **Ensure that the CRA Web pages clearly inform Web page users how to access the CRA Board-adopted budgets.**

Finding 11: Ending Balances in CRA Trust Funds

State law[67] requires that, on the last day of a CRA's fiscal year, any money remaining in a CRA trust fund after the payment of expenses pursuant to State law shall be either:

[66] Section 189.016(4), Florida Statutes.
[67] Section 163.387(7), Florida Statutes.

- Returned to each taxing authority which paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year.
- Used to reduce the amount of any indebtedness to which increment revenues are pledged.
- Deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged.
- Appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan.

Moneys remaining in the Downtown CRA Trust Fund and Riverfront CRA Trust Fund on the last day of the CRAs' 2016-17 and 2017-18 fiscal years totaled $724,203 and $1,070,109, respectively, as shown in Table 2.

Table 2
Ending Balances in CRA Trust Funds
For the 2016-17 and 2017-18 Fiscal Years

	2016-17	2017-18
Downtown CRA	$340,999	$ 540,873
Riverfront CRA	383,204	529,236
Totals	**$724,203**	**$1,070,109**

Source: City's audited financial statements.

Our review of City records and discussions with City personnel disclosed that City records did not demonstrate that the moneys remaining in the Downtown CRA Trust Fund and Riverfront CRA Trust Fund were appropriated to a specific redevelopment project or otherwise disposed of in accordance with State law. City personnel indicated that the moneys remaining in the Downtown CRA Trust Fund and Riverfront CRA Trust Fund on the last day of the 2016-17 and 2017-18 fiscal years is being used to fund future capital projects listed in the City's 5-year capital improvement plan and is appropriated to specific projects via budget resolutions. However, although projects were listed in the City's 5-year capital improvement plan, City records did not demonstrate that the moneys remaining in the Downtown CRA Trust Fund and Riverfront CRA Trust Fund at the end of the 2016-17 and 2017-18 fiscal years were appropriated to specific redevelopment projects in the 2017-18 and 2018-19 fiscal years, respectively.

In response to our inquiry, City personnel indicated that, although there were no specific appropriations for any of the Downtown CRA and Riverfront CRA projects on the last days of the 2016-17 or 2017-18 fiscal years, any moneys remaining in the CRA Trust Funds at the end of the fiscal year were included in each CRA's respective portion of the City's pooled cash account for the purpose of later reducing any indebtedness to which increment revenues are pledged. However, State law requires that moneys be deposited into an escrow account when remaining funds are to be used for the purpose of

later reducing any indebtedness to which increment revenues are pledged.[68] Insofar as the City's pooled cash account was not an escrow account (i.e., an account restricted to reducing indebtedness to which the CRAs' increment revenues are pledged), City records did not demonstrate that unexpended trust fund moneys were committed to reduction of indebtedness pursuant to State law.

Absent records evidencing that moneys remaining in CRA trust funds at fiscal year-end were re-appropriated to a specific redevelopment project or otherwise disposed of according to State law, there is an increased risk that the taxing authorities that contributed tax financing moneys to the CRAs may not receive unused CRA moneys to which they are entitled pursuant to State law.

Recommendation: The Downtown CRA and Riverfront CRA should maintain records evidencing that moneys remaining in CRA trust funds at the end of the fiscal year were either obligated for purposes authorized by State law or returned to the applicable taxing authorities that contributed tax financing moneys.

Finding 12: CRA Trust Fund Uses

State law[69] requires CRAs to use a redevelopment trust fund to receive and spend tax increment financing moneys. Funds allocated to and deposited into the trust fund must be used to finance or refinance any community redevelopment undertaken pursuant to the approved redevelopment plan. State law[70] also requires each CRA to provide for an audit, conducted by an independent certified public accountant or firm, of the trust fund[71] each fiscal year. The audit report must describe the amount and sources of deposits into, and the amount and purpose of withdrawals from, the trust fund during the fiscal year.

Our examination of City records and discussions with City personnel disclosed that disbursements of moneys received in the Downtown CRA Trust Fund and Riverfront CRA Trust Fund for capital outlay purposes are not reported as CRA expenditures in the City's audited financial statements. Rather, CRA moneys are transferred from the applicable CRA Trust Fund to applicable City capital projects funds, and disbursements of those moneys for capital outlay purposes are reported as expenditures in the capital projects funds when incurred. To determine the extent to which such moneys were not reported as capital outlay expenditures of the Downtown CRA and Riverfront CRA in the City's 2016-17 and 2017-18 audited financial statements, we reviewed the 2015-16, 2016-17, and 2017-18 fiscal year transfers out of CRA

[68] Section 163.387(7)(c), Florida Statutes.

[69] Section 163.387(1)(a), Florida Statutes.

[70] Section 163.387(8), Florida Statutes.

[71] Effective October 1, 2019, Chapter 2019-163, Laws of Florida, amended Section 163.387(8), Florida Statutes, to require that CRAs with revenues or a total of expenditures and expenses in excess of $100,000 provide for a trust fund audit as part of a separate financial audit of the CRA. CRAs with revenues or a total of expenditures and expenses of $100,000 or less may provide for a trust fund audit as part of the financial audit of a county or municipality.

Trust Funds and the subsequent expenditures associated with the transfers, as recorded in City capital project funds.[72]

Table 3 shows the amounts of moneys transferred from the Downtown CRA and Riverfront CRA Trust Funds to capital projects maintained within City capital projects funds for the 2015-16, 2016-17, and 2017-18 fiscal years.

Table 3
Transfers Out of CRA Trust Funds
by Capital Project
For the 2015-16 Through 2017-18 Fiscal Years

	2015-16	2016-17	2017-18
From Downtown CRA Trust Fund for:			
Riverview Park Improvements [a]	$20,000	$32,000	$ 25,000
West Crane Creek Pedestrian Bridge [b]	20,000	-	-
Compensation and Classification Study [b]	-	270	-
Archway/Gateway Painting [b]	-	-	25,000
From Riverfront CRA Trust Fund for:			
Phase I of the Olde Eau Gallie District Lighting Project [b]	-	20,000	125,000
Compensation and Classification Study [b]	-	135	-
Totals	**$40,000**	**$52,405**	**$175,000**

[a] Accounted for in the City Recreation Improvement Fund.
[b] Accounted for in the City General Construction Fund.

Source: City records.

As shown in Table 4, the City capital project funds that received the Downtown CRA and Riverfront CRA transfers incurred capital outlay expenditures that were all or partially funded by the transfers.

[72] We included the 2015-16 fiscal year transfers in our review as there was often a delay between the transfer of funds and the expenditure funded by the transfer.

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Table 4
CRA Transfers Expended in City Capital Project Funds
by Capital Project
For the 2015-16 Through 2017-18 Fiscal Years

	2015-16	2016-17	2017-18
Use of Downtown CRA Transferred Funds			
Riverview Park Improvements	$ -	$72,000 [a]	$12,800
West Crane Creek Pedestrian Bridge	-	-	-
Archway/Gateway Painting	-	-	831
Use of Riverfront CRA Transferred Funds			
Phase I - Olde Eau Gallie District Lighting Project	-	-	8,400
Totals	**$**	**$72,000**	**$22,031**

[a] Includes use of $20,000, $20,000, and $32,000 transferred from the Downtown CRA in the 2014-15, 2015-16, and 2016-17 fiscal years, respectively.

Source: City financial records.

The capital expenditures in the 2016-17 and 2017-18 fiscal years were reported as capital outlay expenditures in the aggregate for the City's nonmajor funds on the statement of revenues, expenditures, and changes in fund balances in the City's audited financial statements for those fiscal years, instead of Downtown CRA and Riverfront CRA Trust Fund expenditures.

City personnel indicated that an accounting decision was made to transfer money from the CRA trust funds to City capital projects funds and record the expenditures within the City capital projects funds rather than directly record the expenditures within the CRA trust funds because CRA trust funds are special revenue funds and the City prefers to record capital expenditures in capital projects funds. City personnel also indicated that the practice of transferring CRA trust fund moneys to City capital project funds, was established by a former City employee based on CRA resources being insufficient to finance large capital projects and, therefore, the transfer of CRA moneys to City capital projects funds facilitates the accumulation of CRA and other capital outlay moneys sufficient to complete such projects. City personnel further indicated that they believe the process to be transparent, as the transferred money is associated with specific projects within the City capital project fund accounting records. Notwithstanding, reporting CRA trust fund transfers out, instead of expenditures, reduces the transparency of CRA operations to the public and could affect the determination of whether the CRA expenditures meet the statutory threshold requiring a separate financial audit.[73]

[73] Section 163.387(8), Florida Statutes.

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Recommendation: To enhance the transparency of Downtown CRA and Riverfront CRA operations and help ensure that financial audit thresholds are properly determined, amounts expended from CRA resources should be reported as expenditures in the CRA trust funds instead of transfers out.

Finding 13: Guarantees for Payment

Project developers are typically required to provide guarantees for payment specific to each project should the developer not satisfy the contract job requirements. These guarantees include letters of credit, payment and performance bonds, or other forms of security, and protect the interests of the local government if a developer does not properly perform or complete a development project.

During the period October 2017 through March 2019, as part of the Downtown CRA Public-Private Development Program (Program),[74] two development projects were in progress, the Highline Redevelopment (Highline) Project and the Strawbridge Hotel (Strawbridge) Project. The Highline Project was construction of a multi-use building consisting of 171 apartments and 8,600 feet of retail and restaurant space along with public facility and infrastructure improvements. The Strawbridge Project was construction of a 156-room hotel, structured parking, and off-site public improvements. As of March 2017 and August 2018, the estimated construction costs of the Highline and Strawbridge Projects were $29.6 million and $35.5 million, respectively, and the Program provided for the following financial payments to the Projects' developers:

- $2.4 million upon completion of the Highline Project.
- 75 percent of the tax increment funding generated by the Strawbridge Hotel property for the 3 years following project completion and 50 percent of the tax increment funding generated and paid for the 17 years thereafter.

To determine whether the Downtown CRA was provided with guarantees for payment for the two projects, we examined the agreements associated with each project and found that:

- The Highline Project developer posted a payment bond of $30.1 million, which covered the cost of constructing the multi-use building and parking lot on private land. The payment bond ensured that laborers, material suppliers, and equipment suppliers would be paid for the project but did not include the City or Downtown CRA as an obligee. For the portion of the project taking place on City land (public facility and infrastructure improvements of $1.3 million), payment and performance bonds were issued and included the City as an obligee and provided protection if the developer did not satisfy the contract job requirements. However, the payment and performance bonds only provided the CRA with limited security for the project given the project's

[74] The Public-Private Development Program was adopted as an amendment to the Downtown CRA's community redevelopment plan in 2014 and enables the CRA to enter into public-private partnerships to facilitate large-scale real estate development projects costing $5 million or more by providing financial incentives to aid private real estate activity.

overall estimated cost totaled $29.6 million and, consequently, City residents had limited assurance that the CRA considered all the risks associated with a failed project.

- The City did not require the Strawbridge Project developer to provide a performance bond since the City only requires performance bonds for projects or portions of projects constructed on public land, and the Strawbridge Project was constructed entirely on private property.

In response to our inquiry, City personnel indicated that, since the developers provided non-refundable deposits for impact fees of $275,000 and $368,740 for the Highline and Strawbridge Projects, respectively, and the developers will not receive incentive payments until completion of the projects, the developers have a financial interest in completing the projects without required guarantees for payment. Additionally, City personnel indicated that:

- The apartment building and private parking portions of the Highline Project and the entire Strawbridge Project were being constructed on private property. If payment and performance bonds were issued for those portions of the projects with the City or Downtown CRA listed as the obligee and the developers did not fulfill their contract job requirements, the City would find it legally difficult, if not impossible, to complete the projects without the owners' consent.
- In the event a developer does not satisfy contract job requirements, the City could utilize code enforcement mechanisms, such as levying fines and issuing liens, to remedy any deficiencies that result in City code violations.

Notwithstanding, the Downtown CRA did not receive adequate guarantees for payment should the developers not properly perform or complete the projects because:

- As referenced in the City's response, non-refundable deposits for impact fees of $275,000 and $368,740 only provide a minimal amount of security for the Highline and Strawbridge Projects as the total costs of the projects were estimated to be $29.6 million and $35.5 million, respectively.
- Similarly, the Highline Project performance bond of $1.3 million attributable to improvements of public property adjacent to the project was insignificant relative to the total project amount of $29.6 million. Payment and performance guarantees, even given their practical complexity, require developers to memorialize their sincere intent to perform according to the contract and would reassure the public that the Downtown CRA considered the risk of the developer not satisfactorily completing a development project.
- Although the amounts payable to the developers upon completion of the Highline and Strawbridge Projects provide incentive for the developers to complete the projects, absent payment and performance guarantees, the City has limited assurance that the projects will be fully and satisfactorily completed if the developers do not fulfill their commitments.

Properly executed payment and performance guarantees provided prior to contract execution, provide additional assurance that development projects within the CRA will be properly or fully completed. As guarantees for payment require developers to memorialize their sincere intent to perform according to the contract, such guarantees also reassure the public that the CRA considered the risk that the developer may not satisfactorily complete a development project.

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Recommendation: To protect the Downtown CRA's interests and provide assurance of satisfactory completion of development projects, the CRA should establish procedures that require, prior to executing a contract with a developer, the developer to provide guarantees for payments, such as letters of credit, payment and performance bonds, or other forms of security.

Finding 14: CRA Donations

The Attorney General has opined[75] that a public purpose may be carried out through donations, provided the local governmental entity determines that an entity purpose is served by such donations and proper safeguards are implemented to assure the accomplishment of that purpose. During the period October 2017 through March 2019, the Downtown CRA and Riverfront CRA made a total of four donations to two external organizations. The donations to the organizations totaled $175,000 and $82,500, respectively.

To help ensure and demonstrate that donations to external organizations accomplish an authorized public purpose, the CRAs characterized the donations as grants and established grant agreements that outlined and documented the terms of the grants. The grant agreements require, for example, the recipient to:

- Retain financial records, supporting documentation, and other records pertinent to the grant for a period of 3 years after the end of the fiscal year in which the grant was awarded and ensure that such records are available for inspection by the CRA.
- Agree to allow the CRA to conduct audits[76] involving performance or accounting matters of the external organization at any time to assure compliance with the grant agreement.
- Provide quarterly reports showing accomplishment of required activities outlined in the grant agreement.

As part of our audit, we requested for examination CRA records supporting the four donations to the two external organizations. Our examination disclosed that the external organizations provided to the CRAs the required quarterly reports. However, the reports only provided a general overview of the external organizations' activities during the reporting period and did not contain sufficient detail to fully describe how the donations were ultimately used. For example, the June 2018 quarterly report submitted by the Melbourne Main Street organization included pictures of events and a profit and loss statement listing the income and expenses by account for the quarter; however, the report did not list the amount of expenditures and types of activities funded by the donation from the Downtown CRA. Absent reports containing sufficient detail to evidence the organizations' activities for which the donations were used,

[75] Attorney General Opinion No. 2002-18.

[76] In this context, "audits" could include examinations by designated City staff of the contracted organizations' records.

the CRAs have limited assurance that the donated funds were used for the specific purposes described in the grant agreements.

Additionally, although the CRAs were permitted to audit the external organizations at any time to assure compliance with the grant agreement, the CRAs did not examine the records of the two external organizations during the period October 2017 through March 2019. In response to our inquiries, City personnel indicated that City personnel, the CRA Advisory Committees, and the CRA Boards reviewed the activities of the external organizations for compliance with grant agreement terms at the end of each program year prior to recommending continuation of the annual agreements and provided several documents including:

- CRA meeting minutes.
- City Manager agenda reports.
- Internal memoranda.
- Annual reports.
- Grant agreements.
- Compiled financial statements.

However, the documents only provided a general overview of the external organizations' activities during the reporting period and did not support an examination of the organizations' performance or accounting matters to verify that donations were used for the specified purposes. Without documented examination and verification procedures, the CRAs have limited assurance that the external organizations used donated funds consistent with the grant agreement's intended public purpose.

Recommendation: To ensure Downtown CRA and Riverfront CRA donations to external organizations are used for their intended public purposes, the CRAs should:

- **Ensure that agreements executed with external organizations require those organizations to submit, as part of their quarterly reports, documentation showing how the donated funds were expended to accomplish the specific public purpose for the donations.**
- **Periodically examine records maintained by the external organizations to verify that the documentation provided to the CRAs is supported by external organization records.**

End of Preliminary and Tentative Audit Findings.