



Sam M. McCall, Ph.D., CPA, CGFM, CIA, CGAP
City Auditor

HIGHLIGHTS

Highlights of City Auditor Report #0917, a report to the City Commission and City management

WHY THIS AUDIT WAS CONDUCTED

This audit was conducted to evaluate the process for executing, approving, and administering City leases of real properties. The primary focus was to review the administration of leases of City-owned properties to other entities, including the collection of revenues for those leases. We also reviewed activities relating to the administration of lease of property by the City from external entities.

The audit addressed lease activities during the period January 1, 2006, through April 30, 2008. In some instances, negotiation and execution of leases prior to the above period was reviewed.

WHAT WE RECOMMENDED

To improve the lease administration process, recommendations were made within the report to ensure:

- City Real Estate Policy 136 is revised to (1) identify and address leases that are covered by that policy; (2) specify which leases should be processed through and negotiated by, or with the assistance of, the Property Management Division; and (3) identify circumstances in which approval authorities may be delegated.
- The Property Management Division is made aware of all prospective leases in accordance with City Real Estate Policy 136.
- The Property Management Division negotiates all leases, or, at a minimum, is involved in the negotiations of all leases as prescribed by Real Estate Policy 136.
- Leases are reviewed and approved by the appropriate approval authorities established in City Real Estate Policy 136.
- The Risk Management Division reviews all prospective lease agreements for the purpose of determining if agreements contain appropriate terms protecting and/or minimizing the City's exposure to risks.
- Existing leases are timely renewed when applicable.
- Updated certifications of insurance coverage are timely obtained from lessees (tenants).
- Lease revenues are timely collected when due from lessees, and, when appropriate, penalties are developed and applied to lessees that are significantly delinquent in their payments.
- Options to escalate lease rates are exercised or reasons for not escalating rates are documented.
- State sales taxes are assessed and collected when applicable.
- Lease payments are billed in a manner to provide for receipt by the City in accordance with the timeframes established by lease terms.
- Lease records are maintained in an organized manner.

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Audit of City Lease Administration

City leases were generally properly executed, approved, and administered. However, several issues were identified in regard to leases of City Property to external entities that, if not corrected, could limit the proper and efficient administration of those leases.

WHAT WE CONCLUDED

For the most part, management implemented controls and processes that ensured leases were executed and administered properly. Related revenues were generally collected and properly deposited. Payments to external entities for lease of properties by the City were correct and appropriate. We also identified issues that indicate the need for improvements and enhancements in the administration of leases of City-owned property to external entities. Those issues included the following:

- Some City departments executed leases without direct coordination by the Property Management Division, which was contrary to the existing City real estate policy.
- Documentation was not available to show some leases were reviewed and approved by the appropriate levels of management established in the City's real estate policy.
- Leases were not always reviewed by the Risk Management Division prior to execution.
- Management changed the terms of one lease without revising the related lease agreement.
- Some leases were not renewed or negotiated in a timely manner.
- Required certificates of insurance were not obtained for some leases.
- One lessee was significantly delinquent in payment of amounts due the City for its use of City utility assets (fiber cable).
- For two leases of City utility assets, management did not document the reasons for not exercising options to escalate lease rates.
- Appropriate records were not available to explain tenants' exemptions from state sales taxes for three leases; for two other leases state sales taxes were applicable but not always properly assessed by the City and collected.
- Leases were not always billed in a manner to allow for payment by the due dates established in the lease agreements.
- Lease documents and related records were not always maintained in an organized manner, thereby limiting management's ability to efficiently manage and administer those leases.
- Written procedures or guidelines for lease administration were not adequate.

We would like to thank the staff of the Property Management Division and various audited City departments and offices for their cooperation and assistance during this audit.

Audit of City Lease Administration

AUDIT REPORT #0917

July 22, 2009



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Audit conducted by:

Reuben Iyamu, Senior Auditor

T. Bert Fletcher, CPA, Senior Audit Manager

Sam M. McCall, Ph.D., CPA, CGFM, CIA, CGAP, City Auditor

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Audit of City Lease Administration



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July 22, 2009

Executive Summary

This audit addressed both leases of City property to non-City entities as well as leases by the City of non-City properties.

In addition to reviewing land and building leases, we reviewed leases of City utility assets to telecommunication companies.

City policy provides for the Property Management Division to coordinate lease activities.

The City Attorney's Office, Treasurer-Clerk's Risk Management Division, and other departments and offices also have responsibilities in regard to City leases.

This audit addressed the City's administration of property leases. The audit addressed both leases of City property to non-City entities as well as leases by the City of property from non-City entities. For selected leases, we determined if (1) revenues due the City for leases of City properties were received; (2) payments to other entities for leases of non-City property were appropriate; (3) leases were executed and administered in accordance with established policy, controlling laws, and sound business practices; and (4) accurate records were maintained to account for City leases and related activity. While we focused on lease activity during the period January 1, 2006, through April 30, 2008, some activity occurring in earlier years was also reviewed. In addition to reviewing traditional leases of land and buildings, we examined some leases involving the use of City facilities, such as water storage tanks, electric poles, and telecommunication lines. Examples included leases by wireless communication companies to place their equipment on City water tanks or utility poles.

Pursuant to City Commission Policy 136, "Real Estate Policy," the Property Management Division is responsible for the coordination of leases. Coordination generally includes processing requests for leases and conducting or overseeing the initiation, negotiation, and execution of leases. The policy provides for the Property Management Division to be assisted by the City Attorney's Office and the Treasurer-Clerks' Risk Management Division in that process. Upon execution, leases are generally administered by the City departments or offices to which the

We identified 110 leases of City property to non-City entities; those leases generate annual revenues to the City of approximately \$6.6 million.

leases pertain. The Property Management Division administers those leases that do not pertain to any specific City department or function.

Based on information made available to us during this audit, there are approximately 110 leases of City-owned properties to non-City entities. Eight City departments or offices, including the Property Management Division, administer those leases. Based on 2008 lease terms, the 110 leases are expected to generate annual revenues that approximate \$6,600,000.

Similarly, information obtained during this audit showed the City is leasing 17 properties from non-City (external) entities. Those leases pertain to seven City departments and offices. The annualized value of payments by the City for those 17 leases is approximately \$350,000.

We identified 17 leases of non-City property; total annual lease payments for those leases approximate \$350,000.

Our audit showed, for the most part, that management implemented controls and processes that ensured leases were executed and administered properly. Related revenues were generally collected and properly deposited. Similarly, payments for leases of property from external entities were correct and appropriate.

We also identified issues that indicate the need for additional improvements and enhancements in the administration of leases of City-owned property to non-City entities. Accordingly, recommendations are made within this report to ensure:

- City Real Estate Policy 136 is revised to (1) identify and address leases that are covered by that policy; (2) specify which leases should be processed through and negotiated by, or with the assistance of, the Property Management Division; and (3) identify circumstances in which approval authorities may be delegated.
- The Property Management Division is made aware of all prospective leases in accordance with City Real Estate Policy 136.

Overall we found that adequate controls and processes are in place and leases are generally properly administered.

Issues were identified that indicate the need for additional improvements and enhancements in the administration of leases of City-owned property to non-City entities.

Recommendations were made to address the identified issues.

The Property Management Division has initiated actions to address several of the issues.

- The Property Management Division negotiates all leases, or, at a minimum, is involved in the negotiations of all leases as prescribed by Real Estate Policy 136.
- Leases are reviewed and approved by the appropriate approval authorities established in City Real Estate Policy 136.
- All prospective lease agreements are reviewed by the Risk Management Division for the purpose of determining if agreements contain appropriate terms protecting and/or minimizing the City's exposure to risks.
- Existing leases are timely renewed when applicable.
- Updated certifications of insurance coverage are timely obtained from lessees (tenants).
- Lease revenues are timely collected when due from lessees, and, when appropriate, penalties are developed and applied to lessees that are significantly delinquent in their payments.
- Options to escalate lease rates are exercised or reasons for not escalating rates are documented.
- State sales taxes are assessed and collected when applicable.
- Lease payments are billed in a manner to provide for receipt by the City in accordance with the timeframes established by lease terms.
- Lease records are maintained in an organized manner.

In response to our discussions and meetings on the issues identified by this audit, the Property Management Division has initiated actions to implement several of the above recommendations. We will address the success of those actions as part of our follow-up engagements conducted for this audit.

We would like to thank the staff of the Property Management Division, City Attorney's Office, Risk Management Division, and other administering departments in their assistance during this audit.

Audit of City Lease Administration



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Objectives

This audit determined whether City leases were properly executed and administered.

The objectives of this audit were to determine whether (1) revenues due the City for leases of City-owned property to other entities were properly collected; (2) payments by the City to other entities for leases of non-City property were appropriate; (3) leases were executed and administered in accordance with the City's real estate policy, controlling laws, and sound business practices; and (4) accurate records were maintained to account for City leases and related activity.

Scope

Our audit addressed lease administration during the period January 1, 2006, through April 30, 2008, with some attention given to certain activities prior to that period.

This audit addressed the process of executing and managing City leases during the period January 1, 2006, through April 30, 2008. In some instances, negotiation and execution of leases prior to that period were reviewed. The primary focus was to review the administration of leases of City-owned properties to other entities, including the collection of revenues for those leases. We also reviewed activities relating to the administration of leases of property by the City from other entities. In addition to reviewing traditional leases of land and buildings, we examined some leases involving the use of City facilities, such as water tank towers, electric poles, and telecommunications lines, by other entities to enhance their operations. Examples included leases by wireless communication companies to place their equipment on City water towers or utility poles.

We selected and reviewed 25 of the 127 leases identified through this audit, with a focus on leases of City-owned property to non-City entities.

We identified 127 leases through this audit. As shown in **Table 1** and **Table 2** on page eight of this report, 110 of those represented leases of City-owned property to external (non-City) entities and 17 represented leases by the City of property owned by external entities. Of those 127 leases, we selected and reviewed activity relating to 25, with 20 of those representing leases of City-owned property to external entities and 5 representing leases by the City of properties owned by external entities. Details on the 25 selected leases are shown in **Appendix B** of this report.

Methodology

We obtained an understanding of City lease processes, reviewed selected leases, and made recommendations in areas where issues were noted.

To address the stated objectives, we:

- Gained an understanding of City lease processes by reviewing documentation and conducting interviews of staff responsible for administering and managing leases.
- Identified the population of City leases with the assistance of the City's Property Management Division and City departments that administer and manage leases.
- Selected and reviewed activity for a representative sample of leases.

Based on the understanding obtained and results of our reviews, we provided assurances as to existing controls and procedures and made recommendations for improvements in areas where issues were identified.

We conducted this audit in accordance with the International Standards for the Professional Practice of Internal Auditing and Generally Accepted Government Auditing Standards. Those standards require 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The City's Property Management Division generally coordinates initiation, negotiation, and execution of leases; administration of executed leases is often the responsibility of affected City departments and offices.

The 110 leases of City property to non-City entities are administered by eight City departments/offices and should generate annual revenues approximating \$6.6 million.

Pursuant to City Commission Policy 136, "Real Estate Policy," the Property Management Division is responsible for the coordination of leases. (Note: The Property Management Division was formerly known as the "Real Estate Division" prior to recent organizational changes.) Coordination generally involves receiving and processing requests from non-City entities to lease City properties and conducting or overseeing the initiation, negotiation, and execution of the lease. Upon execution, leases are generally administered by the City department or office to which the leases pertain. Administration involves ensuring revenues are properly collected, lease payments properly made, and lease terms and conditions are properly followed. In the event the leased property does not pertain to any specific City department or function, the Property Management Division administers the lease. An example is the lease of a vacant City-owned building or lot not currently used by the City.

Based on information made available to us during this audit, there are approximately 110 leases of City-owned properties. As shown in **Table 1**, eight City departments and offices, including the Property Management Division, administer those 110 leases. As also shown in **Table 1**, those 110 leases should generate annual revenues that approximate **\$6,600,000**.

| Table 1 – Leases of City Property To External Entities | | | |
|---|---|-------------------------|-------------------------------|
| No. | Administering Department/Office | Number of leases | Annualized Revenue (1) |
| 1. | Aviation | 47 | \$4,580,251 |
| 2. | Property Management | 27 | \$609,991 |
| 3. | Electric Utility | 18 | \$683,381 |
| 4. | Underground Utility | 9 | \$372,325 |
| 5. | Housing and Human Services (2) | 4 | \$62,924 |
| 6. | Information System Services (Radio Communication) | 3 | \$76,822 |
| 7. | Economic Development (2) | 1 | \$253,500 |
| 8. | Parks and Recreation & Neighborhood Affairs | 1 | \$5,520 |
| TOTAL | | 110 | \$6,644,714 |
| <p>Note (1): Annualized Revenues are based on 2008 lease terms; also, the revenues for some leases are in form of “in kind” contributions instead of cash collections. For example, a tenant may have its lease payments reduced for legitimate repairs and maintenance costs incurred on behalf of the City.</p> <p>Note (2): These two divisions are part of the recently created Department of Economic and Community Development.</p> | | | |

Annual disbursements for the 17 leases of non-City owned properties totaled approximately \$350,000.

Similarly, information obtained during this audit showed the City has 17 leases of properties from external entities. As shown in Table 2, those 17 leases pertain to seven City departments and offices, including the Property Management Division. The annualized value of the lease payments incurred by the City for those 17 leases is \$351,570.

| Table 2 – City leases of Property Owned by External Entities | | | |
|---|---|-------------------------|------------------------------------|
| No. | Administering Department/Office | Number of leases | Annualized Expenditures (1) |
| 1. | Property Management | 8 | \$240,910 |
| 2. | Tallahassee Police Department | 3 | \$66,050 |
| 3. | Parks and Recreation & Neighborhood Affairs (2) | 2 | \$2 |
| 4. | Electric Utility | 1 | \$300 |
| 5. | Energy Services | 1 | \$907 |
| 6. | Facilities Management | 1 | \$43,200 |
| 7. | Planning | 1 | \$200 |
| TOTAL | | 17 | \$351,569 |
| <p>Note (1): Annualized expenditures are based on 2008 lease terms.</p> <p>Note (2): Some leases are for nominal values (e.g., \$1 per year).</p> | | | |

Overall Summary

We found leases were generally properly executed and administered; however, issues were identified that indicate improvements are needed.

We found management has implemented controls and procedures that, for the most part, ensure leases are executed and administered properly. Related revenues were generally collected from those external entities leasing City properties and properly deposited. Similarly, payments by the City to external property owners were correct and appropriate.

However, issues were identified that indicate improvements are needed. For reporting purposes, those issues were categorized into the following four areas:

- Execution of Leases
- Billing and Collection of Lease Revenues
- Lease Records
- Internal Operating Procedures

The issues within those areas are addressed in the following sections of the report.

Execution of Leases

To ensure the best interests of the City are taken into consideration and to ensure a proper understanding of lease terms and arrangements by all parties, a lease agreement should be negotiated and executed by knowledgeable and authorized personnel. Appropriate levels of management should approve the lease prior to execution. When executing leases, management should ensure appropriate terms and conditions are included in the applicable lease agreements, and required documentation is timely obtained. These same principles apply to amendments of existing leases. Overall, we found leases were properly executed and approved by appropriate staff. However, the following issues were identified.

Contrary to City real estate policy, some City departments executed leases with limited or no involvement by the Property Management Division.

Contrary to the City’s real estate policy, some City departments executed leases without direct coordination by the Property Management Division.

Section 136.15 of the City’s real estate policy provides, in part, that the Property Management Division should be notified by parties interested in leasing City property. Upon evaluation of that property and its potential uses, the policy provides the Property Management Division should:

- Make a written recommendation to the City Manager or the City’s Real Estate Committee on whether or not to negotiate a lease with the interested party.
- Upon approval by the City Manager or City Commission, enter into negotiation of the lease with the potential tenant.

Having the Property Management Division evaluate potential leases, make recommendations for the City Manager and/or Real Estate Committee to consider, and negotiate the lease is advantageous to the City. Specifically, it:

- Ensures experienced and qualified staff negotiates the most favorable terms and conditions for the City.
- Ensures appropriate terms and conditions are included in the final lease agreement to adequately and properly protect the City (and landlord) from a legal and compliance perspective.
- Ensures other departments and offices have reviewed lease documents as appropriate in regard to form and risk exposure (e.g., City Attorney’s Office and Risk Management Division).

As noted in Appendix B of this report, we reviewed lease activity for 20 leases of City-owned properties to external entities. Contrary to the policy provisions and/or sound business practices as stated above, we

noted 9 of those 20 leases were negotiated and executed by City departments with limited or no involvement or participation by the Property Management Division (PMD). Many of those nine leases were negotiated and executed several years ago. Those nine leases are shown in **Table 3** below.

| Table 3 – Leases Not Negotiated By Property Management | | | | |
|---|--|------------------------------|--|---|
| | <u>Lease Description</u> | <u>Annual Lease Revenues</u> | <u>City department that negotiated the lease</u> | <u>Involvement by PMD</u> |
| 1 | Terminal Lease with Northwest Airlines; executed in July 2000. | \$219,206 | Aviation Department with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | None. |
| 2 | Lease of space at the Airport to Inter-space Advertising, Inc. to operate an advertising program; executed in May 1999. | \$39,158 | Aviation department with assistance from City Attorney’s Office. | None. |
| 3 | Office space to Red Hills Horse Trials, Inc.; executed in August 2006. | \$5,520 | Parks and Recreation Department with assistance from the City Attorney’s Office. | Provided contract parameters and suggested lease rates. |
| 4 | Building space lease in Lincoln Neighborhood Center to Neighborhood Health Services, Inc.; executed in October 2007. | \$28,321 | Neighborhood and Community Services with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | Discussed lease rates with Neighborhood and Community Services. |
| 5 | Lease of City-owned property and building to Danfoss Turbocor Compressors for economic development purposes; executed in January 2006. | \$253,500 | Economic Development and Assistant City Manager with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | Limited involvement in negotiations. |
| 6 | Lease of City utility assets (cable fibers) to Electronet Intermedia Consulting for telecommunication services; executed in December 2005. | \$33,667 | Electric Utility with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | None. |
| 7 | Lease of City utility assets (pole attachments) to Electronet Intermedia Consulting for telecommunication services; executed in May 2003. | \$4,764 | Electric Utility with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | None. |
| 8 | Lease of City utility assets (pole attachments) to Comcast Cablevision for telecommunication services; executed in March 2003. | \$307,280 | Electric Utility with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | None. |
| 9 | Lease of City utility assets (water tower attachments) to Verizon Wireless for telecommunication services; executed in June 1997. | \$56,646 | Water Utility (now Underground Utility) with assistance from City Attorney’s Office and City Treasurer-Clerk’s Office. | None. |

We did not identify any significant issues that resulted from limited or no involvement by the Property Management Division in those nine leases. However, if the Property Management Division had been involved, some of the other issues identified in this report may not have occurred. For example, if the Property Management Division had been more involved in the lease to Red Hills Horse Trials, Inc., that lease likely would have been approved by the City Manager as required by City real estate policy.

Revisions should be made to the City real estate policy to address current lease types and circumstances.

The current lease provisions within City Commission Policy 136, "Real Estate Policy," were established when that policy was initially adopted in September 1989. In our discussions regarding the lack of involvement by the Property Management Division in the execution of the noted leases, management indicated they understood the policy as designed to cover only land and buildings. Management stated staff did not contemplate the policy as covering leases such as pole and water tower attachments or leases of cable fibers (see items 6 through 9 in Table 3 of the previous page). Based on that interpretation and understanding, involvement by the Property Management Division was not required or necessary, and therefore not requested. Notwithstanding, management acknowledges the potential benefits of involving the Property Management Division in negotiating and executing all leases.

We recommend department managers ensure the Property Management Division is timely notified and involved in negotiating all prospective leases in accordance with City real estate policy.

Accordingly, we recommend appropriate revisions be made in the City's real estate policy to identify the type of leases subject to that policy. We also recommend department managers ensure the Property Management Division is timely notified of all prospective leases in accordance with that revised policy. Furthermore, as provided by the revised policy, all applicable leases should be negotiated by, or at a minimum with the assistance of, the Property Management Division.

Documentation was not available to show some leases were reviewed and approved by the appropriate level of management.

Section 136.15 of the City's real estate policy provides the following approval authorities for leases of City property to external entities:

The City's real estate policy provides that the City Commission or the City manager shall approve leases.

- Potential leases for which annual revenue values are \$50,000 or more shall be reviewed by the City's Real Estate Committee, which was created to review acquisitions and other real estate matters. Pursuant to the City's real estate policy, that committee is comprised of the Public Works Director, City Treasurer-Clerk, and the Assistant City Manager for Transportation and Development Services or (other official) as appointed by the City Manager. The proposed leases reviewed and approved by the Real Estate Committee are presented to the City Commission for consideration as an agenda item. If approved by the City Commission, the Property Management Division will negotiate the applicable lease.
- Potential leases for which annual revenue values are less than \$50,000 shall be reviewed by the City Manager. If approved by the City Manager, the Property Management Division will negotiate the applicable lease.

Three instances were identified where leases were not approved by the authority established in the City's real estate policy.

In our review of 20 leases of City-owned property to external entities, we found three instances where documentation was not available to show the applicable leases were approved by the appropriate authorities pursuant to the above provisions. Those three instances included the following:

- A lease of airport terminal space to an airline company (Northwest Airlines), managed by the Aviation Department and with annual lease revenues in excess of \$200,000, was not submitted to the Real Estate Committee and City Commission for review and approval. The lease was executed in July 2000. In response to our inquiry, the

Aviation Department indicated a “standard airline use and lease agreement” was developed in 1989 and has been used by the Aviation Department since that time. The agreement contains standard language related to terms and conditions, with the variable being the amount of terminal space leased by the respective airlines. The Aviation Department indicated the standard agreements are reviewed and approved by the Aviation Department director, the City Attorney’s Office, and the Treasurer-Clerk’s Office. The Aviation Department also stated they were not aware of a formal exemption from the City’s real estate policy in regard to approval by the City’s Real Estate Committee and City Commission.

- A lease of office space on City property (Meridian Youth Sports Complex) to the Red Hills Horse Trials, Inc., with an annual revenue value of \$5,520, was not submitted to and formally approved by the City Manager. The lease, which was executed in August 2006, was negotiated and approved by the director of the Parks and Recreation Department. The City Attorney’s Office and Property Management Division provided assistance in the negotiations and the form and content of the lease agreement.
- Leases of City property on West Carolina Street to an external entity (Core Institute) for parking spaces were not submitted to and formally approved by the City Manager. Specifically, two leases, with each representing a revision to a former lease agreement, were negotiated and executed by the Property Management Division. There was no documentation showing the two leases had been submitted to and formally approved by the City Manager. The annual revenue value of the current lease is \$3,096.

Review and approval by the designated approval authorities serves to help ensure the lease and related terms and conditions are appropriate

and in the best interest of the City. Furthermore, such reviews and approvals serve as a significant control to help preclude any one person (employee) from controlling all aspects of a lease execution. For example, for the parking space leases addressed above, the Property Management Division Administrator was the only City employee involved in negotiating and executing the lease terms and agreements. Sound control practices provide that no one person should be in the position to control all aspects of transactions, including execution of a lease agreement.

We recommend leases be reviewed and approved by the appropriate approval authorities.

In our discussions on this matter, management indicated some of the described circumstances likely were not contemplated when the current lease provisions were established in 1989. For example, when the policy was established, consideration likely was not given to development and use of “standard lease agreements” (e.g., the standard airline use and lease agreement) that could be reviewed and approved for use for executing similar leases (e.g., airline terminal space). As a result, at the time the lease in question (airline terminal space) was executed, applicable staff’s understanding was that the level of approvals prescribed by policy was not required or necessary.

The City real estate policy should be revised to address delegations of approval authorities.

We recommend actions be taken to ensure leases are reviewed and approved by the appropriate approval authorities. In the event City management determines certain types of leases need not be reviewed and approved by the City Commission or City Manager on an individual lease basis, we recommend the City’s real estate policy be revised to address those circumstances. Similarly, in the event City management determines that leases below a certain threshold need not be reviewed by the City Manager, we recommend the City’s real estate policy be revised to provide for a delegation of review and approval authority to a management level below the City Manager (e.g.,

Assistant City Manager). However, in no circumstances should any lease be negotiated and executed by any single employee.

Risk Management staff should review all proposed lease documents to ensure risk exposures are identified and adequately addressed.

Leases should be reviewed by the Risk Management Division prior to execution. Section 136.15 of the City's Real Estate Policy provides that all proposed leases should be reviewed as to form and content by the City Attorney's Office and the City's Risk Management Division. The purpose of the review by the Risk Management Division is to ensure the leases contain appropriate terms protecting the City's exposure to applicable risks. For example, the lease agreements often should have terms requiring (1) the tenant to obtain and retain proper and adequate liability insurance in the event of personal injury or property damage and (2) the City be named as an insured entity under the applicable policy or coverage.

Instances were identified where proposed lease documents were not reviewed by Risk Management staff.

Contrary to this policy requirement, we found there was no documentation showing that the Risk Management Division reviewed 8 of the 20 leases (City property to external entities) for risk exposure. The lack of those reviews occurred when the applicable departments negotiating and executing the leases did not provide the lease documents to, and request a review by, the Risk Management Division. Upon our inquiry, the Risk Management Division reviewed those lease agreements and determined appropriate terms and language were generally included to adequately protect the City from applicable risks (e.g., language provided for appropriate and adequate insurance provisions). However, for four leases, the Risk Management Division found the insurance language and/or terms were likely inadequate, thereby resulting in unnecessary risk exposures for the applicable properties.

We recommend a standard process be developed to ensure review by the Risk Management Division.

Had those lease documents been reviewed by the Risk Management Division prior to the execution of the leases, those risk exposures likely would have been identified and mitigated through appropriate lease terms and requirements (e.g., required insurance coverage). Accordingly, we recommend the Property Management Division enact a standard procedure/process for providing lease documents to, and reviews by, the Risk Management Division. (NOTE: Such procedure/process should be applicable to all leases, regardless of whether the Property Management Division negotiates the lease directly or another City department negotiates the lease with the assistance of the Property Management Division.)

A key provision of one lease was changed without an amendment to the lease agreement.

Management changed the terms of one lease without revising the related lease agreement. As noted in an issue addressed above, the City leases property on West Carolina Street to an external entity (Core Institute) for parking spaces. The lease agreement in effect at the time of our audit fieldwork provided for the lease of 29 parking spaces to that entity. However, our analysis of lease activity showed the City was collecting revenues for only 24 parking spaces. In response to our inquiry on this matter, the Property Management Division explained that, based on the tenant's request, the number of parking spaces had been reduced to 24. However, the Property Management Division acknowledged the lease agreement had not been amended to reflect this change. Subsequent to our inquiry, the Property Management Division executed a revision to the lease agreement, which provided for the lease of 24 parking spaces. In future circumstances of this nature, we recommend timely lease amendments be executed to reflect the negotiated changes. (As recommended above, such negotiated revisions should be reviewed and approved by managerial staff separate from the staff negotiating and executing the revision.)

We recommend timely lease amendments be executed to reflect negotiated changes.

Some leases were not renewed or negotiated in a timely manner.

Some leases were not renewed and negotiated in a timely manner.

Many of the City's leases provide options for renewal at the end of the initial lease period. In other leases, although the terms do not explicitly provide for renewal of the existing lease, there generally is an opportunity to negotiate a new lease upon the lease termination date. To ensure the City and tenant's interests are adequately protected, such renewals or new leases should be negotiated and executed prior to the date the initial lease term expires. This will ensure there is no period of tenant occupancy and use of City property that is not covered by an executed lease agreement.

- Two leases by separate private corporations (Electronet Intermedia Consulting and Comcast Cablevision) of City utility assets (e.g., poles and conduit systems), to attach equipment needed for the provision of telecommunication services, each covered a five-year period commencing in 2003 and ending in 2008. (One expired in March 2008 and the other expired May 2008.) There were no explicit provisions for renewal of those two leases. We found as of the time of our audit fieldwork in February 2009, the two private corporations continued to use the City utility assets in the provision of telecommunication services even though the lease agreements had technically expired. At that time, periods of 9 and 11 months had elapsed since the lease termination dates. Notwithstanding the lack of an effective lease, we noted the two corporations continued to make lease payments to the City under the provisions of the terminated contracts. (Annual amounts of \$5,045 and \$309,634 were paid in February and March 2009, respectively.)

In their March 2009 response to our audit inquiry, Electric Utility staff indicated new leases were currently being negotiated with the private corporations and the delays are attributable, in part, to the lessees.

To limit the City's exposure to risks of uncollected revenues and general liabilities, efforts should be made to provide for negotiation and renewal of leases prior to the end of the current lease term.

- The initial lease by a nonprofit entity (Tallahassee Branch of the NAACP), of a portion of a City building and related parking spaces, covered the two-year period ending September 30, 2008. The initial lease terms provided the lease could be extended by mutual agreement of both parties. The terms require the tenant give the City 60 days written notice of its intent to renew. Contrary to this provision, no documentation was available to show the lease has been renewed at the time of our audit fieldwork in January 2009. The tenant is still occupying and using that property and paying the City rent in the same amounts provided for in the initial lease agreement. Annual lease revenues under the initial lease terms are \$1,200. The lease is administered by the Property Management Division.
- The initial lease of City sidewalk space by a restaurant (FIBI) was executed in 2001. The initial lease terms provided the lease can be renewed annually, so long as the City receives written notice prior to the termination of the existing agreement. Throughout 2008 the restaurant continued to use the sidewalk space and pay the City rent in the amount of \$1,200 annually, which is the rate established in the initial lease agreement. However, we found no evidence the lease has been renewed since 2003. The lease is administered by the Property Management Division.

The above instances increase the City's exposures to various risks, including uncollected lease (rental) revenues and general liabilities. To reduce those risks, we recommend the Property Management Division institute a system/method that (1) identifies leases nearing termination and (2) notifies applicable administering staff of the need to renew or negotiate a new lease, or plan for lease termination, prior to the applicable termination dates. Consideration should be given to stronger efforts for ensuring timely negotiations and cooperation by the lessees,

including penalties for not completing negotiations by the current lease expiration date.

Required certificates of insurance had not been obtained for some

leases. As noted in a previous issue, when leasing City-owned property to others, the applicable lease agreement should have terms requiring (1) the tenant to obtain and retain proper and adequate liability insurance in the event of personal injury or property damage and (2) the City be named as an insured entity under the applicable policy or coverage. That coverage insures the tenant and the City in the event of property damage or personal injury arising from the use or occupancy of the leased property. Depending on the circumstances and nature of the lease, City lease agreements should also require the tenant maintain workers' compensation insurance to cover the tenant's employees in the event of job-related employee injuries. That workers' compensation insurance helps protect the City from legal actions resulting from injuries to the lessees' employees occurring on the leased properties.

Required certificates of insurance were not always obtained.

Our review showed leases of City-owned property to external entities generally contained terms requiring the tenant to obtain specific insurance coverage. (NOTE: Agreements with inadequate requirements for insurance coverage are addressed in a previous issue.) Those leases required the tenant to provide the City with appropriate proof of coverage. That proof is typically certificates of insurance prepared by the applicable insurance companies/agents underwriting the coverage. Sound control practices provide the City should obtain proof of current insurance coverage to ensure the City's risk exposures are adequately mitigated throughout the lease term. Accordingly, updated certificates of insurance should be obtained on a periodic basis. Because most insurance policies are for a one-year period, updated certificates of insurance should therefore be obtained annually.

We recommend the Property Management Division ensure appropriate evidence of current insurance coverage is obtained for leases of City property to external entities.

Contrary to that practice, we noted for 11 of the 20 sampled leases, certificates of insurance or other acceptable evidence was not provided to demonstrate the tenants were currently insured as required by the lease terms. In response to our inquiry on this matter, the applicable administering departments and offices responded the required certificates of insurance or other appropriate evidence of coverage would be obtained. As of May 13, 2009, applicable departments had obtained updated and current certificates of insurance for six of the 11 instances.

To ensure the City is adequately protected as intended by contractual terms and conditions and by sound control practices, we recommend the Property Management Division ensure appropriate evidence of current insurance coverage is obtained for leases of City property to external entities.

***Billing and
Collection of
Lease Revenues***

The majority of leases of City property to external entities require the leasing entity (lessee) to pay a negotiated fee, or lease payment, for the privilege of occupying and using the applicable property. Appropriate processes and controls are necessary to ensure those payments are collected, properly processed, accurately accounted for, and promptly deposited into the City's bank account. We found required lease payments were generally collected and properly processed and deposited by applicable City staff. However, we noted the following issues that indicate improvements are needed to the City's lease billing and collection process.

A private corporation leasing a City fiber optic cable for telecommunication services was delinquent in its payment to the City.

One lessee has been significantly delinquent in payment of amounts due the City for its use of City utility assets (fiber cable).

One of the sampled leases was a private corporation's (Electronet Intermedia Consulting) lease of City utility assets (e.g., fiber optic cables) for the provision of telecommunication services. The Electric Utility administered the lease. The terms of the lease agreement provide the lessee is to pay the City on the first day of each month. The amount due is based on the number of fibers (within City cables) that are leased and the length of those leased fibers (measured in miles). The initial lease agreement provides that, based on the fibers leased and their lengths, the monthly payment would be \$3,377.89. The lease was initiated in December 2005 and has a term of five years.

At the time of our initial review of this lease in July 2008, we found no revenues had been collected from the lessee. At that time, the lessee owed the City for activity for 2006, 2007 and the first six months of 2008. Based on the initial lease agreement, the amount due but not collected totaled \$101,337. In response to our inquiry on this matter, the Electric Utility provided various documentation and explanations addressing why the amounts due from the lessee had not been collected for the past 30 months. Based on our review of that documentation and the Electric Utility's explanations, we ascertained the following:

- Due to oversight, the Electric Utility did not bill the lessee for their monthly use of City fibers during calendar year 2006. Electric Utility staff detected this oversight in December 2006. As a result, Electric Utility staff requested billing information from the lessee at that time so the City could commence billing the lessee for amounts due on the lease (including past due amounts).
- After resolution of an issue regarding one of the fiber routes, the City sent the lessee an invoice in March 2007 for calendar year

2006 activity. The lessee challenged the invoiced amount based on a determination that one of the fibers was not used for the entire year. After the City determined the challenge to be valid, the City submitted a revised invoice in July 2007, in the amount of \$44,461.

At the time of our initial fieldwork, the private corporation still owed the City in excess of \$100,000 for the past 30 months.

- The lessee was delinquent in payment of the invoiced amount. After several communications with the lessee during the period September 2007 through June 2008, City staff agreed to bill the lessee through the City's utility billing system. Based on explanations provided by City staff, the lessee apparently continued to "stall" their payment of the invoiced amounts. City staff met with the lessee in June 2008 in an attempt to resolve the lessee's concerns.
- Based on the June 2008 meeting, the City and the lessee worked out a payment schedule for the past due and current amounts owed by the lessee. At that time the lessee owed the City for fiber use during calendar years 2006, 2007, and the first half of 2008 (i.e., 30 months). The total amount determined to be due was \$99,100. The payment schedule provided that lessee would be billed through the City's utility billing system and pay a monthly total of \$11,064, with \$8,258 representing payment on past due amounts and \$2,806 representing amounts due for the current month. That monthly payment was to continue through July 2009; at which point the past due amounts would have been collected.
- The lessee was billed but did not pay the \$11,064 for the months August and September 2008. In October 2008, the lessee requested to renegotiate the payment schedule due to their difficulty in making the payments. The City renegotiated that schedule. The revised payment schedule provides for the lessee to pay a monthly amount of \$5,046, for 48 months, through their monthly City utility

bill. That monthly amount is comprised of \$2,240 representing past due amounts and \$2,806 representing amounts due for the current month. The City commenced billing the lessee that monthly amount in December 2008. To date, the lessee has paid those billed amounts.

In response to our inquiry as to why the lessee was allowed to continue its use of the City fibers during this period of significant delinquency, Electric Utility staff indicated (1) there have been on-going efforts to resolve this issue with the lessee, (2) the lessee has never taken the position that it would not pay the bills, (3) terminating the lessee's use of the fibers would significantly impact the lessee's customers, and (4) the City is not incurring any additional costs by allowing the lessee to use the City's existing fibers.

We acknowledge the Electric Utility has made efforts to resolve this issue once it was determined City staff had not billed the lessee for any services during calendar year 2006. We also acknowledge a payment schedule has been renegotiated and the lessee has since paid the invoiced amounts. However, allowing a lessee to continue use of City property after not paying for that use for 30 months, with a past due amount approximating \$100,000, would appear to merit more significant action on the City's part to require payment by the lessee. In future circumstances, we recommend the Electric Utility disallow a lessee's continued use of City utility assets in the event of nonpayment for a reasonable period. While we do not intend to define what constitutes a "reasonable period," a period of 30 months is construed not to be reasonable.

We recommend management not allow a lessee to continue use of City property in the event of nonpayment for a reasonable period.

Management did not document the reasons for not exercising options to escalate lease rates

Management did not document the reasons for not exercising options to escalate lease rates. Two of the reviewed lease agreements, administered by the Electric Utility and involving the lease

of City utility assets to telecommunication companies (Electronet Intermedia Consulting and Comcast Cablevision), provided an option for the City to increase the rates on an annual basis. Both leases were executed in 2003 for five-year terms and each one established a standard rate of \$14.18 per attachment. The applicable lease terms stated the annual increases must be limited to the increase in the Consumer Price Index (CPI). The leases defined the applicable CPI index. Both leases terminated in calendar year 2008. The annual lease revenues approximated \$5,000 for one lease and \$300,000 for the other lease.

Appropriate rates and escalation provisions should be negotiated and established in future leases with these entities.

We noted the same rate of \$14.18 per attachment was charged for each year of the respective leases' five-year terms. In response as to why the escalation options were not exercised, current staff administering the leases indicated they adopted the historical practice of not implementing the available rate escalations. (NOTE: Staff initially administering the leases no longer works for the City.) No other documentation or explanations were provided as to the reasoning for not exercising the escalation options. Based on the CPI indices specified by the lease agreements, if those options had been exercised, additional revenues of \$1,400 and \$107,000 would have been generated over the respective leases' five-year terms.

In future leases, options for rate escalation should be exercised; or if not exercised, appropriate support should be prepared showing management's reasoning and justification.

In further response to our inquiry on this matter, the current administering staff indicated their plan is to use available industry materials to help ascertain the cost to the City for allowing the attachments, and then compare City cost calculations to current rates. Based on those analyses, staff stated the rates would be adjusted if warranted.

As addressed in a previous comment on page 18 of this report, the City is currently in the process of renegotiating new agreements with these

two lessees. We recommend appropriate rates be established as part of those negotiations and included in the applicable lease agreements. Escalation provisions should also be addressed and included as part of that process. If adopted, those escalation provisions should be exercised/applied; or if those provisions are not applied, appropriate documentation should be prepared that supports management's reasoning and justification.

Adequate support was not available to show some lessees' exemption from state sales taxes; also, instances were noted where those taxes were due but not assessed and collected.

Appropriate records were not available to explain tenants' exemptions from state sales taxes for three leases; for two other leases state sales taxes were applicable but not always properly assessed by the City and collected.

Pursuant to section 212.031, Florida Statutes, tenants in lease agreements are required to pay state sales taxes on the rent paid to their landlords. Nonprofit organizations that hold a current exemption (*Florida Consumer's Certificate of Exemption*) issued by the Florida Department of Revenue are, however, exempt from payment of state sales taxes. Other organizations may be exempted from the payment of state sales taxes based on certain statutory provisions. For example, governmental entities are exempt from the payment of state sales taxes, as are telecommunication providers that lease space on utility assets (e.g. poles and towers).

Our review of 20 leases of City-owned property to external entities showed state sales taxes were generally assessed and collected when applicable. However, we noted the following instances where those taxes were either (1) not properly assessed by the City (and thus not collected) or (2) evidence of exemptions from payment of those taxes was not available.

- For two leases administered by the Property Management Division, we determined state sales taxes were due but not always assessed by the City and collected. Specifically:

- For one lease of City property to a private corporation (Circle K Stores), state sales taxes were not assessed and collected on the 2006 and 2007 annual lease payments. State sales taxes that should have been assessed and collected for those two years totaled \$180. Subsequent to the start of our audit fieldwork, state sales taxes were properly assessed and collected on the 2008 lease payment due from this corporation.
- For one lease of City property to a private corporation (Al Lawson and Associates), the state sales taxes were not assessed and collected on four consecutive monthly payments for the period July 2007 through October 2007. State sales taxes that should have been assessed and collected for those months totaled \$900. State sales taxes have been properly assessed and collected from that corporation since that period.
- State sales taxes were not assessed by the City and collected on rental payments received for three leases of City properties to various organizations. Those three leases are also managed by the Property Management Division and included:
 - A lease of City sidewalk space to a private restaurant (FIBI) for purposes of outside service for food and beverages. The annual lease payment is \$1,200. If applicable, state sales taxes on that amount would be \$90.
 - A lease of unused City property to a private association (Tallahassee Bowhunters Association) for recreational purposes. The annual lease payment is currently \$402.

If applicable, state sales taxes on that amount would be approximately \$30.

- A lease of office space and related parking spaces at a City-owned building to a nonprofit organization (Tallahassee Branch of the NAACP). The annual lease payment is \$1,200. If applicable, state sales taxes on that amount would be \$90.

We recommend the Property Management Division assess and charge state sales taxes to all tenants, unless evidence is available clearly documenting the tenant's exemption from those taxes.

For the private restaurant, it is likely state sales taxes are due the City. The private association may or may not be exempt from state sales taxes by the Florida Department of Revenue. The nonprofit organization likely is exempt from payment of state sales taxes by the Florida Department of Revenue. Regardless, the Property Management Division has not obtained evidence of exemptions for any of these three organizations.

To ensure state sales taxes are properly collected, we recommend the Property Management Division assess and charge those taxes to all tenants, unless evidence is available clearly documenting the tenants' exemption from those taxes, such as a *Consumer's Certificate of Exemption* issued by the Florida Department of Revenue. Additionally, the Property Management Division should enhance their reviews of prepared billings to ensure taxes are properly assessed and charged to those tenants. For the leases addressed above, consideration should be given to back billing the taxes determined to be due, but not assessed and collected. (NOTE: In our discussions on this matter, management indicated these issues were also identified by a recent State Department of Revenue audit of the City, and that actions are being taken to ensure the proper assessment and collection of state sales taxes.)

Leases were not always billed in a manner to allow for payment by the due dates established in the lease agreements.

Most of the reviewed lease agreements stipulated the lease payments should be paid in advance, with the majority providing the lease payment was due on the first day of each month. For example, the lessee should pay the lease payment for the month of March no later than the first day of March. For a few of the agreements, annual lease payments were due in advance, no later than January 10 for the calendar year. For example, the annual payment for calendar year 2008 was due no later than January 10, 2008. In accordance with good control practices, we noted most of the City's recurring leases are billed to the lessees through the City's accounts receivable process. To allow the lessee to receive notification and submit timely payment (i.e., in advance no later than the first day of the month or no later than January 10), the invoices should be sent to the lessees no later than 15 days prior to the stipulated due dates. Continuing with the above examples, this means the invoice should be sent such that the lessee receives it no later than mid-February for the payment due March 1 (monthly payments), or no later than December 26 for payments due January 10 (annual payments). That process should help ensure timely payments.

Some leases were not always billed in a manner that allowed for payment by the due dates established in the lease agreements.

Contrary to that logic, for eight of the 20 leases reviewed, we found the invoices were prepared and mailed by the City on the same date that the payment was due as stipulated by the lease terms. Specifically, the invoice for the payment due on March 1 (for the month of March) was not prepared and submitted to the lessee until March 1, thereby making it difficult for the lessee to make the payment so that it was received by the City on that date. In essence, this practice sometimes resulted in lease payments being billed and paid in arrears, instead of in advance. *(Applicable administering departments were the Property Management Division and Economic and Community Development.)*

We recommend the billing process be revised to allow for timely payments by the lessee.

Additionally, for another two of the 20 leases reviewed, we found the invoices for the annual lease payments were prepared and mailed by the City subsequent to the dates the payments were due as established in the lease agreements. For example, the invoices for annual lease payments due by January 10 were not prepared until January 31, 2007, for the 2007 calendar year, and February 19, 2008, for the 2008 calendar year. This resulted in lease payments not being collected in a timely manner. *(The Electric Utility was the administering department.)*

To allow for prompt payment as prescribed in the lease agreements, we recommend the billing processes for the applicable leases be revised to ensure timely billing and collection.

Lease Records

Complete and relevant records of leases and related activities should be prepared and maintained to help management ensure leases are properly administered. We found applicable records were generally made available to audit staff throughout our review. However, as demonstrated by the following issue, enhancements are needed.

Lease documents and related records were not always maintained in an organized manner.

Lease documents and related records were not always maintained in an organized manner, thereby limiting management's ability to efficiently manage and administer those leases. During our audit fieldwork, applicable management of the Property Management Division or other administering City departments generally provided appropriate records upon our request. However, the sometimes lack of organization of those records and lack of a centralized filing system for leases occasionally resulted in delays in the provision of those records to audit staff. For example, the Property Management Division did not provide a copy of an updated lease agreement until two months after our audit request. In other instances, staff had to obtain copies of records from the lessees (tenants), as the requested records were not located in City files.

To facilitate the administration and oversight of leases, we recommend the Property Management Division develop a filing system that provides a standard manner and process for retention of lease documents and related activity (e.g., billing and collection of revenues). To assist in this endeavor, consideration should be given to the development of a checklist addressing each expected document and activity. Management should periodically review those files to ensure appropriate documents (historical and current) are being obtained and filed. Consideration should be given to using the City’s Electronic Document Management System (EDMS) for these purposes.

In addition to developing an efficient filing system, consideration should be given to establishment of a centralized inventory of all City leases.

In addition to tracking leases administered directly by the Property Management Division, consideration should be given to establishing a centralized inventory of all leases of City-owned property, regardless of what City department administers the leases. Such a centralized inventory could be used by the Property Management Division to help ensure proper processes and procedures are followed. For example, the checklist addressed above could be applied to ensure appropriate managerial approvals were obtained and appropriate City staff participated in the lease negotiations and executions.

(NOTE: Subsequent to the end of our audit fieldwork, the Property Management Division provided draft procedures and checklists to demonstrate corrective actions had been initiated to better organize and maintain lease records.)

***Internal
Operating
Procedures***

Documented operating procedures serve to ensure covered activities are properly and consistently performed. Such procedures are also beneficial in the event of significant and/or unexpected turnover of key staff. While current procedures and processes are generally adequate to ensure proper administration of leases, we recommend that such

processes and procedures be documented, as addressed in the following issue.

Written procedures or guidelines should be developed for lease administration.

The Property Management Division should develop written procedures or guidelines for lease administration. We noted the Property Management Division currently does not have written procedures or guidelines for the negotiation, execution, and overall administration of leases. To facilitate and help ensure proper, complete, and efficient administration of leases by the Property Management Division, we also recommend written internal procedures and guidelines be prepared and provided to applicable staff responsible for administering leases and related records. Such written procedures should be beneficial in implementing appropriate actions developed in response to the issues identified in this audit. (NOTE: Subsequent to the end of our fieldwork, the Property Management Division provided evidence that written procedures and guidelines were being developed as recommended.)

Conclusion

Overall, leases were properly executed and administered. However, issues were identified in regard to leases of City property to external entities that, if not corrected, could limit the proper and efficient administration of those leases.

Overall, we found City leases were properly executed, approved, and administered. For leases of City-owned property to external entities, applicable revenues were generally collected in accordance with stipulated lease terms. Similarly, for leases by the City of property from non-City entities, amounts paid to those entities were appropriate. However, issues were identified in regard to leases of City property to external entities that, if not corrected, could limit the proper and efficient administration of those leases.

Those issues were addressed with applicable City management and corrective actions have been or are being developed and implemented.

We would like to acknowledge the full and complete cooperation and assistance of staff in the Property Management Division and other audited departments.

**Appointed Official's
Response**

City Manager:

I would like to thank the City Auditor's office for their professional assistance in reviewing city leases and recommending ways to further improve lease administration.

Lease Management. As a result of discussions during the audit process, Property Management staff members have implemented improvements including development of a lease procedure and checklist, which can be used by all departments. This information will be distributed and discussed with those departments currently managing leases to provide a more comprehensive record and accounting.

Lease Approval. The audit highlights the fact that the current Real Estate Policy was first implemented 20 years ago (September 1989), with the lease portion of that policy envisioned primarily to cover land and building leases. Development since that time, including fiber leases, communication leases or Airport leases, were not specified in the original policy, in part because some of those uses didn't exist at that time. Staff will update the lease portion of the policy with clear specificity on what is to be covered by the City's Real Estate Policy, and also define the appropriate approval process for any lease that would not be covered by that revised policy.

Lease Accounting. The accounting process for lease payments will be reviewed and specific recommendations implemented to ensure prompt payment and collection on all leases, including collection of sales tax where applicable.

We appreciate the opportunity to review our processes and make appropriate corrections to ensure accountability. I look forward to a prompt follow up to the items mentioned in the Action Plan including policy revisions where appropriate. Thanks again for your support and guidance.

| Appendix A – Action Plan | | | |
|---|--|-----------------------------|--------------------|
| Action Steps | | Responsible Employee | Target Date |
| A. Objective: Ensure leases are properly executed and administered | | | |
| PROPERTY MANAGEMENT DIVISION | | | |
| 1. | With direction from City management, the Property Management Division will revise Real Estate Policy 136 revised to (1) identify the lease types subject to the policy and (2) provide for delegation of approval authorities under specified circumstances. | Mark Beaudoin | 12/31/2009 |
| 2. | Management will emphasize to City departments and offices the requirement (prescribed by Real Estate Policy 136, as revised) for the Property Management Division to be timely notified of prospective leases. | Mark Beaudoin | 8/30/2009 |
| 3. | The Property Management Division will negotiate, or assist in negotiating, all prospective leases for which it is made aware in accordance with Real Estate Policy 136, as revised. | Mark Beaudoin | 7/7/2009* |
| 4. | No leases will be negotiated and executed by any one employee, regardless of circumstances or lease terms and provisions. | Mark Beaudoin | 7/7/2009* |
| 5. | <p>A checklist will be developed and used to assist in the administration of leases. That checklist will address and serve to ensure, at a minimum:</p> <ul style="list-style-type: none"> • Review and approval by the appropriate authorities as established by Real Estate Policy 136. • Review and approval by the City Attorney's Office and Risk Management for adequacy of insurance coverage and other provisions needed to protect the City's exposure to risks. • Updated certifications of insurance coverage are obtained and on file. • Valid exemptions from payment of state sales taxes are obtained and on file for applicable lessees. | Mark Beaudoin | 7/7/2009* |

| | | | |
|-----------------|---|---------------|------------|
| 6. | City staff will use the checklist developed pursuant to the prior action plan step for all City leases, regardless of whether the lease is negotiated or administered by other City departments and offices. | Mark Beaudoin | 10/30/2009 |
| 7. | Lease amendments will be timely executed to reflect negotiated revisions, regardless of the related revenue or expenditure amounts involved. | Mark Beaudoin | 7/30/2009 |
| 8. | State sales taxes will be assessed and collected from all lessees not exempt from such taxes. | Mark Beaudoin | 7/7/2009* |
| 9. | A system/method will be established to track leases nearing termination and notifying applicable staff of the need to renew or negotiate a new lease, or plan for termination. | Mark Beaudoin | 9/30/2009 |
| 10. | The billing process for leases will be revised to provide for receipt of required payments by the due dates established in the controlling lease agreements. | Mark Beaudoin | 9/30/2009 |
| 11. | A standard and centralized system for retention of applicable leases records and documents will be established. | Mark Beaudoin | 9/30/2009 |
| 12. | The Property Management Division will maintain a centralized inventory for all leases of City-owned property, regardless of what City department or office administers the leases. The checklist developed pursuant to action plan step A.5. will be used for each inventoried lease to help ensure proper processes and procedures are followed. | Mark Beaudoin | 12/31/2009 |
| 13. | Written internal procedures and guidelines will be developed to assist Property Management staff in negotiation, execution, and administration of City leases. | Mark Beaudoin | 7/30/2009 |
| 14. | Training on policies, procedures, and processes developed or revised as a result of the audit will be provided to the various City departments and offices that lease City property to external entities. | Mark Beaudoin | 10/30/2009 |
| AVIATION | | | |
| 15. | The Property Management Division will be notified of each prospective lease in accordance with Real Estate Policy 136, as revised. Assistance from the Property Management Division will be obtained in negotiation and execution of each lease, as prescribed by that policy. | Patsy Capps | 12/31/2009 |

| PARKS, RECREATION, AND NEIGHBORHOOD AFFAIRS | | | |
|---|--|---------------------------------|------------|
| 16. | The Property Management Division will be notified of each prospective lease in accordance with Real Estate Policy 136, as revised. Assistance from the Property Management Division will be obtained in negotiation and execution of each lease, as prescribed by that policy. | Cindy Mead | 12/31/2009 |
| ECONOMIC AND COMMUNITY DEVELOPMENT | | | |
| 17. | The Property Management Division will be notified of each prospective lease in accordance with Real Estate Policy 136, as revised. Assistance from the Property Management Division will be obtained in negotiation and execution of each lease, as prescribed by that policy. | Wanda Whitehead and Rick McCraw | 12/31/2009 |
| 18. | The billing process for leases will be revised to provide for receipt of required payments by the due dates established in the controlling lease agreements. | Wanda Whitehead and Rick McCraw | 12/31/2009 |
| ELECTRIC UTILITY (AS ASSISTED BY UTILITY BUSINESS AND CUSTOMER SERVICES) | | | |
| 19. | The Property Management Division will be notified of each prospective lease in accordance with Real Estate Policy 136, as revised. Assistance from the Property Management Division will be obtained in negotiation and execution of each lease, as prescribed by that policy. | Matt Matherne | 12/31/2009 |
| 20. | Staff will closely monitor the lessee that has been significantly delinquent in payment of amounts due for use of City-owned fiber optic cables. | Matt Matherne | 6/29/2009* |
| 21. | Timely efforts will be made to obtain amounts due from lessees that are significantly delinquent in payments of amounts due. Lessees with continued delinquencies beyond a reasonable time will not be allowed to continue use of City property. | Matt Matherne | 6/29/2009* |
| 22. | Escalation provisions will be exercised and applied. In the event such provisions are not exercised/applied, justification and explanation will be documented. | Matt Matherne | 6/29/2009* |
| 23. | The billing process for leases will be revised to provide for receipt of required payments by the due dates established in the controlling lease agreements. | Matt Matherne | 6/29/2009* |

| UNDERGROUND UTILITY | | | |
|----------------------------|--|-----------------|------------|
| 24. | The Property Management Division will be notified of each prospective lease in accordance with Real Estate Policy 136, as revised. Assistance from the Property Management Division will be obtained in negotiation and execution of each lease, as prescribed by that policy. | Joanne Becknell | 12/31/2009 |

*Per department, actions have been taken and completed. Completion will be verified during the audit follow-up process.

Appendix B – Leases Selected and Reviewed

Leases of City Property to Non-City Entities

| | <i>Lessee and Lease Description</i> | <i>Administering Department/Office</i> | <i>Annual Revenue (Note 1)</i> |
|-----|--|---|--------------------------------|
| 1. | General Dynamics Land Systems, Inc – Ground and Building Lease. | Property Management | \$481,940 <i>(Note 2)</i> |
| 2. | Tallahassee Bowhunters Association, Inc. – Lease of 129 acres of surplus airport property. | Property Management | \$382 |
| 3. | NAACP, Tallahassee Branch – Office building and parking area. | Property Management | \$1,200 |
| 4. | Various tenants – 6 Apartment units on Park Avenue acquired during road infrastructure projects; managed for the City by an agent (Kent Straus Management and Realty). | Property Management | \$37,552 <i>(Note 2)</i> |
| 5. | Circle K Stores, Inc – Sidewalk lease. | Property Management | \$1,200 |
| 6. | Florida State University Board of Trustees – Lease of vacant lot for parking during construction of nearby parking garage. | Property Management | \$12,000 |
| 7. | Clear Channel Broadcasting, Inc. – Lease of land at Roberts Ave and Mabry St. | Property Management | \$9,600 |
| 8. | Al Lawson and Associates, Inc – Office building at North Adams St. | Property Management | \$37,200 |
| 9. | FIBI, Inc. (Clyde and Costello’s restaurant) – Sidewalk lease. | Property Management | \$1,200 |
| 10. | Core Institute – Lease of vacant lot for parking spaces. | Property Management | \$2,880 |
| 11. | Tallahassee Habitat for Humanity, Inc –Building and land on Roberts Rd. | Property Management | \$1 <i>(Note 3)</i> |
| 12. | Neighborhood Health Services, Inc. – Building space in Lincoln Neighborhood Center. | Neighborhood and Community Services <i>(Note 6)</i> | \$28,321 |
| 13. | Verizon Wireless – Lease of City water storage tank to attach antennas. | Underground Utility | \$56,646 |
| 14. | Northwest Airlines, Inc – Lease of airport terminal space. | Aviation | \$219,206 |
| 15. | Interspace Services, Inc. – Airport display advertising space | Aviation | \$39,158 |
| 16. | Red Hills Horse Trials, Inc.– Lease of office space in City building located at Meridian Youth Sports Complex. | Parks and Recreation <i>(Note 7)</i> | \$5,520 <i>(Note 2)</i> |
| 17. | Electronet Intermedia Consulting, Inc. – lease of City cable fibers for telecommunication services. | Electric Utility <i>(Note 8)</i> | \$33,667 |

Appendix B – Leases Selected and Reviewed (cont'd)

Leases of City Property to Non-City Entities (cont'd)

| | | | |
|--------------|--|---|--------------------|
| 18. | Electronet Intermedia Consulting, Inc. – lease of space on City electric poles to place telecommunication devices. | Electric Utility <i>(Note 8)</i> | \$4,764 |
| 19. | Comcast Cablevision of Tallahassee, Inc. – lease of City cable fibers for telecommunication services. | Electric Utility <i>(Note 8)</i> | \$307,280 |
| 20. | Danfoss Turbocor Compressors, Inc. – Building and land for manufacturing and research entity. | Economic Development <i>(Note 6)</i> | \$253,500 |
| TOTAL | | | \$1,533,217 |

City Leases of Property from Non-City Entities

| | <i>Landlord and Lease Description</i> | <i>Administering Department/Office</i> | <i>Annual Payments (Note 1)</i> |
|--------------|---|--|---------------------------------|
| 21. | Tallahassee Mall Partners, LTD. – Lease of building space for Tallahassee Police Department (TPD) training facilities. | TPD <i>(Note 4)</i> | \$60,411 |
| 22. | Gemini Associates, LTD. – Parking spaces on West Carolina St. | Facilities Management <i>(Note 4)</i> | \$43,200 |
| 23. | Hamilton Leasing Partnership, LLP – Hamilton Park office space for Utility Business and Customer Services (UBCS) Call Center. | Property Management for UBCS | \$100,920 |
| 24. | Personal Estate –Eastside Parking Garage <i>(Note 5)</i> | Public Works <i>(Note 4)</i> | \$50,664 |
| 25. | Winchester Properties of Tallahassee, LTD. – Eastside Parking Garage. <i>(Note 5)</i> | Public Works <i>(Note 4)</i> | \$70,326 |
| TOTAL | | | \$325,521 |

Note (1): Annual amounts are based on 2008 lease terms.

Note (2): These are lease revenues prior to any authorized deductions for maintenance costs.

Note (3): This is a nominal rental charge as authorized by the City Commission.

Note (4): Property Management assists in the administration of these leases.

Note (5): These two leases cover two different sections of the garage, with each section owned by a different entity.

Note (6): Neighborhood and Community Services and Economic Development have been combined into the Department of Economic and Community Development.

Note (7): Parks and Recreation is now part of Parks, Recreation, and Neighborhood Affairs.

Note (8): Staff administering these leases is now part of Utility Business and Customer Services.

