

# STATE OF FLORIDA AUDITOR GENERAL

## Operational Audit

Report No. 2024-036  
October 2023

### CITY OF WINTER SPRINGS



Sherrill F. Norman, CPA  
Auditor General

## **City Commissioners, Mayor, and City Manager**

During the period October 2021 through December 2022, Kevin McCann served as City of Winter Springs Mayor, Shawn Boyle served as City Manager, and the following individuals served as City Commissioners:

	<u>District No.</u>
Matt Benton	1
Victoria Colangelo from 11/14/22	2
Kevin Cannon through 11/13/22: (Deputy Mayor 12/13/21, through 11/13/22)	2
Ted Johnson (Deputy Mayor through 12/12/21)	3
Cade Resnick from 11/14/22	4
TiAnna Hale through 11/13/22	4
Rob Elliott (Deputy Mayor from 11/14/22)	5

The team leader was Keith Auyang, CPA, and the audit was supervised by Jeff Brizendine, CPA.

Please address inquiries regarding this report to Derek Noonan, CPA, Audit Manager, by e-mail at [dereknolan@aud.state.fl.us](mailto:dereknolan@aud.state.fl.us) or by telephone at (850) 412-2864.

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# CITY OF WINTER SPRINGS

## SUMMARY

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This operational audit of the City of Winter Springs (City) focused on selected City processes and administrative activities. Our audit disclosed the following:

**Finding 1:** The City continues to incur fines and penalties for wastewater treatment violations.

**Finding 2:** The City should improve its water utility contract monitoring processes.

**Finding 3:** The City's use of consent agendas to revise the project list provided to the public in advance of the voter referendum approving the local government infrastructure sales surtax reduced transparency by depriving the opportunity for public information and discussion. In addition, the City did not provide for separate accountability of transferred sales surtax moneys.

**Finding 4:** Contrary to State law, the City did not estimate fees assessed to fulfill public records requests requiring extensive information technology resources or clerical or supervisory assistance based on actual costs. In addition, the City did not always promptly respond to public records requests.

**Finding 5:** Contrary to City ordinances, the City Manager had not established written uniform purchasing policies and procedures, and the City did not always competitively procure goods and services in accordance with City ordinances.

**Finding 6:** Although the City's cardholder agreement requires purchase card (P-card) expenditures be pre-approved by supervisory personnel, City records did not demonstrate that pre-approval was obtained. In addition, the City had not established comprehensive P-card policies and procedures to provide effective controls over the accountability and use of the cards.

**Finding 7:** The City experienced significant turnover in key management positions from April 2019 through February 2023.

**Finding 8:** The City needs to establish policies and procedures for communicating, investigating, and reporting known or suspected fraud.

## BACKGROUND

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The City of Winter Springs (City) was originally incorporated in 1959 as the Village of North Orlando. In 1972, the Village of North Orlando was abolished, and the City of Winter Springs was established. The City, located in Seminole County (County), had an estimated population of 39,038 as of April 1, 2022.<sup>1</sup> The City Commission, composed of five elected Commissioners and a separately elected Mayor, govern the City. The Mayor is recognized as the head of City government but does not vote except in cases of a City Commission tie vote.<sup>2</sup> The City Commission is responsible for enacting ordinances, resolutions,

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<sup>1</sup> *Florida Estimates of Population 2022*, Bureau of Economic and Business Research College of Liberal Arts and Sciences University of Florida.

<sup>2</sup> Part 1, *Charter*, Article IV, *Governing Body*, Section 4.01, City of Winter Springs Code of Ordinances, *Composition; qualification of members; and commission districts*.

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.

The City provides a full range of services including public safety, sanitation, recreational and cultural activities, public improvements, planning, zoning, highways and streets, and general administrative services. In addition, the City provides water, wastewater, reclaimed and stormwater utilities.<sup>3</sup> In October 2019, the City outsourced its water operations to a water utility contractor through execution of a 5-year contract with an unspecified number of optional 1-year renewals.

## ***FINDINGS AND RECOMMENDATIONS***

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### **Finding 1: Wastewater System Operations**

The City owns two wastewater reclamation facilities to treat sewage. The facilities are referred to as the East WRF and West WRF and, pursuant to an October 2019 contract, a contractor maintains the facilities and manages the day-to-day operations. The contractor's responsibilities include providing certified and qualified personnel to operate the facilities, performing preventative maintenance on the equipment and facilities, and conducting laboratory testing and sampling required by Federal and State laws and regulations. The City's contractual responsibilities include funding capital expenditures; maintaining all existing facility warranties, guarantees, easements and licenses; and retaining the services of an independent engineering firm to conduct period inspections and performance audits of the contractor's performance under the agreement. The contract contains liability clauses that specify that the City is liable, as the owner of the water system, for fines or civil penalties imposed by a regulatory or enforcement agency, except in the cases of the contractor's negligence or willful misconduct.

In March 2021, the Florida Department of Environmental Protection (FDEP) sent a warning letter to the City regarding the West WRF. The letter indicated that FDEP personnel noted numerous violations during several inspections conducted in January and February 2021, including:

- A fish kill attributed to an unauthorized wastewater discharge.
- Unknown treatment flows that bypassed filtration and disinfection systems.
- Inoperable wastewater treatment systems.

In April 2021, the FDEP sent a second warning letter delineating East WRF violations noted during an FDEP compliance evaluation in March 2021, including:

- Incomplete wastewater treatment calibration procedures.
- Excessive bacteria levels in wastewater.
- Malfunctions in the wastewater air distribution system.

In response to the warning letters, the City signed two consent orders with the FDEP in December 2021 agreeing to complete corrective actions related to the numerous violations of FDEP rules<sup>4</sup> regulating

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<sup>3</sup> The City has three water treatment plants and two wastewater reclamation facilities, all built in 1972 and 1973.

<sup>4</sup> Various Florida Department of Environmental Protection (FDEP), including FDEP Rules, Chapters 62-604, 610, and 620, Florida Administrative Code.

wastewater and reclaimed water systems. In addition, the consent orders required the City to either pay civil penalties of \$149,418 and \$20,396 associated with the West WRF and East WRF violations, respectively, or implement FDEP-approved pollution prevention projects in lieu of paying the civil penalties.

As of June 2023, the City had implemented several corrective actions to satisfy consent order requirements. For example, the City:

- Plugged a pipeline at the West WRF that had drained treated sewage into an abandoned golf course pond.
- Implemented a pollution prevention program modernizing the supervisory control and data acquisition system at the West WRF to be executed and funded by the City's contractor.
- Provided evaluations, design modifications, construction permits, and certificates of completion to remedy the excessive debris in a basin at the East WRF.
- Implemented a pollution prevention program at the City Center Stormwater Pond related to the East WRF to be executed and funded by the City's contractor.

Notwithstanding these actions, the FDEP issued two additional warning letters to the City regarding further potential wastewater-related violations of FDEP rules. Specifically:

- On June 9, 2022, the FDEP indicated that, on March 8, 2022, it received notice that the East WRF had an unpermitted sanitary sewer overflow of approximately 750 gallons, which was an unauthorized wastewater discharge caused by an electrical power outage. Although the FDEP did not require the City to take any corrective actions, the FDEP assessed, and the City's contractor paid, \$4,250 for civil penalties and investigative costs incurred by the FDEP to conduct its investigation.
- On May 26, 2023, the FDEP indicated that, in response to a complaint, it conducted an inspection on May 19, 2023, of the West WRF that disclosed four violations regarding wastewater and reclaimed water systems. The City responded to the warning letter on July 10, 2023, providing its explanations and corrective actions taken, and the FDEP indicated that the warning letter had been resolved as of July 28, 2023.

Since December 2021, total costs and civil penalties paid to the FDEP to resolve the consent orders and warning letters, including costs of projects in lieu of civil penalties, totaled \$318,372, of which the City incurred \$68,100 and the contractor incurred \$250,272.

As owner of the wastewater reclamation facilities, the City is ultimately responsible for ensuring that State regulations governing the operation of water facilities are followed and that water quality is protected. As discussed in Finding 2, the City's noncompliance with certain contract provisions and contract and contractor performance monitoring deficiencies may have contributed to the violations noted by the FDEP.

**Recommendation: The City should ensure that wastewater reclamation facilities operate in accordance with applicable FDEP rules.**

## **Finding 2: Water Utility Contract Monitoring**

The City is responsible for monitoring and enforcing contractual terms and conditions to ensure that contract deliverables are appropriately provided, and any regulatory requirements are satisfactorily met.

As indicated in Finding 1, in October 2019, the City entered into a contract for the operation, maintenance, and management of the City's water, wastewater, reclaimed and stormwater (water) utilities.

The contract requires the City to retain the services of an independent engineering firm with expertise in water, sewer, reclaimed and stormwater utility operations maintenance and management to conduct periodic inspections and performance audits of the water utility contractor's performance under the contract. Such inspections and audits are to be scheduled by the City annually or as otherwise deemed warranted by the City.

In December 2020, the City issued a request for qualifications (RFQ) for civil engineering continuing services to be determined by the City on an individual task order basis. Such services included various aspects of the City's operations and services for its water utility, such as stormwater engineering, water quality studies and design, flood control, stormwater master planning, potable water treatment engineering, sewer and reclaimed water treatment engineering, and general site planning and design for municipal facilities. Effective June 4, 2021,<sup>5</sup> approximately 20 months after the effective date of the contract with the water utility contractor, the City entered into a contract with an engineering firm for civil engineering continuing services for projects related to its water utility on an as-needed, task-oriented basis.

Based on our discussions with City personnel and review of City records, the City's efforts to monitor the water utility contractor's performance included the receipt of monthly status reports, periodic meetings with the contractor, and the performance of periodic water quality testing that the FDEP reviewed to ensure that water quality consistently met State standards. In response to our requests for task orders made by the City to periodically evaluate and conduct performance audits of the contractor's performance, City personnel indicated that the engineering firm had provided a scope of services<sup>6</sup> dated June 22, 2021, indicating that, upon receipt of a notice to proceed from the City, an operational audit<sup>7</sup> would be completed within 16 weeks. On July 12, 2021, the City approved the scope of services and issued a purchase order on July 21, 2021. The City received the audit report over 2 years later on August 25, 2023, and, according to City personnel, the delay was primarily caused by impacts on the City from hurricanes in September 2022 and November 2022. Our review of the audit report disclosed findings that may have contributed to the wastewater violations discussed in Finding 1. For example:

- Aging utility facilities led to unexpected maintenance projects, including emergency repairs.
- Communication protocols were not always followed when abnormal or emergency events occurred.
- Computer software used to monitor process performance and track maintenance events was not always functional due to program modifications. Additionally, the work order system used to schedule preventative maintenance tasks was not always utilized to document corrective

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<sup>5</sup> The City had previously contracted with the same engineering firm in September 2018, with a primary focus on water quality improvements, and the City contracted with the same firm in December 2020 pursuant to the RFQ process for a separate continuing services contract for engineering services.

<sup>6</sup> The scope of services indicated that the audit was to evaluate permit and contractual compliance, work practices, communication protocols, procedures and documentation, and operation and maintenance practices compared to industry practices.

<sup>7</sup> The term "operational audit" was meant to be synonymous with the term "performance audit" included in the City's contract with the water utility contractor.

maintenance procedures, and a spare parts inventory was not actively maintained, which led to delays in maintenance and repair projects.

According to the City's Director of Utilities, the audit findings would be discussed with the contractor to ensure the prompt correction of the deficiencies noted.

Although we requested, we were not provided evidence that the City scheduled any other periodic inspections or audits of the contractor's performance. In addition to the engineering firm's delay in providing the above-mentioned audit report, the City's delay in procuring independent engineering firm services may have contributed to the wastewater violations discussed in Finding 1. Absent effective contract monitoring, including periodic evaluations of contractor performance, the City has limited assurance that the water utility contractor is complying with State laws, State rules, and contract terms and that any noncompliance is timely detected.

**Recommendation: The City should develop policies and procedures to more effectively monitor contractor compliance with contract terms and applicable State laws and rules. Such policies and procedures should ensure that contractor performance is evaluated periodically, but no less frequently than annually. In addition, the City should ensure that its contracted engineer conducts periodic inspections of the water utility contractor's performance in accordance with the water utility contract requirements.**

### **Finding 3: Infrastructure Sales Surtax**

Pursuant to State law,<sup>8</sup> Seminole County (County) enacted an ordinance<sup>9</sup> authorizing the imposition of a 1 percent local government infrastructure sales surtax (sales surtax) to provide acceptable levels of service for public transportation system infrastructure, pedestrian access and mobility facilities, trails, and stormwater management facilities, as well as other public infrastructure and other infrastructure uses as authorized by law. Seminole County, the School Board of Seminole County, and the seven County municipalities approved an interlocal agreement in March 2014 to govern the distribution of the infrastructure sales surtax collected during the period January 1, 2015, through December 31, 2024.

In accordance with the interlocal agreement, the City submitted a list of 40 proposed projects for roadway infrastructure improvements, pedestrian trails, sidewalks, road resurfacing, bridge replacement and repair, stormwater improvements and pipe relining, with preliminary costs totaling \$19 million. The three categories of listed proposed projects with the largest dollar amounts were:

- Road resurfacing, \$5.2 million.
- Bridge replacement and repair, \$4.0 million.
- Roadway improvements (other than resurfacing), \$3.5 million.

To inform the public about the infrastructure sales surtax, the County maintained a Web site that included the interlocal agreement and the City's project list. As of December 31, 2022, City records indicated that the City had received and deposited into its Road Improvements Special Revenue Fund \$18.4 million of the sales surtax collections, and the City's investment earnings on those collections totaled approximately \$700,000, for a total of \$19.1 million available sales surtax collections and investments earnings. From

<sup>8</sup> Section 212.055(2)(a)1, Florida Statutes.

<sup>9</sup> Seminole County Ordinance No. 2014-8. Seminole County voters approved the sales surtax referendum on May 20, 2014.

this amount, the City had expended \$7.9 million and transferred an additional \$2 million to the Water and Sewer Utility Fund for infrastructure projects.

The interlocal agreement allows for the project list to be revised only after approval by the governmental entity controlling the project following a noticed public meeting. City Commission meeting agendas include consent agenda items that may be collectively approved by the City Commission in one motion and without individual discussion; however, any City Commissioner may request an item be removed from the consent agenda for individual discussion and action. Our examination of City Commission meeting minutes and City records disclosed that the City Commission approved the following revisions to the project list at publicly noticed meetings as part of the meeting consent agendas without individual discussion:

- On July 13, 2020, the City Commission reallocated \$10 million from “bridge repairs/retrofits, residential road resurfacing, sidewalks, and new roadway projects” to “water/wastewater projects, parks and trails, patrol and fleet vehicles, equipment, and building rehabilitation projects.”
- On March 13, 2023, the City Commission reallocated \$2.8 million from “water/wastewater, parks and trails, patrol and fleet vehicles, and equipment projects” to “residential road resurfacing projects.”

From the \$12.8 million reallocated, the City expended \$7.2 million for projects that were not on the initial project list, including \$3.5 million for residential road resurfacing projects; \$2.3 million for patrol and fleet vehicles, equipment, and building rehabilitation projects; and approximately \$925,000 on the Central Winds parking lot and acquisition of land. As of December 2022, City records indicated that an additional \$3.5 million of the sales surtax collections were budgeted for a second City Hall generator and indoor gymnasium, which were also not included on any approved project lists, as amended.

In addition, although the \$2 million transferred from the Road Improvements Special Revenue Fund to the Water and Sewer Utility Fund was allocated to a utility fund that periodically incurs infrastructure expenses potentially allowable under State law,<sup>10</sup> as of August 2023, City Water and Sewer Utility Fund accounting records did not separately identify expenses financed from the sales surtax proceeds. Consequently, City records do not demonstrate that the \$2 million of transferred sales surtax moneys were used, or earmarked to be used, for specific projects included on the amended project lists or other allowable sales surtax purposes.

Insofar as the sales surtax project list was made available to the public in March 2014,<sup>11</sup> voters may have reasonably expected the sales surtax collections to be expended on project list items when they voted for the sales surtax referendum on May 20, 2014. Our examination of City records supporting 38 selected sales surtax expenditures totaling \$7.5 million incurred during the period January 1, 2015, through March 10, 2023, disclosed that the expenditures were generally consistent with State law. However, although the interlocal agreement allows the City and the other signatories to change the project list, the City’s decisions to expend sales surtax collections on alternate projects may erode public trust that the moneys will be expended in accordance with voter expectations at the time of the referendum.

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<sup>10</sup> Section 212.055(2)(d)1., Florida Statutes

<sup>11</sup> Seminole County Government Public Works Department Web page – *One Cent Tax 2014*.



In addition, the inclusion of significant sales surtax reallocations in the City Commission consent agenda reduced transparency by depriving the opportunity for public information and discussion. In May 2023, the County's Inspector General issued an audit report<sup>12</sup> of the sales surtax allocations to the City with a similar finding. In response to that audit, the City indicated that its Mayor or Commissioners had the opportunity to remove consent items from the consent agenda for discussion, and that the public meetings have two opportunities for public comment on the consent agenda items. The City further indicated that future project list revisions may be excluded from the consent agenda.

Excluding infrastructure sales surtax reallocations from the City Commission consent agenda would increase the opportunity for public discussion of the City's intent and rationale for revising the project list and improve transparency of City decisions involving the expenditure of sales surtax moneys.

**Recommendation: The City should establish policies and procedures that:**

- **To provide for City Commission and public discussion, require and ensure that items with significant financial impacts or high public interest, such as the infrastructure sales surtax, are included in the agenda as discussion items, rather than consent agenda items.**
- **To the extent practical, ensure that sales surtax collections be expended in accordance with public expectations.**
- **Provide separate accountability for the expenditure of sales surtax collections transferred from the Road Improvements Special Revenue Fund to other City funds.**

#### **Finding 4: Public Records Requests**

Except as otherwise provided in the Constitution of the State of Florida, pursuant to the State's Sunshine Law,<sup>13</sup> the City is required to provide public records for inspection upon request. State law<sup>14</sup> authorizes the City to charge a reasonable fee based on costs incurred if the nature or volume of public records requested to be inspected or copied requires extensive use of information technology (IT) resources or extensive clerical or supervisory assistance. In addition, a City resolution<sup>15</sup> allows a fee, based on the labor costs actually incurred or attributed to City personnel, to be charged if fulfillment of the request is estimated to require more than 30 minutes of labor.

According to City personnel, upon receipt of a request for public records, the City Clerk meets with appropriate City personnel, such as department heads, to discuss where the requested records are stored and to estimate the time required to collect, duplicate, and review the records prior to releasing them to the requestor. If it is determined that the request will involve extensive City personnel effort,<sup>16</sup> the City Clerk will invoice the requestor for the estimated cost to provide the requested public records and require a prepaid deposit for half the cost. If the request does not require extensive resources, the City will complete the request free of charge. For requests received by e-mail, City personnel send an

<sup>12</sup> Seminole County Clerk of the Circuit Courts and Comptroller report No. 040323, *Audit of Inter-local 3<sup>rd</sup> Generation 1 Cent Tax Allocation, City of Winter Springs*.

<sup>13</sup> Section 286.011(1) and (2), Florida Statutes.

<sup>14</sup> Section 119.07(4)(d), Florida Statutes.

<sup>15</sup> City of Winter Springs Resolution No. 2013-07.

<sup>16</sup> According to City personnel, in practice, the term "extensive" means that more than 30 minutes of employee effort will be required to fulfill a request. City of Winter Springs Resolution No. 2013-07 indicates that public records requests requiring 30 minutes or less of response time will be fulfilled at no cost to the requestor.

e-mail to the requestor confirming receipt of the request but do not provide an estimated completion date for fulfillment of the request.

According to City records, the City received 217 public records requests during the period October 1, 2021, through December 31, 2022. For 211 of the requests, City personnel determined that extensive resources would not be required, and no costs were estimated and assessed to the requestors. However, our examination of City records documenting these public records requests noted that 38 requests were completed 11 to 87 business days, or an average of 29 business days after receipt of the requests. In response to our requests for explanations for the lengthy response times, City personnel identified the need to conduct official City business, staff work schedules, vacations, employee turnover, and training as factors contributing to the number of days needed to complete a public records request. Although the City has written procedures addressing request fulfillment, the procedures do not specify a time frame for completing public records requests or that requestors be notified when delays occur. In addition, the City did not have records showing actual employee time spent responding to the public records requests because the City does not have policies and procedures requiring the tracking of actual time spent fulfilling public records requests.

For the remaining 6 requests, City personnel invoiced the requestors amounts ranging from \$21 to \$3,895 based upon estimated costs for the time anticipated to be incurred by the City Manager, Public Works Director, various clerks, and IT personnel to satisfy the requests. Deposits for 2 of the 6 requests were paid and the requests were timely fulfilled, the requestor rescinded 1 of the requests after meeting with City staff, and the other 3 requests were not satisfied as the requestors did not pay the required deposits. In response to our request to review documentation to support the invoiced amounts, City personnel indicated that records demonstrating how the estimated costs were calculated did not exist and that the City does not have any policies or procedures requiring records to be maintained to support the cost estimates.

Prompt responses to public records requests promote good governance and without such, transparency and public trust may be compromised. In the absence of effective policies and procedures to require timely responses to public records requests and to document estimated and actual costs for processing public records requests, City records do not demonstrate City compliance with State law requiring public records be provided upon request and that any amount charged to produce the records was reasonable based on the costs incurred.

**Recommendation: The City should enhance its policies and procedures to specify a standard time frame for completion of public records requests and to require requestors be notified when delays will occur. Further, City policies and procedures should require supporting documentation be retained to support the calculation of the estimated and actual costs of responding to public records requests requiring extensive effort.**

## **Finding 5: Procurement**

City ordinances<sup>17</sup> require that all City purchases be made pursuant to written uniform purchasing policies and procedures established by the City Manager, permit the City Manager to authorize commodities and

<sup>17</sup> Chapter 2, *Administration*, Article VI, *Finance*, Division 2, City of Winter Springs Code of Ordinances – *Purchasing*.

services purchases of \$50,000 or less, and require City Commission authorization for purchases in excess of \$50,000. The ordinance also specifies that competitive prices for purchases of commodities and services shall be obtained by written bid, quote, or proposal with the purchase or contract awarded to the lowest and best bidder, including for the acquisition of professional services pursuant to direct negotiation, with certain exemptions, for example, emergency and sole source situations.

Although we requested in April 2023, as of August 2023, City personnel had not provided to us the City's written uniform purchasing policies and procedures required by City ordinance. However, we were provided a *Purchasing Policy Summary*,<sup>18</sup> that refers to the purchasing policies and procedures City personnel were unable to locate. Although the *Purchasing Policy Summary* did indicate that purchases of commodities and services in excess of \$50,000 were required to be procured pursuant to a publicly solicited competitive selection process using formal sealed bids or responses to requests for proposal (RFP),<sup>19</sup> and any bid or RFP solicitation is to be awarded to the lowest and best responsive bidder or respondent, City personnel indicated that the *Purchasing Policy Summary* is a guide of recommendations rather than a list of requirements. The lack of the uniform purchasing policies and procedures required by City ordinance may have contributed to the deficiencies discussed below.

During the period October 1, 2021, through September 30, 2022, 59 vendors each received one or more payments collectively exceeding \$50,000 and totaling \$15.7 million. Our review of City records supporting the purchases of goods or services from 14 of those vendors, with payments totaling \$4.9 million, disclosed that:

- The City did not use a competitive selection process to procure temporary labor services for concrete, landscape, and generalized services totaling \$67,339. City personnel indicated that temporary labor, such as concrete laborers and landscape and general helpers obtained from a temporary employment agency, qualifies as professional services and is exempted from competitive selection by City ordinance.<sup>20</sup> Notwithstanding, insofar as City ordinances do not define the term "professional services," and the City also lacks policies and procedures that define the term, the basis for concluding that temporary manual labor services constitute professional services and, therefore, are exempt from competitive solicitation, is not apparent.
- At its July 12, 2021, meeting, the City Commission approved the purchase of an irrigation pump for \$67,404 based on three written quotes included in the meeting agenda packet. Although City personnel obtained the three quotes, sealed bids were not solicited as recommended by the City's *Purchasing Policy Summary*.
- In connection with an RFP for communication and branding services, City personnel sought additional guidance from the City Commission during its December 13, 2021, meeting because three proposals, with associated costs ranging from approximately \$48,000 to \$197,000, met the minimum requirements of the RFP but differed in the description of services to be provided. In public debate at that meeting, the City Commission noted that the competing proposals contained significant scope and cost differences but did not direct City personnel to seek additional information from the respondents or attempt to obtain comparable proposals by revising the criteria and reissuing the RFP. Instead, the City Commission instructed City personnel to engage in contract negotiations with a respondent selected based on criteria not specified in the RFP.

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<sup>18</sup> City of Winter Springs *Purchasing Policy Summary*, dated October 11, 2018.

<sup>19</sup> City personnel indicated that, in practice, a formal sealed bid process is utilized when a specific good or service and method of delivery is known; otherwise, an RFP process is initiated to obtain and evaluate variable options to best meet the City's needs.

<sup>20</sup> Chapter 2, *Administration*, Article VI, *Finance*, Division 2, *Purchasing*, Section 2-152, City of Winter Springs Code of Ordinances – *When written bids are required; waiver; small purchases*.

For example, although the RFP did not include a local preference criterion, one proposal was rejected because a City Commissioner expressed a desire to keep the City's dollars local and noted that the proposal originated from an out-of-State respondent. To ensure that the selection process is fair and transparent, City personnel and the City Commission should only evaluate proposals based on the criteria included in the RFP.

- The City issued a request for qualifications (RFQ) in July 2019 for firms to submit their qualifications to operate the City's water systems. As part of the competitive selection process, the City convened a committee to evaluate the two proposals received based upon the qualifications criteria contained in the RFQ. On October 14, 2019, the Commission selected a vendor<sup>21</sup> without using one of the City-ordinance-prescribed competitive selection methods (i.e., a sealed bid or an RFP). As the scope of services was clearly defined, the City should have used an RFP, which would have included a pricing component, to solicit proposals to operate the water systems. During the period November 2019 through June 6, 2023, the City paid \$10.6 million to the vendor. In response to our inquiries, City personnel indicated that:
  - The City was motivated to select the most qualified vendor.
  - The price for the services was not a consideration in selecting the vendor.
  - Insofar as the City previously provided these services to its residents, the City was well positioned to select a vendor based on both qualifications and cost.

Notwithstanding, City records did not demonstrate that the City selected the water utility contractor in accordance with City ordinances and at the lowest price consistent with desired quality.

**Recommendation: The City Manager should establish written uniform purchasing policies and procedures as required by City ordinance. Such policies and procedures should ensure that purchases are made in accordance with City Commission intent, applicable City ordinances are consistently followed, the purchasing process is fair and transparent, and that commodities and services are obtained at the lowest cost consistent with desired quality.**

### ***Follow-Up to Management's Response***

*Management's response indicates that the City competitively procured goods and services in accordance with City ordinances. However, City ordinances<sup>22</sup> require that all City purchases be made pursuant to written uniform purchasing policies and procedures established by the City Manager. As indicated in the finding, City personnel were unable to locate the ordinance-required uniform purchasing policies and procedures; however, they did provide a Purchasing Policy Summary that refers to the missing purchasing policies and procedures. Insofar as the procurements cited in our finding did not comply with the Purchasing Policy Summary requirements, the finding and related recommendation stand as presented.*

### **Finding 6: Purchase Cards**

The City established a purchase card (P-card) program<sup>23</sup> to expedite the purchase of certain goods and

<sup>21</sup> The vendor selected by the City was the same vendor referred to in Findings 1 and 2.

<sup>22</sup> Chapter 2, *Administration*, Article VI, *Finance*, Division 2, City of Winter Springs Code of Ordinances – *Purchasing*.

<sup>23</sup> Chapter 2, *Administration*, Article VI, *Finance*, Division 2, *Purchasing*, Section 2-152, City of Winter Springs Code of Ordinances – *When written bids are required; waiver; small purchases*.

services. P-cards<sup>24</sup> can provide a cost effective, convenient, and decentralized method for designated employees to make business purchases on behalf of an entity. However, as P-cards are vulnerable to fraud and misuse, it is essential that City policies and procedures provide effective controls over the accountability and use of the cards.

In response to our request for the City's P-card policies and procedures, City personnel indicated that no such policies and procedures had been established and that P-card guidelines were limited to the requirements included on the cardholder agreement, which all cardholders must sign prior to being issued a P-card. The cardholder agreement provides that the cardholder understands and agrees to abide by the following requirements:

- The cardholder bears ultimate responsibility for the card.
- The P-card will not be used for personal expenses and will only be used for official business on behalf of the City.
- The cardholder will ensure that applicable budget is available, and expenses are pre-approved through their manager or supervisor.
- The cardholder will reconcile P-card expenditures and submit original receipts to the Finance Department within 5 business days of the statement date.
- The cardholder will report lost or stolen P-cards immediately to the Finance Department.
- Upon separation from City employment, the cardholder will return the P-card with a final reconciliation of all expenditures prior to departure.

Subsequently, City personnel provided a City Commission resolution<sup>25</sup> from 2004 that contained certain elements of a P-card policy. Although the requirements included in the cardholder agreement and the resolution provide some basic guidance on P-card usage, comprehensive written procedures would provide guidelines for staff to reference. Such guidelines could include acceptable uses, allowable vendor types, single purchase limits and restrictions on attempts to evade those limits such as split-invoice or multiple similar purchases, daily and monthly limits, restrictions on sharing P-cards, the process for disputing incorrect charges, the monthly reconciliation process, and supervisory approval and review responsibilities.

During the period October 1, 2021, through December 31, 2022, P-card expenditures by 36 City employees totaled \$347,590. Our examination of City records supporting 30 selected P-card expenditures totaling \$56,233 disclosed that, contrary to the cardholder agreement and resolution, City records did not demonstrate that any of the P-card expenditures had been pre-approved by supervisory personnel. In response to our inquiry, City personnel indicated that pre-approval of an employee's assigned P-card use is verbal and that Finance Department personnel is instructed to identify any questionable charges.

While our examination did not disclose any questionable P-card expenditures, absent comprehensive written policies and procedures to provide effective controls over the accountability and use of the cards

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<sup>24</sup> Chapter 2, *Administration*, Article VI, *Finance*, Division 2, *Purchasing*, Section 2-152 of the Code of Ordinances uses the term "purchase card," City Resolution No. 2004-11 uses the term "credit card," and the City cardholder agreement uses the term "corporate credit card." In practice, City personnel use these terms interchangeably, with "P-card" being the most commonly used.

<sup>25</sup> City of Winter Springs Resolution No. 2004-11.

and documented supervisory pre-approval of expenditures and supervisory review after the expenditures, there is increased risk that unauthorized or inappropriate P-card expenditures could occur without being timely detected.

**Recommendation: The City should establish comprehensive written P-card policies and procedures governing all significant aspects of the P-card program. In addition, the City should document the required supervisory pre-approval of P-card expenditures specified in the cardholder agreement.**

**Finding 7: Management Turnover**

The City Manager, department heads, and other key management positions in the City are responsible for designing and implementing effective internal controls and ensuring consistent application of City policies and procedures. The implementation and consistent application of policies and procedures can be particularly challenging when significant turnover in key management positions is experienced.

As illustrated in Table 1, our examination of City records and discussions with City personnel disclosed that the City experienced significant turnover in certain key management positions during the period April 2019 through February 2023.

**Table 1  
Turnover in Key Management Positions  
For the Period April 2019 Through February 2023**

Position	Number of Resignations	Number of Times Position Was Vacant	Number of Days Position Was Vacant
City Manager	2	-	-
Finance Director	3	1	24
Chief of Police	2	-	-
Director of Public Works	3	2	100
Director of Community Development	3	3	321

Source: City records.

Our examination of City personnel records associated with some resignations disclosed instances of allegations of a negative workplace environment. For example, in December 2019 a former City Clerk cited accusations by Commissioners questioning her loyalty and in July 2022 a former Director of Community Development referred to the “hostile nature” of the working environment at the City. Additionally, in response to our inquiries, City personnel indicated that there were prior instances of Commission interference with City staff and that training regarding City Charter prohibitions against City Commission interference with administration<sup>26</sup> is now provided to City Commissioners during their onboarding process. In addition, City personnel indicated higher pay, lifestyle changes, and retirement as common reasons for key management turnover in recent years.

<sup>26</sup> Part I, *Charter*, Article IV, *Governing Body*, Section 4.07(c), City of Winter Springs Code of Ordinances – *Interference with Administration*, prohibits the Mayor and City Commissioners from giving orders to City staff subject to the direction and supervision of the City Manager.

During the course of the audit, we also noted that the City's 2021-22 fiscal year financial statement audit, which was due to be filed with the Auditor General and Florida Department of Financial Services on June 30, 2022, had not been completed. As of September 2023, the audit was ongoing and was delayed, in part, because the City Controller was also performing Finance Director duties on an interim basis. Additionally, the City's water contractor sent the City a Notice of Default letter dated August 14, 2023, indicating that the City had not paid \$1.2 million for various invoices, the oldest of which had been unpaid since November 2022. The invoices included \$339,467 related to contractual maintenance and repair, and electricity cost refunds associated with water and sewer utility operations<sup>27</sup> and two monthly contract payments totaling \$640,018. According to City personnel, the delays in paying the invoices were, in part, caused by staffing shortages.

Significant turnover in key management positions results in the loss of institutional knowledge and impacts the oversight and consistent application of City policies and procedures and may lead to inefficient operations and reduced service quality. The turnover in key City management positions may have contributed to the control deficiencies and instances of noncompliance disclosed in this report.

**Recommendation: To promote efficient operations, deliver high-quality services to residents, and consistently apply City policies and procedures, the City should continue its efforts to train City Commissioners and develop policies and programs that foster a positive work environment and promote stability in key management positions.**

#### **Finding 8: Anti-Fraud Policy**

Effective policies and procedures for communicating, investigating, and reporting known or suspected fraud are essential to aid in the mitigation, detection, and prevention of fraud. Such policies and procedures serve to establish the responsibilities for investigating potential incidents of fraud and taking appropriate action, reporting evidence of such investigations and actions to the appropriate authorities, and protecting the reputation of persons suspected but determined not guilty of fraud.

Our audit procedures found that the City did implement some elements of a fraud policy, in a related policy,<sup>28</sup> essential to aid in the mitigation, detection, and prevention of fraud; however, the policy did not:

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

<sup>27</sup> Section 8 of the Agreement for Utilities Operations, Maintenance, and Management Services provides that the contractor will be paid for certain maintenance and repair costs and, when applicable, be provided partial electricity cost refunds for utility costs deducted from the contractor's monthly installment payments.

<sup>28</sup> Section 50, City of Winter Springs Personnel Manual – *Code of Conduct*.

The lack of a comprehensive fraud policy that includes, for all employees, adequate training on how to recognize potential acts of fraud, as well as a well-defined method for reporting those acts, increases the risk that fraud will go undetected or unreported. In addition, the lack of procedures assigning responsibility for investigating acts of fraud, as well as for the conduct of the investigation, increases the risk that fraud allegations will not be properly investigated.

**Recommendation: The City should establish a comprehensive policy and procedures for detecting, communicating, and investigating known or suspected fraud.**

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

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. Pursuant to Section 11.45(3)(a), Florida Statutes, the Legislative Audit Committee, at its January 26, 2023, meeting, directed us to conduct this operational audit of the City of Winter Springs (City).

We conducted this operational audit from March 2023 through September 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the City of Winter Springs focused on selected processes and administrative activities. For those areas addressed by this audit, our objectives were:

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

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



As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included transactions, as well as events and conditions, occurring during the audit period October 2021 through December 2022, and selected City actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

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

In conducting our audit, we:

- Reviewed applicable laws, grants, contracts, City ordinances, policies and procedures, and other guidelines, and interviewed City personnel to obtain an understanding of applicable processes and administrative activities and the related requirements.
- Examined minutes of City Commission meetings held during the audit period, and the minutes of selected meetings held prior and subsequent to the audit period, to determine the propriety and sufficiency of actions taken related to the programs, activities, and functions included in the scope of this audit.
- Evaluated the adequacy of City policies and procedures related to identifying potential conflicts of interest. For selected City officials, reviewed Seminole County Supervisor of Elections records, statements of financial interests, and City records to identify any potential relationships that represented a conflict of interest with City vendors.
- Inquired of City personnel to determine whether the City entered into any contracts under the authority granted by a state of emergency, declared or renewed during the audit period.
- Evaluated the sufficiency of City actions to comply with consent orders issued by the Florida Department of Environmental Protection. Additionally, we evaluated the sufficiency of City monitoring of its water utility contractor.
- From the population of 59 vendors receiving one or more payments collectively exceeding \$50,000 during the period October 2021 through September 2022, examined City records supporting the procurement process for 14 vendors paid \$4.9 million to determine whether the City competitively procured goods and services in accordance with City ordinances.
- Reviewed City records and communications related to a consumptive use permit issued by the St. Johns River Water Management District for irrigation-type water rights associated with a local lake and also an artesian well located on private property. Our review of City records disclosed that the permit issued by the Water Management District to the City in April 2007 lasts for 20 years

and is currently the subject of a legal dispute by the property owners of the artesian well site, which is the appropriate avenue for resolution.

- Examined City records related to public records requests received during October 2021 through December 2022, to determine if City personnel promptly processed such requests and that any fees charged to requestors were properly calculated and in accordance with State law.
- Determined whether the City had established anti-fraud policies and procedures to provide guidance for detecting, communicating, and investigating known or suspected fraud.
- For the population of 19 employees hired at the director position and above between January 2019 through December 2022, examined City documentation to determine whether the employees were hired in accordance with City policies and the employees met the minimum education and experience qualifications established in the City's written job descriptions.
- Reviewed City employment opportunity outreach methods and evaluated the adequacy of such methods to ensure that an adequate number of qualified applicants were made aware of City employment opportunities.
- From the population of 1,716 purchase card (P-card) expenditures between October 2021 and December 2022 totaling \$347,590, examined 30 transactions totaling \$56,233 to determine whether P-card expenditures complied with City policies and procedures and good business practices.
- Prepared a schedule of key City personnel turnover and reviewed exit interviews and resignation letters to ascertain whether the City Commission or its members may have contributed to a negative workplace environment or otherwise took actions that increased employee turnover.
- Examined City records and inquired of City personnel to determine whether the City Commission complied with the City Charter, which requires the City Commission and its members to deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager.
- Analyzed changes in City staffing levels and corresponding changes in salaries and benefits for the 2019-20, 2020-21, and 2021-22 fiscal years to determine whether changes in staffing levels and associated costs were reasonable.
- Reviewed the interlocal agreement signed by Seminole County (County), Seminole District School Board, and seven municipalities located within the County to identify key provisions associated with the expenditure of the voter-approved infrastructure sales surtax (sales surtax).
- From the population of 205 sales surtax expenditures incurred during the period January 2015 through March 2023 and totaling \$9.9 million, we examined City records supporting 38 expenditures totaling \$7.5 million to determine whether the expenditures were made in accordance with Section 212.055(2), Florida Statutes, the sales surtax interlocal agreement, and the voter-approved referendum.
- Analyzed City records to determine if the City possesses sufficient financial resources to implement the proposed water, wastewater, and stormwater capital improvement plan.
- In April 2023, reviewed the Web site created by the City's contracted public relations firm to determine whether statements on the Web site to inform the public were materially accurate.
- Examined City records, including City Commission meeting minutes, for the period October 2021 through December 2022, and inquired of City personnel to determine whether any construction or electrical projects with estimated or actual costs exceeding the thresholds specified in Section 255.20, Florida Statutes, were performed using City services, employees, and equipment.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.

- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

## ***AUTHORITY***

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

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

Sherrill F. Norman, CPA  
Auditor General

# MANAGEMENT'S RESPONSE

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**KEVIN McCANN**  
MAYOR

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**PHILIP HURSH**  
INTERIM CITY MANAGER

October 13, 2023

Sherill F. Norman, CPA  
Auditor General  
Claude Denson Pepper Building, Suite G74  
111 West Madison Street  
Tallahassee, Florida 32399-1450

**Re: City of Winter Springs Operational Audit – Updated Per Auditor General's Request For Clarification from October 11, 2023 Version Submission**

Dear Ms. Norman:

Thank you for your letter dated September 19, 2023 enclosing a list of eight (8) preliminary and tentative audit findings and recommendations resulting from the operational audit of the City of Winter Springs conducted by your office. Upon a thorough evaluation of the findings and recommendations, we appreciate the opportunity afforded the City to submit the enclosed written management response in accordance with section 11.45(4)(d), Florida Statutes.

The City genuinely appreciates the work conducted by the Auditor General Office and the professional manner in which the audit team communicated and worked with City staff. During the audit process, City staff, the City's contracted consultants, and City Attorney have expended a substantial amount of time responding to inquiries and requests for records from the audit team. We believe the experience gained from engaging in the operational audit and implementing your recommendations will help the City further strengthen its policies and procedures and improve operations for the benefit of the citizens of Winter Springs.

Please do not hesitate to contact us if you have any questions or require additional information.

Respectfully submitted,

Kevin McCann, Mayor

Philip Hursh, Interim City Manager

C: City Commission  
City Attorney  
Enclosure (pages 1-8)

## **City of Winter Springs' Response to the Florida Auditor General's Preliminary and Tentative Audit Findings**

### **Finding 1 – Wastewater System Operations**

**Recommendation:** The City should ensure that wastewater reclamation facilities operate in accordance with applicable FDEP rules.

#### **Management Response:**

Management is committed to operating the City's wastewater reclamation facilities with licensed operators in accordance with applicable FDEP rules. The City will continue to fully cooperate and work with the FDEP, which is the State agency delegated with exclusive jurisdiction to oversee wastewater reclamation facilities pursuant to chapter 403, Florida Statutes. The City communicates regularly with the FDEP and provides all operational reports required by FDEP rules. The City acknowledges that the operation of the almost 50-year-old wastewater treatment plants and related infrastructure has been difficult. In response to the FDEP consent orders referenced in the report, the City completed many repairs and improvements to the wastewater facilities to maintain compliance with State regulations including the installation of new equipment. Several of these improvements were requested by the FDEP, but several of them were also initiated voluntarily by the City for purposes of improving operational reliability. Additionally, the City authorized its consulting engineer to provide enhanced operational and compliance support to the City's contract operator in accordance with two approved task orders: "West WWTP Rehabilitation and Operational Improvements" and "Compliance Engineering Support." These task orders provided authorization for additional design improvements along with direct in-field operational review, guidance, and regulatory coordination with the FDEP. Further, the City has developed an approximate \$100 million plan to replace the two wastewater treatment plants with new facilities that will be more resilient and operationally reliable. In addition, the City is applying for funding with the Florida's State Revolving Fund, as well as actively seeking additional grant funding sources, to fund the design and construction of the new plants. In the coming months, Management will also be finalizing, with the assistance of the City's utilities rate consultant, a utilities rate study and presenting to the City Commission for consideration and approval a comprehensive funding plan to support the long term operational and capital improvement needs of the City's water, sewer and reclaimed utilities systems.

### **Finding 2 – Water Utility Contact Monitoring**

**Recommendation:** The City should develop policies and procedures to more effectively monitor contractor compliance with contract terms and applicable State laws and rules. Such policies and procedures should ensure that contractor performance is evaluated periodically, but no less frequently than annually. In addition, the City should ensure that its contracted engineer conducts periodic inspections of the water utility contractor's performance in accordance with the water utility contract requirements.

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**Management Response:**

Management is in agreement with the recommendation. The City, through our consulting engineer, recently completed an operational audit of the current contract operations of the City's water and sewer utilities. To accomplish more frequent oversight and monitoring in the future, the City is currently working with its consulting engineer to finalize a detailed written task order to establish a scope of service and plan to conduct monthly operational inspections and monitoring, instead of annually. The monthly inspection and monitoring will be primarily focused on operational performance, contract compliance, permit compliance and FDEP reporting. The intent of the monthly review plan will be to proactively assist the operator in avoiding problems that could result in non-compliance of FDEP rules and contract requirements, and to strengthen the City's utilities policies and procedures where warranted.

**Finding 3 – Infrastructure Sales Surtax**

**Recommendation: The City should establish policies and procedures:**

- **To provide for City Commission and public discussion, require and ensure that items with significant financial impacts or high public interest, such as infrastructure sales surtax, are included in the agenda as discussion items, rather than consent agenda items.**
- **To the extent practical, ensure that sales surtax collections be expended in accordance with public expectations.**
- **Provide separate accountability for the expenditure of sales surtax collections transferred from the Road Improvements Special Revenue Fund to other City funds.**

**Management Response:**

Management appreciates the recommendation, and remains committed to continue expending infrastructure sales tax funds in a publicly transparent manner and in accordance with law, the public referendum and the 2014 Interlocal Agreement approved by Seminole County, the seven Seminole County cities and School District.

The City acknowledges that the City Commission's current rules of procedure provide two public input opportunities for the public to comment on consent items, and allows a Commissioner to pull a consent item for questioning and comments.<sup>1</sup> Consistent with the Auditor General's recommendation, the City has already committed not to place infrastructure sales tax items on the Commission's consent agenda. On July 10, 2023, the most recent revised project list for the infrastructure sales tax item was placed on the Commission agenda as a regular agenda item for

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<sup>1</sup> The Report cites two Commission meetings on July 13, 2020 and March 13, 2023 when the sales surtax project list was revised (as explicitly allowed by the 2014 Interlocal Agreement) on the Consent Agenda without individual discussion. However, a Commissioner did ask questions and discussed with the City Manager the proposed revised project list and available surtax revenues immediately before the Consent Agenda was approved at the July 13, 2020 meeting. (See July 13, 2020 Commission Meeting Audio Recording beginning at 1:10:11 mark).

consideration based on a recent recommendation by the Seminole County Clerk of Court. Placement as a regular agenda item allows even more opportunities for public discussion in addition to the other two opportunities afforded the public to address infrastructure sales tax items under the public input sections on the agenda which occur at the beginning and end of each City Commission meeting.

In addition, regarding public expectations of the sales surtax money, the Report seems to acknowledge, but fails to mention that, the critically important referendum question prepared by the County and approved by the voters stated:

**SEMINOLE COUNTY TEN YEAR SALES TAX TO FUND COUNTYWIDE GENERAL GOVERNMENT AND PUBLIC EDUCATION INFRASTRUCTURE**

The County, the seven cities in the County and the School Board require revenue for the construction and rehabilitation of roads and transportation facilities; bicycle and pedestrian trails; stormwater facilities; public education facilities; **and other infrastructure uses authorized by law.** Shall the County be authorized to levy a ten (10) year, one cent (1¢) per dollar sales surtax on taxable transactions occurring within Seminole County to become effective on January 1, 2015?

Thus, the referendum approved by the voters authorized expenditures for the construction and rehabilitation of not only roads and transportation facilities; bicycle and pedestrian trails; stormwater facilities; and public education facilities, but also explicitly authorized any “other infrastructure uses authorized by law.” For example, section 212.055(2)(d), Florida Statutes specifically authorizes the expenditure of infrastructure sales tax revenue on a variety of other major capital improvements, including sanitary sewer, solid waste, drainage, potable water, and parks and recreational facilities.

Regarding the transferred \$2 million sales surtax money referenced in the Report, the transferred funds provided funding for critical priority capital repairs and improvements to meet FDEP water and wastewater system regulations, consistent the Auditor General’s recommendation in Finding 1 and in compliance with the type of capital expenditures authorized by Section 212.055(2)(d), Florida Statutes. Additionally, the City did separately account for the \$2 million sales surtax money transfer. The Report does not mention that in this case, the City Commission adopted the Fiscal Year 2020-2021 budget on September 28, 2020 in accordance with the TRIM notice and public hearing procedures under Section 200.065, Florida Statutes. The approved budget explicitly included a separate accounting of the \$2 million transfer from the Infrastructure Surtax fund to the Water & Sewer Utility Fund (See FY Budget 20/21, pgs 103, 130 and 132), and specifically identified and earmarked water and sewer capital improvements to be initiated and funded by the transfer. (See FY Budget 20/21, pgs 103 and 132). On December 14, 2020, the City Commission then approved at a public meeting, a capital expenditure in the amount of \$942,809.98 for a new suction pipe for water treatment plant #1 (See Agenda Item 301). In addition, at its public meeting on July 13, 2020, the City Commission authorized a \$1,920,155.00 capital expenditure for priority infrastructure repairs and upgrades to its aging wastewater utility system. (See Agenda Item 301).

Nevertheless, in furtherance of the Auditor General's recommendation, Management will establish additional reporting procedures to improve the separate accountability of any future expenditure of sales surtax collections transferred from the Road Improvements Special Revenue Fund to other City funds. However, the City maintains it spent and accounted for the sale surtax on permissible infrastructure in compliance with State law.

#### **Finding 4 – Public Records**

**Recommendation: The City should enhance its policies and procedures to specify a standard time frame for completion of public records requests and to require requestors to be notified when delays will occur. Further, City policies and procedures should require supporting documentation be retained to support the calculation of the estimate and actual costs of responding to public records requests requiring extensive effort.**

#### **Management Response:**

Management understands the importance of responding to public records requests as required by law. The City has an existing comprehensive public records policy which was adopted by the City Commission by Resolution No. 2013-07. Management acknowledges the position taken by the Auditor General and will begin evaluation of the City's existing public records policy to enhance the policy regarding the calculation and documentation of estimated and actual costs that are collected as special service charges for requests requiring extensive efforts to complete.

Management notes, however, that a "standard time frame" for a completion of public records is not required by law. The Public Records Act does not contain a specific time limit for compliance with public records requests because the time required to respond to a particular request will necessarily vary depending on the nature of the request, volume of documents sought, location of documents, review time required for possible exemptions and redactions, payment of deposits, and other circumstances legally justifying a delay. An average number of business days taken to respond to public records requests received during a certain period does not indicate a lack of transparency when the nature of those requests are not also considered. The custodian of public records must promptly acknowledge requests to inspect or copy records and respond to those requests in good faith. Section 119.07(1), Fla. Stat. However, the Public Records Act contemplates the reasonable custodial delay necessary to retrieve, review, and excise exempt material when responding to a records request. *Tribune Co. v. Cannella*, 458 So.2d 1075, 1078 (Fla. 1984). The Act demands prompt attention and a reasonable response time, not the quickest-possible response time. *Id.* In addition, service charges may take into account the information technology services and labor required to respond to a public records request. Courts have typically found that special service charges which account for the amount of hours required to review the records and the hourly cost of the employees reviewing those records are reasonable.

Management also understands that in some cases due to the nature and volume of records requests, the custodian of records may require a special service charge or a deposit accounting



for some amount thereof to be paid in advance. See e.g., Trout v. Bucher, 205 So. 3d 876 (Fla. 4th DCA 2016) (finding that a deposit of \$189 and payment of an hourly fee in the same amount was reasonable); Morris Pub. Groub, LLC v. State, 154 So. 3d 528 (Fla. 1st DCA 2015) (finding that a \$3000 deposit and ultimate cost of approximately \$6357 to review records was reasonable); City of St. Petersburg v. Dorchester Holdings, LLC, 331 So. 3d 799 (Fla. 2d DCA 2021) (finding that the city's prepayment request of approximately \$6154 did not violate the public records act even where clerk advised that estimated final cost to review may be over \$27,555).

In addition, Management notes that the initial Report was revised regarding the referenced 6 public records requests requiring a deposit. Each of the 6 requestors received a written email from City staff setting forth the deposit amount requested. Two requestors actually paid the deposit and those two requests were timely fulfilled either on the same day the deposit was paid or one day after payment was received. Regarding one of the other 6 requests, the attorney making the request rescinded the request after he and his client had a "productive meeting with Staff" regarding a pending development project. Lastly, City staff partially completed one of the other requests without charge, but the requestor then decided not to respond to a deposit request for the remaining records. Therefore, 214 of the 217 (98.6%) public records requests received during the audit period were fully completed by City staff, and one other request was partially completed without charge before the requestor decided not to pay the deposit for the remainder of the request. Additionally, while the nature and volume of records requests can vary considerably and 38 requests were completed within 11 to 87 business days, Management notes that 175 out of 214 (81.7%) completed requests were handled by the City staff in 10 business days or less.

#### **Finding 5 – Procurement**

**Recommendation:** The City Manager should establish written uniform purchasing policies and procedures as required by City ordinance. Such policies and procedures should ensure that purchases are made in accordance with City Commission intent, applicable City ordinances are consistently followed, the purchasing process is fair and transparent, and that commodities and services are obtained at the lowest cost consistent with desired quality.

#### **Management Response:**

Management is in agreement with the recommendation. During the audit process, the City Commission adopted Ordinance No. 2023-05 on June 12, 2023, updating its existing purchasing policies which are set forth in Sections 2-151 and 2-152 of the City Code. The policy now authorizes the City Commission to establish more detailed written uniform purchasing policies and procedures by resolution rather than the City Manager. Simultaneously with the adoption of the Ordinance, the City Commission adopted Resolution No. 2023-20 adopting a comprehensive set of Purchasing Policies and Procedures (consisting of 24 pages) related to numerous procurement methods and procedures which will govern the procurement of supplies,

goods, equipment, contractual services, professional and consultant services, capital improvements, construction and/or any combination of goods and services.

However, Management respectfully disagrees with the finding that that the “the City did not always competitively procure goods and services in accordance with City ordinances.” Section 2-151 of the City Code provides that applicable provisions of the city charter, city ordinance, or state or federal law control the purchases of goods and services. Written uniform purchasing policies and procedures may also be established provided they are consistent and not in conflict with applicable provisions of the city charter, city ordinance, or state or federal law. With respect to several of the purchases referenced in the Report, Management states:

1. Section 2-152(a) of the City Code authorizes purchases of professional services by negotiating directly with a provider for professional services. In addition, although State law establishes procedures for awarding contracts for some kinds of professional services under the Consultants’ Competitive Negotiation Act (“CCNA”), State law does not require the City to competitively select other professional services not covered by the CCNA, including the services of a temporary employment agency. The professional service sought in this case was that of an employment agency able to fulfill a variety of needed positions within the City, not simply the purchase of temporary manual labor. Therefore, the selection of the temporary employment agency was consistent with City ordinance allowing for the direct negotiations for professional services.
2. The irrigation pump purchase for \$67,404 was presented to the City Commission based on three written quotes which is consistent with Section 2-152(a) of the City Code which provides that competitive prices may be obtained by written bid, quote, or proposal. Based on these quotes, the City Commission approved the award of the contract to the lowest and best bidder in accordance with City ordinance.
3. Regarding the selection of a contractor to provide utilities operation, maintenance, and management services, the City used a competitive selection method required by State law. Specifically, the City followed the competitive selection process set forth in the CCNA under Section 287.055, Florida Statutes and publicly announced a detailed and comprehensive Request for Qualifications for Professional Services for Utilities, Maintenance, and Management Services (RFQ #05-19 LR). The RFQ covered different facets of the City’s overall utility system including assuming responsibility for managing the City’s two wastewater plants, three water plants, reuse augmentation plant, reclaimed water storage and pumping system, 50 lift stations, and stormwater infrastructure. Such professional services included respondents providing a proposed staffing plan for a project manager, licensed and certified professionals, and a management team capable of operating the utilities, which was anticipated to and ultimately did result in the furnishing of a project management team including qualified engineers and construction management professionals. Consistent with the CCNA, the City followed a two-step competitive process. First, during the competitive selection step, the City evaluated and ranked the respondents based solely on qualifications and the submittal requirements, and Veolia was ranked the

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most qualified firm. Price cannot be considered during the first step. Second, based on the ranking, the City was then required by Section 287.055(4)(b) to commence competitive negotiations of a contract with the most qualified firm (Veolia) to determine a “fair, competitive, and reasonable” price. As a result of the CCNA process, the Agreement for Utilities Operations, Maintenance and Management Services, dated October 21, 2019, was approved by the City Commission at a negotiated price the City determined to be fair, competitive, and reasonable. As such, Management respectfully disagrees with the Auditor General’s comment in the Report that “the City should have used an RFP, which would have included a pricing component, to solicit proposals to operate the water systems.”

#### **Finding 6 – Purchase Cards**

**Recommendation:** The City should establish comprehensive written P-card policies and procedures governing all significant aspects of the P-card program. In addition, the City should document the required supervisory pre-approval of P-card expenditures specified in the cardholder agreement.

#### **Management Response:**

Management is in agreement with the recommendation. The City’s P-card policy was updated by Resolution No. 2023-20 and is contained in Section 9 of the new comprehensive Purchasing Policy and Procedures.

#### **Finding 7 – Management Turnover**

**Recommendation:** To promote efficient operations, deliver high-quality services to residents, and consistently apply City policies and procedures, the City should continue its efforts to train City Commissioners and develop policies and programs that foster a positive work environment and promote stability in key management positions.

#### **Management Response:**

Management is in agreement with the recommendation. Management remains committed to promoting efficient operations and delivering high-quality services to residents. As noted elsewhere in this response, Management has already taken steps with City Commission approval to improve several City policies and procedures. Management also recognizes that amid a historically strong labor market, employers, especially State and local governments, have struggled to retain and hire employees. Additionally, several of the positions in Table 1 in the Report recognize that the City had several positions become vacant due to retirement or the position being vacated because of promotion to serve as City Manager or Interim City Manager. Management will continue to look for opportunities to develop additional policies and programs that foster a positive work environment and promote stability in key management positions. For example, this year, the City Commission adopted several amendments to the City’s Employment Policies related to improving employee retirement, sick and vacation time, and additional personal

leave to foster a more positive work environment and promote stability. Management will continue to offer training to City Commissioners especially during orientation of a newly elected mayor or commissioner, and will continue to encourage City Commissioners to take advantage of other training opportunities such as those provided by the Florida League of Cities regarding the Institute for Elected Municipal Officials and State-Mandated Continuing Education in Ethics.

**Finding 8: Anti-Fraud Policy**

**Recommendation: The City should establish a comprehensive policy and procedures for detecting, communicating, and investigating known or suspected.**

**Management Response:**

Although State law does not require the City to adopt an Anti-Fraud policy, Management is in agreement with the recommendation to establish a more comprehensive Anti-Fraud Policy. On October 9, 2023, the City Commission adopted Resolution 2023-32 establishing an Anti-Fraud Policy.