

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY
RESPONSE TO FLORIDA AUDITOR GENERAL
PRELIMINARY AND TENTATIVE FINDINGS REPORT DATED SEPTEMBER 9, 2013

Finding 1: CRA funding provided to nonprofit organizations and City of Delray Beach for promotional activities is not clearly authorized by the Community Redevelopment Act nor the 2010 Attorney General Opinion. This includes funding for: Delray Beach Marketing Cooperative (DBMC), Creative City Collaborative (CCC), Delray Beach Public Library, Delray Beach Center for the Arts at Old School Square (OSS), Expanding and Preserving Our Cultural Heritage (EPOCH, Spady Museum) as well as sponsorship of the City's annual tennis tournament.

The Delray Beach CRA Plan, which has been adopted by the CRA Board and City Commission, provides the basis for the CRA's funding of the organizations and activities listed above. The projects and programs in the Plan are based on the parameters contained within the Community Redevelopment Act. The Plan includes descriptions of economic development and promotional activities and programs that the agency will fund through its A-GUIDE Program (Achieving Goals Using Impact Driven Evaluation). In order to qualify, facilities must be located on public land and must demonstrate that their programs and operations are consistent with the CRA Plan and will help to achieve the CRA's economic development objectives.

The City of Delray Beach and the CRA have successfully partnered with local cultural and civic institutions for many years to help revitalize the downtown and surrounding neighborhoods and to attract private investment and support local businesses. Some of the downtown's transformation can be attributed to physical upgrades, but long term success and ongoing prevention of blighted conditions depends upon activities and investments that will continue to attract people and spark renewed private sector investment. Entities such as the Delray Beach Marketing Cooperative, the Delray Beach Center for the Arts at Old School Square, the Delray Beach Public Library, the Spady Museum and the Creative City Collaborative (Arts Garage) attract thousands of people to the downtown area each year and generate a significant economic impact throughout the entire CRA district. Spending by arts organizations and their audiences has been shown to result in economic benefits to the community through spending on restaurant and retail establishments, parking fees and transportation, child care, etc. For instance, using accepted methods of calculating the return on investment of public dollars, the DBMC's events and activities are estimated to have an economic impact of \$11.8 million and the impact of the annual tennis tournament is estimated at \$12.2 million. CRA funding enables the library to stay open on Sundays, and allows Old School Square to provide affordable rental rates for festivals and events that bring large crowds to its campus and beyond. The CCC's Arts Garage in is estimated to have a \$3.2 million economic impact for 2012. The Spady Museum is the cultural anchor to the recently revitalized NW/SW 5th Avenue corridor, where the City and CRA have invested millions in infrastructure, property improvements and landscaping/parking upgrades.

The CRA Board and City Commission authorized these initiatives when they approved the CRA Plan and its subsequent amendments. The A-GUIDE process employs a logic model and measurable objectives to ensure that program outcomes help achieve the CRA's goals for the redevelopment area. We believe that the activities generated by these events and entities are consistent with the Community Redevelopment Act. They contribute to the prevention of slum and blighted conditions in the CRA

district by bringing patrons to the district, helping to reduce vacancies and crime, support local businesses, maintain higher rental rates, and increase property values.

The Attorney General recognized in his 2010 letter that promoting the use of a redeveloped area falls within the scope of the community redevelopment act. In addition the CRA has consistently followed the advice of its own legal counsel with regard to this matter. The CRA board discussed the AG Advisory Opinion Letter at the meeting of November 18, 2010. Counsel advised that as long as the agency's funds are used in a manner that is consistent with the Redevelopment Plan and in a manner that serves the redevelopment area itself there is no conflict with the opinion. In addition, the attached Memorandum from the CRA's attorneys dated March 28, 2013 includes a detailed review of the CRA's expenditures with regard to promotional activities and concludes that the CRA's activities are consistent with Florida law and the CRA's Redevelopment Plan, and that its actions and use of funds is consistent with Chapter 163 and the 2010 Attorney General Opinion.

This Finding will be further discussed by the CRA Board and consideration will be given to the AG's suggestion that additional clarification be sought from the Attorney General regarding this issue.

Finding #2: Property leased by CRA from City at Old School Square Garage—why didn't the City lease the space directly to the nonprofits-- net effect appears to be a subsidy of City operations

The Economic Development Director is staffed at the CRA; the CRA agreed to manage the tenancy for the City-owned commercial space in the garage as an economic development initiative for the Pineapple Grove Arts District. Real estate values had fallen and the purchase offers for the space were not what the City had anticipated. Both the City and CRA felt that a temporary art/culture use would be appropriate for the space and could generate economic activity for the surrounding businesses. The stated goal was to establish art and culture venues in the facility that would augment, rather than compete with, surrounding restaurant and retail businesses. The CRA issued an RFQ specifically geared to non-profit art and culture establishments, and agreed to sublet the space to those entities at a discount in order to help ensure their viability over the course of the lease term. The City has the obligation for maintaining at its expense all structural, functional and systemic aspects of the building including roof, elevators, walkways, parking garage, landscaping, etc.

As recommended by this Finding the CRA will ensure that future transactions with the City do not have the effect of subsidizing City operations.

Finding #3: Funding of City Neighborhood Planner and Project Manager not based on actual time spent on CRA activities.

For those City positions that are involved in redevelopment activities and which the CRA agrees to contribute to through an Interlocal Agreement (ILA), the amounts budgeted have been based on the prior year's actual salary and benefits, and the City invoices the CRA accordingly. It's possible that the final amount paid by the CRA may vary slightly from the City's actual expense, but it is also noted that in 2009 the CRA was reimbursed \$10,075.85 when a position remained vacant for a period of time. The CRA will modify the ILAs in the future to better ensure that the CRA pays only for actual expenditures.

Finding #4: Ending balances in CRA Trust Funds didn't comply with F.S. 163.387(7 (funds must be committed to projects planned for completion in 3 years, applied to debt, or refunded to taxing agencies)

The CRA Plan calls for the agency to fund or otherwise participate in the implementation of projects contained within numerous plans adopted for specific areas (i.e. Downtown Master Plan, West Atlantic Redevelopment Plan, Southwest Neighborhood Plan, etc.). For instance, the Downtown Master Plan contains millions of dollars in infrastructure projects that were to be funded with CRA dollars, most of which were scheduled to be completed within an estimated time frame of 2 to 5 years (reference pg. 73 of Delray Beach Downtown Master Plan). Due to the length of time involved in designing, permitting and bidding the projects, as well as obtaining grant funding from other sources, many of these projects took longer to accomplish than anticipated. This caused a temporary delay in the expenditure of dollars in the trust fund, however, there was never a situation where the money was not targeted to projects that were intended to be completed within the stipulated 3-year time frame. This backlog of projects has been resolved, and the moneys in the trust fund have since been expended and/or specifically allocated to projects in the FY 13/14 budget.

Finding #5 Grants and Funding Administration—Grant awards made in excess of guidelines

- *Business Development Grants—payments made based on length of operations not on lease term*

There is an inconsistency in certain sections of the Guidelines for this program. The Purpose Statement says that the program allows the CRA to provide rental subsidies that are intended to assist start-up businesses “during the critical first year of operation”. The eligibility criteria clarify and specify that qualified applicants may receive 12 months of assistance anytime during “the first 18 months of a business’s operation.” However the first paragraph of the Program sub-section states that the program provides rent subsidies ... “for twelve (12) months anytime during the first 18 months of a multi-year lease.” The intent of the program is to assist a business during its first year of actual operations. This is to account for instances in which a business spends the first few months of its lease period building out its space and is therefore not operational.

In response to this Finding, the Guidelines will be modified to provide consistency and clarify the actual intent.

- *Site Development Assistance Grant--Payment made for work done prior to grant approval*

The applicant for the subject grant had begun work on the project prior to applying for funding, and was informed that they would not be reimbursed for work completed before the CRA board approved the grant. In order to verify the extent of the work completed the site was visited by the CRA’s Marketing and Grants Manager and CRA Assistant Director on March 8, 2012 prior to the CRA Board meeting, and photos were taken to document the project status. The roof and windows were not installed prior to the CRA Board’s approval as inferred in this Finding. However the CRA did allow reimbursement for deposits that had been made on materials prior to the grant approval, but the work itself had not been completed.

The inspections that are required prior to installation of the windows and doors were conducted in April 2012 (subsequent to the grant approval). In addition, the City’s building permit records indicate a revision to the roof plans was submitted on March 5, 2012 and revised truss drawings were submitted

to the Community Improvement/Building Department in April 2012. A subsequent letter dated May 8, 2012 was provided by the roof manufacturing company (Riffe Metal Co.) regarding the method of installing the roof material.

Based on the above it is our opinion that all eligible improvements were completed subsequent to the board's approval of the grant.

Finding #6: Monitoring of Funding Agreements—checks cut prior to receipt of required reports

CRA checks are processed during scheduled CRA check runs. The entire check process can be somewhat time consuming since it requires the approval of the CRA Finance & Operations Director, CRA Executive Director and a CRA Board member. If quarterly reports/documents are not received prior to the processing of the check, it is noted on the check that it must be held until the quarterly report/documents are received and reviewed. An additional check run would not be efficient use of staff time. The specific dates that the checks cleared the bank was provided in a previous correspondence.

Other than two instances where an early release of payment was requested in writing due to extenuating circumstances, no payments were released prior to the required reports being submitted. As noted in the audit report several reports were submitted after the stipulated date, however payment was not released. Regarding the notation of the time and date that reports are submitted, many are received via email and the date and times can be readily verified.

In the future the CRA will require that the reports are submitted electronically in order to have verification of the date received. Staff has drafted a modified A-GUIDE Agreement that addresses the timeliness of the reports, and provides that the CRA may adjust the amount of the final disbursement based on the organization's year end budget.

Finding #7: CRA Board has not adopted specific policies to mitigate, detect and report fraud

The CRA considers the risk of fraud each year in conjunction with its annual financial audit. Budgetary and other controls are regularly updated to maintain a low risk of fraud, including the issuance of monthly financial reports to the board, separation of duties, board approval for any borrowing, etc. The majority of the CRA's revenues are received by wire transfer or check, with minimal handling of cash by any employees. With the checks and balances that have been put into place the CRA has avoided any instances of fraud during its nearly 30 years of operation.

In response to this finding the CRA will update its Financial Policy and Procedures Manual to include a provision regarding the mitigation, detection and reporting of fraud.

Finding #8: Statements of Financial Interest not filed timely

The list of persons required to file the financial forms is provided to the Florida Commission on Ethics by the City Clerk's office. Apparently the Executive Director's name has not been included on the list. Several of the reports have been recently filed.

The CRA will ensure that the proper listing of individuals required to file the report is provided to the Florida Commission on Ethics so that those individuals receive timely notification, and will also follow up with the Board and Staff to ensure the reports are filed.

Finding # 9: Budget Preparation—Not all prior year balances brought forward, budget did not reflect true cost of Green Market

The CRA maintains a five percent (5%) reserve to allow for unanticipated costs or land purchase opportunities. The reserve has not been specifically identified in the budget. We will ask the CRA board to formally adopt a policy to that effect.

Regarding the Green Market budget, the Green Market Manager position has been listed under the overall CRA Administrative Personnel –Salary and Wages line (GL 8011) because she also provides general administrative support for the agency in addition to managing the market. This is particularly true in the off-season months.

In order to address this finding, the position has been moved to GL-7381 under the Green Market program, and the Green Market Manager job description will be modified to include the additional off-season duties.

Finding #10: Expenditures – Five line items over-expended

As noted in the AG report, the CRA's overall budget was not over-expended. The line items noted were mostly a result of changes requested during the CRA's annual audit, which was completed subsequent to the end of the Fiscal Year and after the last budget amendment had been adopted. Balances were adjusted for two construction agreements and an adjustment of \$119,283 was made to affordable housing land values. Another change was a reclassification of legal fees from "Other Legal" to "Debt Service" related to the CRA's line of credit, because the auditors felt it was necessary for clarification.

In the future the CRA will hold open its last budget amendment for the allowable sixty (60) day period in order to have additional time to review changes and adjustments. If the annual audit recommends adjustments beyond that date, a late budget amendment may have to be processed.

Finding # 11: – No written agreements for electronic funds transfer

Three CRA staff persons are authorized to request electronic funds transfers--the Executive Director, Assistant Director, and Finance and Operations Director. All electronic transfers are verified by at least two of the three people, and a form is signed by the Finance and Operations Director, the Executive Director and a board member. There have been no improper or unauthorized transfers. Agreements are in place with three institutions but will be reviewed and updated as needed in order to address this Finding,

Finding # 12: Disbursement processing controls could be enhanced; purchase orders not issued for certain expenses, or invoice dated prior to P.O.

Several of the expenses noted are exempt from the P.O. requirement, such as recurring expenses and utilities (Verizon, AT&T, cleaning services, etc.). Others involving purchases made for Arts Garage

equipment were executed after the staff had relocated to the facility and did not have access to the CRA's server. In a few instances CRA staff did not prepare the required P.O. in a timely manner.

Regarding the verification of the receipt of goods and services, multiple CRA staff persons sign off on check approvals prior to issuing payment by initialing the Check Authorization Stamp. This typically includes review and approval by the person who ordered the items or service, as well as the Finance and Operations Director and the Executive Director.

In order to address this Finding the CRA will examine its processes to identify ways to provide additional documentation of goods and services received, and to improve the Purchase Order process.

Finding # 13: Competitive selection process—compliance with State law regarding procurement

- *CRA records did not evidence time and date bids received*

All RFP submittal packages (envelopes and/or boxes) are stamped with the time and date received. This information is then transposed onto a submittal form. Respondents are provided a receipt indicating the time and date they submitted their proposal, if requested. This information is transposed onto the respective submittal/bid form. The submittal/bid form includes a statement that the responses indicated on the form were received prior to the submittal deadline. This form is signed by at least 2 CRA employees who witness the bid opening, which occurs at a public meeting and the bids are read aloud. Any proposals/bids that are received past the deadline date and time are not accepted for processing. The Board Summary that is prepared for awarding the bid includes information on all bids received, including any that came in late and those that were determined be non-responsive based on requirements outlined in the CRA's Procurement and Purchasing Procedures Manual and the Request for Bids and/or Qualifications, as applicable. In cases where the City of Delray Beach assists with the Request for Bids (for construction projects) or RFP process (for disposal of CRA property), City proposals are submitted directly to the City's Purchasing division and the Purchasing staff coordinates the bid opening meeting and registers all responses onto the bid tabulation form.

In order to address this Finding the submittal packages with date and time received will be scanned and maintained on file.

- *2 of 11 contracts tested did not include completed evaluation sheets*
 - *RFP for Auditing Services (2008)*

Unfortunately we could only locate one of the three rating sheets completed for this RFP.

- *Consulting service for arts warehouse plan (2011)*

The selection process for this RFP was managed by the Creative City Collaborative, who presented their overall ranking and recommendations to the CRA board at the meeting of April 14, 2011. CCC staff relocated their offices since that time and have not been able to locate the original ranking sheets.

- *2 of 11 contracts (architectural and landscape architectural services) did not include consideration of whether a firm was a certified minority business*

A review of the continuing services contracts (architects, landscape architects, and development services consultants) entered into by the CRA for the years 2007 through 2013 indicates that five (5) of the sixteen (16) companies that have provided these services to the CRA would qualify as MWBE businesses. In order to address this Finding the CRA will specifically incorporate the statutory requirements in future Requests for Qualifications.

- *Christmas Tree repairs not competitively bid*

The tree repairs are conducted by the same company that erects and disassembles the tree each year, Eagle Metal. This is a specialized service that was arranged by the Downtown Joint Venture, now the Delray Beach Marketing Cooperative, since the tree was first installed in the 1990's. The cost of the repairs is figured into Eagle's overall budget for the job and would be difficult to separate out. CRA staff verifies the repairs that are needed and inspects the work when it is done. In the future alternative sources of funding other than the CRA will be sought for this project.

- *General Counsel services not put out to bid since 2006*

The CRA's general counsel has extensive experience in municipal government and represents several cities, special districts and Community Redevelopment Agencies in the local area. Their hourly rate has remained the same since the contract was first approved. In order to address this finding the CRA board will be asked to issue a Request for Proposals for general counsel services in the near future.

Finding # 14: CRA board did not adopt credit card policy

The CRA primarily uses one credit card to which it charges items such as office supplies, computer equipment and software purchases, appliances for properties, property maintenance expenses, rope lights for the trees downtown, website expenses, association memberships and conferences, banners and signs, etc. Purchase Orders are to be executed and signed prior to purchases as with non-credit card purchases. Receipts are maintained, attached to the credit card bill and verified by the purchaser, finance staff and management prior to payment. These processes and practices have to date prevented any misuse of credit cards.

In order to address this Finding, the procedures that are currently in place will be put in writing for CRA board approval, and staff will be asked to sign written agreements regarding the appropriate use of credit cards.

Finding # 15: Unauthorized expenditures—funds used for food, gift cards, etc.

The majority of the \$5,644 noted in this Finding was used to purchase decorative street light banners (Street Décor \$1,823.00) and tree lights in the downtown area (\$2,286.76 to 1000Bulbs.com).

The remaining expenditures identified in this finding were used for CRA activities and events as described below.

In order to better inform the public about the CRA's programs and projects the CRA established March 2012 as "CRA Awareness Month" and held several activities aimed at expanding awareness and interest. These included presentations at City Hall for City employees, an event in the West Atlantic Neighborhood, coffee with CRA Chairman Howard Lewis at a local coffee shop, and a social media "Mash Up". Refreshments were served at some of these events and some promotional items were purchased to give away to participants. (Total \$712.60)

The two \$100 gift cards (\$209.90) were given as a token of appreciation to two employees who helped out for several months during another employee's extended medical leave, coordinating and delivering board packets, preparing meeting agendas and minutes, etc. The flowers (\$64.08) were for an employee who had surgery, and the agency has been reimbursed.

In October of 2011 the CRA Executive Director and Assistant Director invited two individuals from the Chamber of Commerce to have lunch and get acquainted with the newly hired Economic Development Director (\$109.43).

Refreshments and lunch were provided at a team building workshop for CRA employees on June 25, 2012 at a cost of \$187.75. The workshop lasted from 9:00 a.m. to 3:00 p.m.

The CRA staff and board held a holiday party, and spent \$141.81 at BJ's for snacks and supplies. CRA management staff contributed additional dollars for food and beverages. The CRA also expended \$99.32 for poinsettias and other holiday decorations for the office, which is visited on a regular basis by members of the public.

In our opinion the above expenditures were appropriate in that they supported CRA programs and events, promoted employee morale and productivity, provided decorative elements to enhance the appearance of the downtown area, and helped inform the public about the CRA's activities and programs.

Finding # 16: Property Appraisal Procedures—recommended use of Review Appraisers

The CRA obtains at least one appraisal for every property it purchases. The CRA employs qualified state certified real estate appraisers for all appraisal jobs, several of whom have the MAI designation.

For the property valued at \$1,895,000 the CRA obtained three separate appraisals, two of which were from MAI designated appraisers. During the period in question the sharp decline in the real estate market made it extremely difficult to determine values. There were few comparable sales and many property exchanges were the result of foreclosures or distress sales. Sales of commercial property in the West Atlantic area to private entities were especially limited during this period.

Regarding the purchase of the warehouse, while the preferred practice has been to obtain more than one appraisal for properties anticipated to have values of \$500,000 or greater, that procedure wasn't included in the CRA Operating Manual until 2011. It's noted that the listing price for the warehouse property was \$1.7 million and the property owners had it appraised for \$1.2 million in February 2009. The CRA had it re-appraised in December of 2009 and purchased it for the resulting value of \$1.1 million.

In response to this finding the CRA will continue to obtain appraisals from qualified firms, and will have the existing acquisition policies and procedures adopted by the CRA board. Staff will evaluate the cost effectiveness of using review appraisers instead of obtaining more than one appraisal in certain cases.

Finding #17: Contractual Agreements

- *Contract with General Counsel has expired, need more back-up for expenses*

We agree with this finding (although we note that the fee structure has remained the same since 2006) and will take corrective steps.

Contract Provisions:

- *Audit Services—Invoices did not provide sufficient detail of hours expended*

We will examine our audit agreement and ensure that the CRA is receiving the level of detail that is called for with respect to invoices for services.

- *Contingent Fees—CRA contracts must include clause prohibiting contingent fees*

We agree with this finding and will ensure that future contracts include this clause.

Finding #18: Contract Monitoring

- *Real estate broker reports did not include foreclosure/tax deed information*

The CRA entered into the Agreement with Anderson & Carr on July 12, 2012. In October 2012, the CRA's Broker coordinated the purchase of a foreclosed property at 203 NW 5th Avenue, via the Palm Beach County Clerk & Comptroller's website. In subsequent months the Broker researched priority properties as directed by CRA staff along the West Atlantic Avenue corridor to determine if there were any pending foreclosure or tax deed sales, which was indicated on the quarterly reports. In the first two quarters of 2013, the CRA's broker assisted closely in the negotiations to acquire two key parcels adjacent to other CRA owned sites.

CRA staff will review the status of the contract to determine if it should be modified to more closely reflect the desired outcomes.

- *Construction/Professional Services Agreement with City – required monthly reports were not submitted*

The status of all CRA-funded projects including those contained within the subject agreement is provided to the CRA Board in the Monthly Status Report, which is routinely updated by CRA and City staff. CRA staff will work with City staff to ensure that the information required per the Construction/Professional Services Agreement is provided either in that report or in a separate report.

- *Interlocal Agreement with City for Shuttle Funding – ridership data not submitted in a timely manner.*

We agree with this finding and will take steps to ensure that the data is submitted on a quarterly basis.

Finding #19: Policies and Procedures regarding travel expenditures could be enhanced

There is an inconsistency in the Human Resources Manual regarding the calculation of mileage. In order to address this finding the Manual will be modified to state that the IRS mileage reimbursement rate will be used.

All CRA travel is for justifiable purposes related to obtaining education and information on redevelopment issues, or in many cases, making presentations about the Delray Beach CRA at conferences and workshops.

In order to address this Finding staff will review the CRA's travel policies to determine ways to improve the approval and review of expenditures.

Attachment: Memorandum No 2013-006 from CRA Attorneys re Delay Beach CRA Expenditures of Tax Increment Funds

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

MEMORANDUM NO. 2013-006

TO: Diane Colonna, Executive Director

CC: Howard Lewis, Chair
Members of the CRA Board of Commissioners

FROM: Donald J. Doody, Office of the General Counsel *DJD*
David N. Tolces, Office of the General Counsel *DTT*

RE: Delray Beach Community Redevelopment Agency ("CRA") / Expenditures of Tax Increment Funds

DATE: March 28, 2013

Pursuant to your request, we have reviewed the March 14, 2013 memorandum submitted by a member of the public. The memorandum asserts a position that there exist several issues relative to the expenditure of public funds by the CRA. Accordingly, our office has reviewed the relevant Florida statutes, Attorney General Opinions, and the CRA's Redevelopment Plan and conclude that the expenditures of funds for the construction and promotion of facilities such as the Arts Garage, the Municipal Tennis Center, and the Delray Beach Public Library are consistent with the applicable statutes governing the operation of a CRA, and therefore legally allowed. This memorandum examines the CRA's authority to fund such operations and facilities.

I. Attorney General Opinion 2010-40

On September 27, 2010, the Florida Attorney General issued an Attorney General Opinion ("AGO") in response to an inquiry concerning a CRA's expenditure of funds for events that promote the redevelopment area as well as for entities that promote tourism and provide socially beneficial programs. AGO 2010-40 was issued in response to an inquiry from the City of Sanford City Commission regarding the expenditure of CRA funds for promotion of the redevelopment area in the City of Sanford.

In a response addressed to the Sanford City Attorney, Attorney General Bill McCollum stated that the use of CRA funds to promote the redevelopment area ". . . would appear to fall within the purposes of the redevelopment act." The Attorney General also stated that in the case of the City of Sandford the use of redevelopment funds to pay entities promoting tourism or providing socially beneficial programs, did not, however, "have an apparent nexus to carrying out the purposes of the redevelopment act." Therefore, the opinion issued to the City of Sanford required a nexus between the expenditure and the fulfillment of the purposes of the Community Redevelopment Act. It is important to note, however, that the cited Attorney General's opinion does not prohibit the use of CRA funds to promote activities that are contained in the CRA's Redevelopment Plan and further the redevelopment purposes of the CRA.

Notwithstanding the Attorney General's cautionary statement regarding the required nexus between the expenditure and the Redevelopment Act, the Attorney General examined Section 163.387(6), Fla. Stat., with respect to whether a CRA may use redevelopment trust funds for promotion of the community redevelopment area and concluded that ". . . [to] read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing the community redevelopment as a static process." Based upon this reasoning, the CRA's expenditures to promote the redeveloped areas within the Community Redevelopment Area are consistent with the statutory language.

II. Legal Analysis

Section 163.356(1), Florida Statutes, states in part that the CRA's purpose is to undertake "community redevelopment." The term "community redevelopment" is defined in Section 163.340(9), Florida Statutes, as follows:

(9) "Community redevelopment" or "redevelopment" means undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.

In order to pursue its purpose of community redevelopment, Section 163.387(6), Florida Statutes authorizes the expenditure of funds in the redevelopment trust fund by the CRA "for undertakings of a community redevelopment agency as described in the community redevelopment plan, including but not limited to:"

- (a) Administrative and overhead expenses necessary or incidental to the implementation of a community redevelopment plan adopted by the agency.
- (b) Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.
- (c) The acquisition of real property in the redevelopment area.
- (d) The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370.
- (e) The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.
- (f) All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of

indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.

(g) The development of affordable housing within the community redevelopment area.

(h) The development of community policing innovations.

In AGO 2010-40, the Attorney General recognized that the use of the term "including, but not limited to" in Section 163.387(6), Florida Statutes, provides flexibility to a CRA with respect to the use of redevelopment trust funds.

III. The Delray Beach CRA Community Redevelopment Plan

In further support of the CRA's activities and expenditures, the CRA's Redevelopment Plan, most recently updated on September 20, 2011, through the adoption of Ordinance 27-11, by the City of Delray Beach City Commission, contains the authority for the CRA to expend the redevelopment trust funds for promotional activities including, but not limited to the Old School Square Parking Garage Commercial Space, the Municipal Tennis Center, and the Delray Beach Municipal Library.

A. Commercial Space within Old School Square Parking Garage.

The Redevelopment Plan provides for the following with respect to development potential within the Pineapple Grove Cluster. On Page 36 of the Redevelopment Plan, the use of commercial space in the parking garage is identified as a potential for development. The Redevelopment Plan provides the following redevelopment opportunities in the Pineapple Grove area:

- Promote Pineapple Grove as a high profile destination
- Create storefronts at strategic locations (corners, near building entrances, etc.) and allow some non-retail on ground floor (i.e. at the new garage) to avoid a glut of marginal retail space.

Objectives contained on Page 52 of the Redevelopment Plan include the following objectives with respect to the downtown area:

- To create a self-sustaining downtown that has a balanced mix of uses.
- To facilitate economic development and ensure that the downtown remains the economic, cultural, and governmental center of the City.

The Pineapple Grove Neighborhood Plan provides for the development and promotion of venues providing space for art and music. Specifically, on Page 60 of the Redevelopment Plan, the CRA's participation may include the following elements:

- Support arts-related uses and features that help establish and maintain the area's identity as an arts district.

- Work with the Pineapple Grove organization to ensure that the City's Land Development Regulations facilitate the establishment of arts-related uses.
- Establishment of the area's special identity as an arts related district.

Finally, Block 76, "Old School Square Expansion and Parking Garage" is specifically referenced on Page 66 of the Redevelopment Plan. In explaining the background of the project, the Redevelopment Plan provides "The plans for [the] garage also included ground floor commercial space adjacent to Pineapple Grove Way and NE 1st Street." The objectives for the Old School Square Expansion and Parking Garage as stated in the Redevelopment Plan include:

- Promote arts and cultural activities as a means to foster increased economic development within the city center.
- Provide a cornerstone for the revitalization

The inclusion of these specific references to the parking garage, and commercial space within the parking garage, provides the guidance for the CRA to expend funds contained within the redevelopment trust fund on projects related to the Old School Square Parking Garage in a manner consistent with state law.

B. Municipal Tennis Center and Delray Beach Public Library.

With respect to the Municipal Tennis Center and the Delray Beach Public Library, the Redevelopment Plan confirms the CRA's participation in these projects as an essential element of the enhancement of recreation and cultural facilities in the Community Redevelopment Area. Specifically on Page 30, the Redevelopment Plan confirms that:

The CRA helped pay off debt service for the establishment of the tennis stadium at the downtown Tennis Center. This facility has hosted major tournaments and generated a great deal of economic activity for downtown restaurants, shops, and hotels. The CRA also contributed funding for the establishment of the new public library in the 100 block of the south side of West Atlantic Avenue. The relocation of this facility to West Atlantic area has been a major catalyst to the redevelopment of the western edge of the downtown, as it attracts more people and activities to venture west of Swinton Avenue.

The Municipal Tennis Center is identified as a Community Improvement Program on Page 94 of the Redevelopment Plan. The objectives of the CRA's participation in the funding and operation of the Municipal Tennis Center are to:

- Encourage the use of the Municipal Tennis Center as a venue for major sporting events and other entertainment activities
- Stimulate economic development within the West Atlantic Redevelopment Area and the downtown as a whole by attracting visitors and activity to a major public facility located directly within the area.

- Where appropriate, support the utilization of sports facilities within the CRA district for events and programs that will provide an economic benefit to hotels and businesses within the CRA district and the City as a whole.

By identifying the specific program and objectives in the Redevelopment Plan, the CRA's funding and participation in events and programs associated with the Municipal Tennis Center is consistent with the statutory provisions and the Attorney General's Opinion.

The Delray Beach Public Library's continued operation and development as a cultural hub in the West Atlantic Area is included as an ongoing redevelopment project on Page 68 of the Redevelopment Plan. Specifically, the Redevelopment Plan provides:

In order to continue to promote activity and economic development in the West Atlantic area, the CRA agreed to fund a portion of the operating funds so that the library could continue to be open seven days a week and offer the same range of services and activities. The CRA will consider on an annual basis, a commitment of funding in order to ensure that the library can continue to function in this manner.

This type of promotional activity to support a completed capital project is consistent with the relevant statutory provisions and the Attorney General's Opinion.

IV. Conclusion

The CRA's activities, as evidenced above, are consistent with Florida law and the CRA's Redevelopment Plan. The CRA's actions and use of funds to eliminate slum and blight, and to promote the redeveloped area within the CRA's boundaries, is consistent with the provisions of Chapter 163 and the 2010 Attorney General's Opinion.

If you require any additional information, please do not hesitate to contact our office.

DNT:dnt

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DAVID W. MARTIN, CPA
AUDITOR GENERAL

AUDITOR GENERAL STATE OF FLORIDA

G74 Claude Pepper Building
111 West Madison Street
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September 9, 2013



PHONE: 850-488-5534
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Mr. Howard Lewis, Chairman
Delray Beach Community Redevelopment Agency
20 North Swinton Avenue
Delray Beach, Florida 33444

Dear Mr. Lewis:

Enclosed is a list of preliminary and tentative audit findings and recommendations which may be included in a report to be prepared on our operational audit of the:

Delray Beach Community Redevelopment Agency

Pursuant to Section 11.45(4)(d), Florida Statutes, you are required to submit to me within thirty (30) days after receipt of this list a written statement of explanation concerning all of the findings, including therein your actual or proposed corrective actions.

Your written statement of explanation should be submitted electronically to flaudgen_audrpt_lg@aud.state.fl.us (flaudgen_audrpt_lg@aud.state.fl.us) in **source format (e.g., Word or WordPerfect)** and include your digitized signature. For quality reproduction purposes, if you are not submitting your response in source format, please convert your response to PDF and not scan to PDF. If technical issues make an electronic response not possible, then a hard copy (paper) response will be acceptable. If you are submitting a hard copy, address to Auditor General, Local Government Audits/Section 341, 111 West Madison Street, Tallahassee, FL 32399-1450.

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

If within the 30-day period you have questions or desire further discussion on any of the proposed findings and recommendations, please contact Marilyn Rosetti at (850)487-9031 or at marilynrosetti@aud.state.fl.us.

Sincerely,

A handwritten signature in blue ink that reads "David W. Martin".

David W. Martin

DWM/jk
Enclosure

c: Diane Colonna, Executive Director
David Tolces, General Counsel
Board Members

******PRELIMINARY AND TENTATIVE FINDINGS******

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

SUMMARY

Our operational audit of the Delray Beach Community Redevelopment Agency (CRA) disclosed the following:

COMPLIANCE WITH THE COMMUNITY REDEVELOPMENT ACT

Finding No. 1: During the period October 2011 through March 2013, the CRA paid a total of \$2,084,183 to various nonprofit organizations to fund their operations and for promotional activities or socially beneficial programs, and contributed \$1,070,000 to the City of Delray Beach (City) as a sponsor for tennis tournaments. Neither the CRA Plan nor CRA records clearly demonstrated the CRA Board's determination of the extent to which the funds provided to the organizations had been appropriately restricted to activities authorized by the Community Redevelopment Act.

Finding No. 2: The CRA leased property from the City and subleased the property for considerably less than it was paying the City, the net effect of which appears to have been a \$423,833 subsidy of the City's operations.

Finding No. 3: The CRA's records did not demonstrate that amounts paid to the City for Project Manager and Neighborhood Planner services were appropriate based on the actual time those employees spent on CRA-related activities.

Finding No. 4: The CRA's records did not demonstrate compliance with Section 163.387(7), Florida Statutes, regarding the disposition of unexpended CRA trust fund moneys at year-end.

GRANT AND FUNDING ADMINISTRATION

Finding No. 5: The CRA made some business development grant awards in excess of program guidelines.

Finding No. 6: The CRA did not adequately monitor funding provided to nonprofit organizations.

FRAUD AND ETHICS CONTROLS

Finding No. 7: The CRA Board had not adopted policies for the mitigation, detection, and reporting of fraud.

Finding No. 8: Certain CRA Board members and one employee did not timely file statements of financial interests, contrary to Section 112.3145(2), Florida Statutes.

BUDGETARY CONTROLS

Finding No. 9: The CRA's adopted budget did not include all prior year balances brought forward, contrary to law, and did not reflect the true cost of the Green Market program.

Finding No. 10: The CRA needed to enhance its budgetary controls to ensure that expenditures are limited to budgeted amounts as required by law.

CASH CONTROLS AND ADMINISTRATION

Finding No. 11: The CRA had not entered into agreements with several financial institutions regarding electronic funds transfers.

PROCUREMENT OF GOODS AND SERVICES

Finding No. 12: The CRA's disbursement processing controls could be enhanced.

Finding No. 13: The CRA did not always comply with prescribed policies and procedures, or State law, regarding the competitive procurement of services.

Finding No. 14: The CRA's controls over the issuance and use of credit cards could be enhanced.

Finding No. 15: CRA records did not always evidence the public purpose served by expenditures.

*****PRELIMINARY AND TENTATIVE FINDINGS*****

REAL PROPERTY ACQUISITIONS

Finding No. 16: The CRA needed to enhance its procedures for acquiring real property to ensure that real property is acquired at the best price possible.

CONTRACTUAL SERVICES

Finding No. 17: The CRA did not have a current written agreement for General Counsel services and some written agreements did not contain statutorily required provisions.

Finding No. 18: The CRA's monitoring of compliance with contractual reporting requirements could be enhanced.

TRAVEL

Finding No. 19: The CRA's policies and procedures regarding travel expenditures could be enhanced.

FINDINGS AND RECOMMENDATIONS

Compliance with the Community Redevelopment Act

"Redevelopment," for purposes of the Act, is defined in Section 163.340(9), Florida Statutes, as undertakings, activities, or projects in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight; the reduction or prevention of crime; the provision of affordable housing; or the rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed. Section 163.370, Florida Statutes, grants counties and municipalities broad powers necessary or convenient to carry out the purposes of the Act. The Act focuses primarily on physical restoration of the CRA area, including acquisition and preparation of land or other real property, and the construction of buildings or affordable housing, except for express authority to conduct community policing innovations. Section 163.360(2), Florida Statutes, indicates that the CRA plan must: (a) conform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Community Planning Act; (b) be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the CRA area; zoning and planning changes, if any; land uses; maximum densities; and building requirements; and (c) provide for the development of affordable housing in the area, or state the reasons for not addressing in the CRA plan the development of affordable housing in the area. Further, Section 163.362, Florida Statutes, requires that the contents of every community development plan show by diagram and general description the physical layout of the CRA area and specifically identify any publicly funded capital projects in the area.

While the CRA expended moneys in accordance with the CRA Board-approved CRA Plan, as discussed further in finding Nos. 1, 2, and 3, we have questioned whether certain uses of CRA funds were consistent with the Act. Additionally, as discussed in finding No. 4, the CRA's records did not evidence compliance with the Act regarding disposition of CRA trust fund moneys at year-end.

Finding No. 1: Promotional Activities and Socially Beneficial Programs

During the period October 2011 through March 2013, the CRA contributed moneys to various nonprofit organizations. Pursuant to agreements with these organizations, funding provided by the CRA was to be used for the nonprofit organizations' ongoing operating expenses, promotional activities, or for socially beneficial programs. The nonprofit organizations included the following:

*****PRELIMINARY AND TENTATIVE FINDINGS*****

- **Delray Beach Downtown Marketing Cooperative, Inc. (DMC).** The DMC was created by the CRA, the City, the Delray Beach Downtown Development Authority, and the Greater Delray Beach Chamber of Commerce. The DMC's mission is to attract people to the City, and create a positive economic impact through destination marketing, marketing programs, events, and community collaboration. The CRA provided the DMC funds totaling \$634,290 during the period October 2011 through March 2013, including \$465 for specific DMC events and \$633,825 to be expended as determined by the DMC.
- **Creative City Collaborative, Inc. (CCC).** The CCC's mission is to create and implement strategies and programs for development and operation of an arts center within the CRA area to attract visitors and promote economic development. The CRA provided funds totaling \$481,893 during the period October 2011 through March 2013 to, or on behalf of, the CCC to support its operations and for the purpose of providing community and cultural art programs within the CRA area. In addition, the CRA paid for the space occupied by the CCC through a lease with the City (see additional discussion in finding No. 2). Pursuant to the agreement between the CRA and the CCC, beginning May 2011, the CCC was required to pay the CRA \$500 per month (increased to \$1,000 per month effective October 1, 2011) to compensate the CRA for marketing and maintenance expenses associated with arts programming.
- **Delray Beach Public Library (Library).** The CRA Plan indicates the Library is not a City facility and is run by a nonprofit board. The CRA Plan also indicates that while the City had financially supported the Library, the City reduced funding to the Library beginning in 2007 due to budget constraints created by property tax reform and "to continue to promote activity and economic development in the West Atlantic area, the CRA agreed to fund a portion of the operating funds . . ." The CRA provided the Library funds totaling \$462,000 during the period October 2011 through March 2013.
- **Old School Square, Inc. (OSS).** The OSS's mission is to be the community's cultural center, enriching people's lives by presenting diverse experiences in visual and performing arts, education, and entertainment; nurturing artistic expression and involvement; providing a community gathering place and preserving its National Historic site, which is located within the CRA area. The CRA provided the OSS funds totaling \$356,250 during the period October 2011 through March 2013 to fund its organizational operations for the performing arts program and grassroots partnership program.
- **Expanding and Preserving Our Cultural Heritage, Inc. (EPOCH).** EPOCH's mission is to expand, preserve, and present the culturally diverse history of the African Diaspora in Palm Beach County. The CRA provided EPOCH funds totaling \$149,750 during the period October 2011 through March 2013 to fund its organizational operations for the Museum and Exhibitions, and Lectures, programs.

The CRA also entered into agreements with the City to participate as a sponsor for the International Tennis Championships tournaments held at the Municipal Tennis Center, providing the City \$535,000 in the 2011-12 and 2012-13 fiscal years, respectively.

In considering the allowability of the types of contributions discussed above, which totaled \$3,154,183 during the period October 2011 through March 2013, we found that there is limited guidance to CRAs as to what constitutes authorized expenditures other than the language of the Act. The Attorney General has issued opinions addressing the allowability of certain expenditures under the Act. For example, in Opinion No. 82-86 the Attorney General indicated that, in addition to improvements that change the physical appearance of a particular property, areawide improvements such as improvements to sidewalks and utilities were appropriate projects to be undertaken by a CRA.

In Opinion No. 2010-40, the Attorney General responded to an inquiry regarding whether a CRA may expend funds for festivals or street parties designed to promote tourism and economic development, make grants to entities that promote tourism and economic development, or make grants to nonprofit entities providing socially beneficial programs. The Attorney General stated that while Section 163.387(6), Florida Statutes, indicates the use of CRA trust funds was not limited to those purposes enumerated therein, a CRA "is a statutorily created administrative agency that

*****PRELIMINARY AND TENTATIVE FINDINGS*****

may only exercise those powers that have been expressly granted by statute or that are necessarily exercised in order to carry out an express power.” The Attorney General also indicated that the legislative intent of the Act would necessarily limit the expenditures by a CRA, and stated that “funds raised by taxation for one purpose cannot be diverted to another use.” In addition, the Attorney General stated that “[t]he enumerated uses of community redevelopment trust fund moneys are likewise couched in terms of redevelopment activities involving ‘bricks and mortar’ in a manner of speaking, rather than promotional campaigns to encourage people to populate the area once the redevelopment has been accomplished. However, to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process. Accordingly, I cannot say that the use of community redevelopment funds would be so limited that the expenditure of funds for the promotion of a redeveloped area would be prohibited. However, grants to entities which promote tourism and economic development, as well as to nonprofits providing socially beneficial programs would appear outside the scope of the community redevelopment act.” The Attorney General further stated that “Use of community redevelopment funds for entities promoting tourism or providing socially beneficial programs, however, does not have an apparent nexus to carrying out the purposes of the community redevelopment act.”

The CRA’s contributions to the above organizations were subject to use for a variety of purposes, including promotion of the redeveloped area and the operation of organizations that were geographically located within the redeveloped area and that provided socially beneficial and cultural programs. Based on our consideration of the provisions of the Act and the referenced Attorney General opinions, use of CRA funds are to be restricted to those clearly authorized by the Act (e.g., redevelopment activities involving “bricks and mortar”) or for the promotion of the redeveloped area. The CRA provided us an opinion from its General Counsel characterizing the above-noted contributions as being for promotional activities and indicating that through inclusion of these activities in the CRA Plan, the CRA’s contributions were consistent with State law. However, neither the CRA Plan nor CRA records clearly demonstrated the CRA Board’s determination of the extent to which the funds contributed to the above-noted organizations had been appropriately restricted to activities authorized by the Act.

While it is clear that the location of organizations operating primarily socially beneficial and cultural programs in the redeveloped area may encourage the public to visit the redeveloped area and, thus, provide some promotion of the redeveloped area, it was not clear from the CRA records that the benefits provided by the funding were limited primarily to the redeveloped area or that promotion of the redeveloped area was the intended primary public benefit of the arrangements. In these circumstances, it was not apparent how funding of the operations of the various organizations referenced above constituted an appropriate nexus to the purposes of the Act.

Recommendation: If it is the CRA’s intent to continue funding the above-noted organizations on an ongoing basis, the CRA Board should seek guidance from the Attorney General as to whether the use of CRA funds for these funding arrangements is allowable under the Act. Additionally, the CRA should document in its records that these organizations’ use of the funding is restricted to activities authorized by the Act.

Finding No. 2: Property Leased from the City

On January 11, 2010, the CRA entered into a five-year lease agreement with the City for 10,289 square feet of the first floor of the Old School Square Parking Garage. Pursuant to the agreement, annual rent of \$150,000, or \$14.58 per square foot, is payable to the City in one lump sum at the beginning of each lease year. Subsequently, the CRA

******PRELIMINARY AND TENTATIVE FINDINGS******

subleased the entire 10,289 square foot of space to two nonprofit organizations, whose missions are to promote the arts, as follows:

- On August 26, 2010, the CRA entered into a two-year sublease of approximately 5,000 square feet with the Puppetry Arts Center of the Palm Beaches, Inc., with monthly rent of \$400 (\$4,800 annually, or \$.96 per square foot). Due to construction delays, the lease term commenced on May 1, 2011, and an April 15, 2013, amendment to the lease extended the term of the lease through May 4, 2014.
- On December 21, 2010, the CRA entered into an agreement with the CCC for the CCC to provide assistance in creating and implementing the development and operations of an arts center. The agreement allows the CCC to use the remaining 5,289 square feet of space at no cost to the CCC (see additional discussion in finding No. 1). The CRA subsequently entered into a sublease agreement with the CCC for the period July 1, 2012, through January 31, 2015, with monthly rent of \$466.67 (\$5,600 annually, or \$1.06 per square foot).

During the period February 2010 through January 2013, the CRA paid \$450,000 in rent to the City and received rents totaling \$26,167 from the sublessees with these organizations, for a net cost to the CRA of \$423,833. The effect of these transactions appears to have been a \$423,833 subsidy of the City's operations. According to the CRA's 2011-12 fiscal year audited financial statements, Palm Beach County contributed 40 percent of the CRA's total tax increment funding, which represented 38 percent of the CRA's total revenues. Consequently, these transactions may have resulted in County funds being used for City purposes.

In response to our inquiries as to why the CRA leased space from the City and then subleased the space to the nonprofit organizations, rather than the City leasing the space directly to these organizations, CRA personnel indicated that the City is not accustomed to administering leases and, therefore, the CRA offered to manage the tenancy as an economic development initiative. However, it is not apparent why the CRA could not have acted as an agent for the City rather than using CRA trust fund moneys to subsidize City operations.

Recommendation: The CRA should ensure that any future transactions with the City do not have the effect of subsidizing the City's operations.

Finding No. 3: Support for CRA Expenditures

Section 163.387(1)(a), Florida Statutes, requires that funds allocated to, and deposited in, the CRA trust fund be used to finance or refinance community redevelopment pursuant to an approved CRA plan. Section 163.387(6), Florida Statutes, provides that moneys in the CRA trust fund may be expended for undertakings of the CRA as described in the CRA plan, including, but not limited to:

- Administrative and overhead expenses necessary or incidental to the implementation of the CRA plan.
- Expenses of redevelopment planning, surveys, and financial analysis.
- Acquisition costs of real property in the redevelopment area.
- Clearance and preparation costs of the redevelopment area for redevelopment and relocation of site occupants.
- Repayment of principal and interest or any redemption premium for any form of indebtedness.
- Expenses incidental to, or connected with, the issuance, sale, redemption, retirement, or purchase of any form of indebtedness, including funding accounts provided for in related ordinances or resolutions authorizing the indebtedness.

*****PRELIMINARY AND TENTATIVE FINDINGS*****

- Costs for the development of affordable housing within the community redevelopment area.
- Costs for the development of community policing innovations.

The CRA entered into two interlocal agreements with the City to fund a portion of the salaries and benefits for a Project Manager and Neighborhood Planner position for their work on CRA-related projects. The agreements required the City to provide quarterly reports to the CRA, including timesheets and payroll information to support the amounts charged. The CRA was invoiced and paid a total of \$160,625 for these positions during the period October 2011 through March 2013; however, the invoiced amounts were based on budgeted amounts rather than actual salary expenditures based on actual time spent by these employees on CRA-related activities. As a result, CRA records did not demonstrate that the amounts paid to the City for these services were appropriate based on the actual time the employees spent on CRA-related activities.

Recommendation: To ensure that CRA funds are used only for allowable purposes, the CRA should ensure that amounts paid to the City are limited to actual salary expenditures based on actual time spent by these employees on CRA-related activities.

Finding No. 4: Ending Balances in CRA Trust Funds

Section 163.387(7), Florida Statutes, provides that on the last day of a CRA's fiscal year, any money remaining in the CRA trust fund after the payment of expenses described in the CRA plan for such year must be either returned to each taxing authority that paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year; used to reduce the amount of any indebtedness to which increment revenues are pledged; deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged; or appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan, which project will be completed within three years from the date of such appropriation.

As noted in finding No. 9, the CRA's 2011-12 and 2012-13 fiscal year budgets only included a portion of the balances brought forward from the prior fiscal year. Although the CRA's audited financial statements for the 2008-09 through 2011-12 fiscal years indicated that portions of ending fund balances were designated or assigned for appropriation in subsequent fiscal years' budgets, much of the appropriations from the prior fiscal years were not used in the fiscal year in which they were appropriated. Further, the CRA also reported undesignated and unassigned fund balance in each of those fiscal years. As shown in Table 1, more than \$7 million of moneys deposited to the CRA trust fund since the 2008-09 fiscal year have been unused in subsequent years.

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| Table 1 | | | | | |
|--------------|---|---|---------------|---|--------------|
| September 30 | Ending Fund Balance Designated/Assigned for Appropriation in the Subsequent Fiscal Year | Less: Amount Used in Subsequent Fiscal Year | Unused Amount | Plus: Ending Fund Balance Undesignated/Unassigned | Total Unused |
| 2009 | \$5,980,620 | (\$2,723,293) | \$3,257,327 | \$4,450,685 | \$7,708,012 |
| 2010 | 5,283,569 | (486,637) | 4,796,932 | 2,516,788 | 7,313,720 |
| 2011 | 5,019,518 | 0 | 5,019,518 | 2,473,620 | 7,493,138 |
| 2012 | 7,528,433 | (1) | (1) | 2,126,764 | (1) |

Note (1): The amounts used and unused during the 2012-13 fiscal year were not finalized as of the completion of our field work in August 2013.

Source: Auditor General calculations based on amounts included in the CRA's Audited Financial Statements

Further, the CRA did not reduce indebtedness, place funds in escrow to later reduce indebtedness, or return funds to the taxing authorities. Consequently, CRA records did not demonstrate compliance with Section 163.387(7), Florida Statutes, regarding the disposition of unexpended trust fund moneys.

In response to our inquiry regarding the CRA's compliance with Section 163.387(7), Florida Statutes, CRA personnel indicated that a review of ending balances was performed annually through the budget process, audit report, and CRA Plan review. CRA personnel also provided an analysis comparing cumulative tax increment funding (TIF) revenues to cumulative expenses. Although the analysis indicated that cumulative expenses exceeded cumulative TIF revenue, this analysis did not include other revenues that were received and deposited into the CRA trust fund, such as revenue from leases, land sales, or the Green Market program (see discussion in finding No. 9). As such, the analysis did not demonstrate compliance with Section 163.387(7), Florida Statutes.

Recommendation: The CRA should document in its records that unused funds have either been obligated for purposes authorized by law or return such funds to the taxing authorities.

Grant and Funding Administration

Finding No. 5: Business Development Grants

Pursuant to the CRA's 2011 Plan, the CRA provides financial assistance to local businesses and community organizations through the following local grant programs: Business Development Assistance Program, Historic Façade Easement Grant Program, Paint-up & Signage Program, and Site Development Assistance Program. Each program has specific guidelines and an application process and each grant award must be approved by the CRA Board. For the period October 2011 through March 2013, the CRA awarded 17 business development-related grants totaling \$134,407. Our test of 15 grant disbursements to local businesses, totaling \$74,485 for 15 grants, disclosed the following:

- The Business Development Assistance Program provided rent subsidies up to \$500 per month for a maximum of 12 months within the first 18 months of a multi-year lease. The program guidelines state that to be eligible for assistance, a business must be located within the CRA area, and must be either a new business venture in operation for less than six months at the time of application, an existing business relocating to Delray Beach from another city, or an existing business opening an additional location in Delray Beach. The business must be at the location for which the subsidy is being requested for less than six months at the time the application is submitted. Our review of seven grant awards under this program totaling \$40,300, disclosed three grants that will provide subsidies to businesses after the 18th month in the lease terms,

*****PRELIMINARY AND TENTATIVE FINDINGS*****

contrary to the program guidelines. Subsidies in excess of program guidelines total \$6,000 over the grant periods. In response to audit inquiry, CRA personnel indicated they calculated the 18-month period beginning on the day of operation rather than on the day the lease term started. However, this is contrary to the program description in the guidelines.

- The Site Development Assistance Program offers a partial reimbursement for the cost of exterior improvements to commercial buildings located in the CRA area to encourage business owners to improve existing business sites. The guidelines state that funding is disbursed on a reimbursement basis only and requires submission of detailed work invoices and proof of payment. Our review of five grants awarded under this program disclosed one grant to a business for exterior improvements based on 25 percent of actual eligible expenses up to a maximum award of \$25,000. At the time the grant was awarded, the business had begun work on the project. CRA records indicated that the CRA Board-approved grant was based on the remaining exterior improvements, and funds would not be applied to any improvements that had been done prior to the CRA Board approval of the grant. According to CRA records, eligible project costs that were paid subsequent to the grant approval totaled \$85,139, an amount that would support a grant disbursement of \$21,285. However, the CRA disbursed \$25,000 to the business on March 28, 2013, resulting in an overpayment of \$3,715.

Enforcement of grant terms and guidelines is necessary to ensure that funds disbursed to recipients are limited to amounts authorized by the CRA Board.

Recommendation: **The CRA should ensure that grant awards are made in accordance with program guidelines.**

Finding No. 6: Monitoring of Funding Agreements

The CRA created a grant program entitled A-GUIDE, *Achieving Goals Using Impact Driven Evaluation*, to provide funding to nonprofit organizations involved in affordable housing, recreation and cultural facilities, and economic/business development. During the 2011-12 and 2012-13 fiscal years, the CRA provided significant funding, both for capital projects and operations, to four nonprofit organizations: Delray Beach Community Land Trust, Inc.; Delray Beach Public Library; Expanding and Preserving Our Cultural Heritage, Inc.; and Old School Square, Inc. For the 2011-12 and 2012-13 fiscal years, the CRA awarded a total of \$1,825,918 to these organizations under the A-GUIDE program.

In addition to the A-GUIDE program, the CRA also provided funding to the CCC to establish an arts incubator program within the CRA area. The CRA provided the CCC funds totaling \$304,795 during the 2011-12 fiscal year pursuant to a staffing and funding agreement, and totaling \$310,735 during the 2012-13 fiscal year pursuant to a funding agreement.

The 2011-12 and 2012-13 fiscal years funding agreements in effect for the four A-GUIDE organizations, as well as the 2012-13 fiscal year funding agreement for the CCC¹, required the organizations to provide quarterly financial and performance reports by specified dates. Pursuant to the agreements, quarterly payments were to be made to the organizations following the receipt of the required reports. The performance reports were designed to provide information on the activities related to the CRA funding provided, and the financial reports were required to detail the use of CRA funds provided.

Our review of the CRA's administration of the funding to these organizations disclosed the following:

¹ The CRA's 2011-12 fiscal year staffing and funding agreement with the CCC did not require quarterly financial and performance reports.

******PRELIMINARY AND TENTATIVE FINDINGS******

- The amounts paid quarterly to the organizations were based on 25 percent of the funding award and the funding agreements did not require the organizations to return any unexpended funds to the CRA.
- Thirteen payments totaling \$743,672 were dated prior to the receipt of the required reports, contrary to the agreements. CRA personnel indicated that checks were prepared earlier to allow time for obtaining authorized signatures but were held until reports were received; however, we noted that two checks totaling \$142,500 cleared the bank prior to the report submittal date. For 11 other disbursements totaling \$674,903, CRA records did not evidence the date the required reports were received by the CRA, as the reports were not signed or dated by the organizations submitting the reports and the CRA did not date-stamp the reports upon receipt.
- Eight reports were dated 10 to 57 days after the required submission date.

Under the above conditions, there is an increased risk that moneys disbursed to these organizations may be used for unauthorized purposes.

Recommendation: The CRA should amend funding agreements to require that moneys unexpended, or expended for unauthorized purposes, be refunded to the CRA. The CRA should also enhance controls over monitoring funding agreements to ensure that required reports are submitted and reviewed timely. Additionally, the CRA should not provide quarterly funding if required reports have not been submitted.

Fraud and Ethics Controls

Finding No. 7: Fraud Policies

On January 15, 2013, the CRA Board executed a Memorandum of Understanding between the CRA and the Palm Beach County Commission on Ethics to exercise authority, functions, and powers granted by the Section 2-258 of the Palm Beach County Code of Ordinances over CRA operations. The CRA's personnel policies refer the staff to the *Palm Beach County Code of Ethics Guide for Employees*, 2011 Edition (*Ethics Guide*). The *Ethics Guide* provides detailed information relating to ethical violations and what may constitute a conflict of interest.

Although the CRA Board had adopted an ethics policy, it had not adopted fraud policies. Policies for communicating and reporting known or suspected fraud are essential to aid in the detection and prevention of fraud. Such policies should clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior. Fraud policies are necessary to educate employees about proper conduct, create an environment that deters dishonesty, and maintain internal controls that provide reasonable assurance of achieving management objectives and detecting dishonest acts. In addition, such policies serve to establish the responsibilities for investigating potential incidents of fraud, taking appropriate action, reporting evidence of such action to the appropriate authorities, and avoiding damage to reputations of persons suspected of fraud but subsequently found innocent. Further, in the absence of such policies, the risk increases that a known or suspected fraud may be identified but not reported to the appropriate authorities.

Recommendation: The CRA Board should establish fraud policies and procedures that clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences of fraudulent behavior.

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Finding No. 8: Statement of Financial Interests

Section 112.3145(6), Florida Statutes, provides that the Florida Commission on Ethics (Commission) shall annually prepare a listing of local officers required to file a statement of financial interests and provide that listing to the local supervisor of elections. Section 112.3145(2), Florida Statutes, provides that each local officer must file, with the supervisor of elections, a statement of financial interests no later than July 1 of each year. Section 112.3145(1)(a)3., Florida Statutes, specifies that local officers include any appointed member of the governing body of a political subdivision; any person holding the position of chief administrative employee of a municipality or other political subdivision; or purchasing agent having the authority to make a purchase exceeding \$20,000 on behalf of a political subdivision. Each year the Florida Commission on Ethics prepares the list of persons holding governmental positions who are required to file statements of financial interests for the previous year. The Commission obtains the name and address of each of these persons from coordinators who have been designated by each State and local government agency.

Our audit disclosed that for the 2011 calendar year, there was no statement of financial interests on file with the Palm Beach County Supervisor of Elections for one CRA Board member, and four CRA Board members filed their 2011 calendar year statements between 41 and 72 days after the July 1, due date. As of July 15, 2013, only three of the seven CRA Board members had filed statements of financial interests for the 2012 calendar year. Also, the Executive Director, the CRA's chief administrative employee, did not file a statement of financial interest for the 2011 and 2012 calendar years.

Recommendation: The CRA should ensure that all Board members and applicable employees required to file a statement of financial interests are advised of the filing requirements, and ensure that the applicable names and positions are communicated to the appropriate coordinator.

Budgetary Controls

Finding No. 9: Budget Preparation

The CRA is a special district as defined in Section 189.403, Florida Statutes. Section 189.418(3), Florida Statutes, requires that the governing body of each special district adopt a budget by resolution each fiscal year and states that the total amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total of appropriations for expenditures and reserves. Budgets are utilized as a tool to regulate expenditures and can also be used as a decision making tool by management regarding the viability and success of individual programs. Our review of the CRA's approved budgets disclosed that:

- Contrary to law, in preparing its 2011-12 and 2012-13 fiscal year budgets, only a portion of the CRA's available fund balance was brought forward from prior fiscal years in determining the amounts available for appropriations. For the 2011-12 and 2012-13 fiscal years budgets, the CRA did not include \$1,375,389 and \$2,126,764, respectively, available from the prior fiscal years. Upon audit inquiry, CRA personnel indicated the amount excluded from the 2012-13 budget represented a five percent reserve for contingencies and funds that would be needed to purchase land; however, pursuant to Section 189.418(3), Florida Statutes, the entire amount available should have been brought forward and the funds intended for a reserve for purchasing land should have been budgeted accordingly. Subsequent to our inquiry, a budget amendment, totaling \$1,852,000, was adopted in July 2013 to recognize the portion of the fund balance reserved for the land purchase.

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- The CRA operates a Green Market program to attract visitors and business to the CRA area and included revenue and expenditure line items related to the Green Market program in its budgets. However, the salary for the Green Market Manager, whose position description only includes duties that pertain to the Green Market program, were included in the salaries budget line under the category of Administration. Excluding the Manager's salary, the budgets for the 2011-12 and 2012-13 fiscal years show projected net losses for this program of (\$9,933) and (\$9,600), respectively. With the Manager's gross salary included, these projected losses would be (\$60,933) and (\$60,600), respectively. As a result, the CRA's budget presentation did not accurately disclose the extent of the projected loss of the Green Market program and, therefore, the CRA Board may not be aware of the true cost of running this program. In response to audit inquiry, CRA personnel stated that the Green Market Manager also performs some general administrative duties for the CRA and the CRA would still incur the expense of this position if the Green Market did not exist. However, the extent of duties unrelated to the Green Market program was not evident from the Green Market Manager's position description.

Including all balances available in the CRA's budget improves transparency and accountability for CRA resources. Also, as previously discussed in finding No. 4, the failure to appropriate balances remaining in the CRA trust fund at the end of a fiscal year may be contrary to law, if those funds are not otherwise used as indicated in Section 163.387(7), Florida Statutes. In addition, an accurate of presentation of the Green Market program's expenditures in the budget, and a documented determination of the portion of the Green Market Manager's salary that should be allocated to the program, would improve the usefulness of the budget as a tool for decision making.

Recommendation: The CRA should ensure that all balances brought forward from prior fiscal years are included in the adopted budgets for the CRA trust fund. In addition, budgets should accurately present all direct Green Market program expenditures to provide the CRA Board with accurate and complete information from which it can make informed decisions regarding the program.

Finding No. 10: Budget Overexpenditures

Section 189.418(3), Florida Statutes, provides that the adopted budget must regulate expenditures of the special district, and it is unlawful for any officer of a special district to expend or contract for expenditures in any fiscal year except in pursuance of budgeted appropriations. The CRA's budgets established the legal level of budgetary control at the object level by cost center, and budget amendments were prepared and approved by the CRA Board twice each fiscal year.

Our review of the final budget-to-actual expenditures comparison included in the CRA's 2011-12 fiscal year annual financial audit report disclosed that although the CRA's total budget was not overexpended, five object level line items were each overexpended by amounts ranging from \$5,703 to \$119,283 (total of \$197,619).

CRA personnel indicated that the overexpenditures were due to adjustments made to agree the CRA's receivables and payables with the City to the corresponding accounts as reported by the City. Absent timely budget amendments, there is an increased risk that CRA expenditures may exceed available resources.

Recommendation: The CRA should enhance budgetary controls to timely amend budgets as necessary to ensure that expenditures are limited to budgeted amounts as required by law.

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Cash Controls and Administration

Finding No. 11: Electronic Funds Transfer s

Good control over electronic transfers of CRA funds requires the use of written agreements with each financial institution to or from which moneys are to be transferred. Such agreements should specify the locations and accounts to which transfers can be made, amounts that can be transferred, and the employees authorized to make such transfers and change the locations to where funds can be transferred.

During the period October 2011 through March 2013, the CRA initiated electronic funds transfers (EFTs) totaling \$18,088,711. The CRA used EFTs to pay certain vendors and to transfer funds to and from financial institutions (seven accounts at four institutions) and the State Board of Administration (two accounts). The CRA's records did not evidence written agreements with each of its financial institutions regarding EFTs that included restrictions as to the amount of the transfers, where the funds may be transferred, employees authorized to make such transfers, and employees authorized to make changes to the agreement. We were provided written funds transfer agreements for two of the CRA's financial institutions; however, they were dated 2008 and 2009 and were applicable to only two accounts still in use.

Absent current written agreements with all of the CRA's financial institutions specifying authorized destination accounts and dollar limits, and employees authorized to make transfers and changes to the agreements, there is an increased risk that unauthorized transfers could occur without timely detection.

Recommendation: The CRA should ensure that it has current EFT agreements with each of its financial institutions.

Procurement of Goods and Services

Finding No. 12: Disbursement Processing

Controls over disbursements should provide for the documented authorization of purchases prior to paying for and receiving goods or services. In addition, payment should not be made until after confirmation that the purchased goods or services have been received. Our review of 40 check disbursements for purchases, totaling \$395,321, made between October 2011 and March 2013 disclosed the following:

- The CRA's Procurement and Purchasing Procedures Manual (Manual) requires that a purchase order form be used for all purchases. Contrary to the Manual, for 7 of the 40 disbursements reviewed totaling \$55,059, a contract or purchase order form was not prepared to document authorization of the purchase. In addition, for 8 of the 40 disbursements reviewed totaling \$7,125, the invoice was dated prior to the contract or purchase order form. Contracts and purchase order forms serve to document management's authorization to acquire goods and services, and the specifications and prices of the goods and services ordered, and also provide a basis for controlling the use of appropriated resources through encumbrances.
- The CRA did not maintain documentation, such as receiving reports, to evidence receipt of goods or services prior to payment for any of the 40 disbursements reviewed. CRA personnel indicated that the Finance Director verbally verified with the purchaser that the goods or services were received prior to payment. Documentation including signatures and dates evidencing that goods and services were received, inspected, and approved by appropriate CRA employees are necessary to ensure that the invoiced goods and services have been received in good condition. Dates that the goods or services were received are necessary for a proper recording of accounts payable at fiscal year-end and may be needed to evidence compliance with the

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Florida Prompt Payment Act (Chapter 218, Part VII, Florida Statutes), which establishes procedures and time limits for processing and paying invoices submitted by vendors to local governmental entities.

Absent adequate control procedures over purchases and disbursements, there is an increased risk of unauthorized purchases, or payment for goods or services that were not received, without timely detection.

Recommendation: The CRA should ensure that written contracts or purchase order forms are used to document the authorization of purchases prior to incurring an obligation for payment. The CRA should also enhance controls over disbursements to ensure that documentation is retained to demonstrate the receipt of goods and services prior to payment.

Finding No. 13: Competitive Selection Process

The Manual recommends at least three quotes for purchases of \$5,000 or less, requires at least three written quotes for purchases from \$5,001 to \$25,000, and requires the use of competitive sealed bids or proposals for purchases in excess of \$25,000. Section 5.6 of the Manual establishes procedures for competitive sealed bids or proposals. These procedures include guidance for advertising, surety, insurance, bid opening, contract and awards, inspection and rejection of bids. Certain exceptions to the purchasing requirements provided in the Manual include: subscriptions, publications, and memberships; emergency purchases; and sole source purchases.

Our test of 11 contracts for services that were subject to the competitive bid or proposal requirements disclosed the following:

- For 8 of the 11 contracts tested, CRA records did not evidence the times or dates the bids were received. These contracts were for consulting, artistic, architectural, landscape, and construction services acquired. For 7 of the contracts, the bid tabulation or proposal sign-in forms included a statement that the listed bids or proposals were received prior to the deadline, but did not provide the actual dates and times received. For the 8th contract, the proposal sign-in form included dates and times for 3 of the 8 proposals received but only indicated a date for the remaining proposals. CRA personnel indicated that bid or proposal envelopes were time and date stamped but were not retained.
- For 2 of the 11 contracts tested, CRA records did not include completed evaluation sheets used and signed by the selection committee to score and rank the submitted proposals. The 2 contracts were for auditing services and consulting services for an arts center development plan.
- Two of the 11 contracts were for architectural and landscape architectural services and, therefore, were subject to the requirements of Section 287.055, Florida Statutes. However, contrary to Section 287.055(3)(d), Florida Statutes, the selection criteria used to evaluate the proposals for these services did not include consideration of whether the firm was a certified minority business enterprise.

Also, our test of 40 check disbursements discussed in finding No. 12 disclosed a \$32,000 payment for repairs to a 100-foot tall artificial Christmas tree used to attract visitors to Downtown Delray Beach that were not competitively bid. In this instance, CRA records did not evidence that this purchase was exempt from competitive bidding. In addition, we noted that a selection process for General Counsel services had not been conducted since 2006 (see further discussion in finding No. 17) and these services were listed as excluded from the purchasing requirements in the Manual. During the period October 2011 through March 2013, the CRA paid \$169,150 for General Counsel services.

Absent adequate documentation to evidence that bids and proposals were timely received and fairly evaluated in accordance with law and the Manual requirements, there is an increased risk that the CRA may be limited in its ability

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to sufficiently defend itself against claims alleging unfair purchasing practices. Additionally, without using a competitive selection process when acquiring contractual services, the CRA cannot be assured that such services are obtained at the lowest cost consistent with acceptable quality and performance.

Recommendation: For those purchases requiring competitive bids or proposals, the CRA should ensure that documentation is retained evidencing the date and time bids or proposals are received, and the selection committee's evaluations of bids or proposals. In addition, procedures for evaluating bids or proposals for professional services should include consideration regarding certified minority businesses as required by law. The CRA should also consider using a competitive selection process for acquiring General Counsel services.

Finding No. 14: Credit Cards

As of March 31, 2013, the CRA had four credit cards that were issued to employees. The CRA received one billing statement each month for all four cards and the cards had a combined credit limit of \$22,500. During the period October 2011 through March 2013, CRA credit card purchases totaled \$73,785.

Our review of the use of credit cards and test of 30 transactions totaling \$14,749 disclosed the following:

- The CRA Board did not approve, of record, the issuance of CRA credit cards or adopt policies, procedures, or other guidance as to the proper use of CRA-assigned credit cards.
- The employees assigned credit cards were not required to, and did not, sign written agreements specifying acceptable uses of credit cards.

In the absence of adequate controls over the issuance and use of credit cards, including certifications signed by credit card holders, and adequate review of support for credit card transactions to ensure that charges are appropriate, there is an increased risk that unauthorized charges may be made without timely detection.

Recommendation: The CRA Board should determine whether credit cards should be issued to CRA employees; set appropriate limits on the types of goods and services that can be purchased and the amounts of transactions; and implement appropriate policies and procedures regarding the issuance, use, and monitoring of credit cards. Such policies and procedures should include a requirement for each cardholder to sign a statement certifying that he or she accepts the terms and conditions set by the CRA on credit card usage.

Finding No. 15: Questioned Expenditures

Expenditures of public funds must be shown to be authorized by applicable law or resolution; reasonable in the circumstances and necessary to the accomplishment of authorized purposes of the governmental unit; and in pursuit of a public, rather than a private, purpose. Section 163.387(6), Florida Statutes, indicates that moneys in the CRA trust fund may be expended for undertakings of the CRA that are related to financing or refinancing of redevelopment in the CRA area pursuant to an approved CRA plan. Since moneys deposited in the CRA trust fund are restricted as to their use, CRA officials are responsible for establishing and maintaining controls, including the adoption of sound accounting practices, which will provide reasonable assurance that CRA funds are expended only for authorized purposes.

Additionally, the Attorney General has indicated on numerous occasions that documentation of an expenditure in sufficient detail to establish the authorized public purpose served, and how that particular expenditure serves to

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further the identified public purpose, should be present at the point in time when the voucher is presented for payment of funds. The Attorney General has further indicated that unless such documentation is present, the request for payment should be denied.

In addition to the questionable use of CRA funds as discussed in finding Nos. 1, 2, and 3, our audit disclosed numerous other instances in which CRA records did not evidence that expenditures served a public purpose, and complied with the CRA's 2011 Plan and Section 163.387, Florida Statutes. Specifically, we noted the following:

- Our tests of 70 check and credit card transactions for the period October 2011 through March 2013 disclosed 12 (17 percent) transactions totaling \$5,644 for items such as flowers, food, gift cards for employees, promotional items, and restaurant charges.
- Our review of three petty cash reimbursements, totaling \$466, disclosed \$266 related to purchases of food items, and \$43 related to reimbursements that were listed on the petty cash reconciliation as \$20 for tips and \$23 for a gift, but for which the CRA's records did not evidence supporting receipts.
- A total of \$100 in credit card rewards points redeemed for cash were, according to CRA personnel, used for various CRA lunch meetings.

Absent documentation establishing the authorized public purpose served, and how an expenditure serves to further the identified public purpose, the CRA has not demonstrated that CRA funds were appropriately used.

Recommendation: The CRA should strengthen its procedures to require documentation that expenditures serve an authorized public purpose, and comply with the CRA Plan and Section 163.387, Florida Statutes. Such documentation should be present in the CRA's records prior to payment.

Real Property Acquisitions

Finding No. 16: Property Appraisals

Good business practice dictates the use of appraisals to determine market value for real property acquisitions. For larger acquisitions, the use of two appraisals provides more assurance of the market value of the property prior to purchase. Should two appraisals result in significant differences in value, the use of a professional appraisal review² can assist in determining the market value of the property to be purchased.

One definition³ of "market value," indicates that market value is the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale under conditions whereby the buyer and seller are typically motivated, both parties are well-informed and acting in their own best interests, a reasonable time is allowed for exposure in the open market, payment is made in terms of cash in U.S. dollars or comparable financial arrangements, and the price represents the normal consideration for the property sold. Guidance from the Appraisal Institute regarding the sales comparison approach, a commonly used approach in appraisals, indicates that appraisers must consider all relevant transactions that have occurred in the market and then determine which of those transactions should be used. Factors that may determine whether a sale is unusable or requires adjustment include atypical buyer or seller motivations.

² A professional appraisal review can assist in determining compliance with applicable appraisal standards and accepted appraisal procedures.

³ Definition derived from Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

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The Operations Manual used internally by CRA personnel indicated that the offering price for property acquisitions is to be typically based upon CRA personnel's knowledge of market conditions, but the purchase and sale agreement will be made subject to the condition that an appraisal must be completed prior to closing. The Operations Manual also indicated that if CRA personnel estimate the value to be at or above \$500,000, a second appraisal was required. After appraisals were received they were reviewed by the Development Manager for accuracy. The Operations Manual, which had not been approved by the CRA Board, did not provide for appraisal instructions prohibiting the use of nonprofit, governmental, or quasi-governmental sales in determining value estimates; provide the steps to be taken should widely divergent appraisals be received; or specify when the engagement of professional review appraisers should be considered.

Our review of 11 real property acquisitions between February 2010 and November 2012, totaling \$3,852,305, disclosed the following:

- For one property acquired for \$1,895,000, the CRA initially obtained two appraisals that indicated values of \$1,500,000 and \$2,340,000, respectively. Since these values were widely divergent, the CRA obtained a third appraisal that valued the property at \$1,685,000. We noted that the CRA did not use a professional review appraiser to assist in determining the reasonableness of the support for the market value of the property. We also noted that some of the wide divergence in the value conclusions among the appraisers appears to have been caused, in part, by the CRA's failure to discourage appraisers from using government-related transactions within the CRA area (i.e., other purchases by the CRA). For example, for the two appraisals with the highest overall value conclusions, all but one of the comparable sales used to value the subject property involved the CRA as the purchaser. However, the CRA would likely be considered an atypically motivated buyer that may have influenced prices in an atypical market created by the CRA. Appraisal guidance used by some governmental agencies strongly discourages the use of governmental purchases in appraisals. For example, *Uniform Appraisal Standards for Federal Land Acquisitions* states "When appraisals for federal land acquisitions are conducted, sales to the government should not be used as comparable sales unless there is a paucity of private market data as to make a reliable estimate of market value impossible without the use of government purchases." Similarly, the *Supplemental Appraisal Standards for the Board of Trustees (State Standards)* promulgated by the Florida Department of Environmental Protection for State land acquisitions, indicates that appraisers are encouraged not to use purchases by nonprofit organizations, water management districts, or quasi-governmental or governmental agencies, as primary indicators of value, and that regional sales searches are encouraged in the event no local comparable sales can be located. *State Standards* further require that use of nonprofit, governmental, or quasi-governmental sales be analyzed and considered separately in the appraisal report. We noted that the \$1,500,000 appraisal had minimized the use of nonprofit, governmental, or quasi-governmental comparable purchases.
- For one property acquired for \$1,100,000, the CRA obtained only one appraisal, contrary to the Operations Manual. Further, the appraisal, which valued the property at \$1,100,000, relied on the negotiated price of the subject property, which was the same price the property sold for in 2004, in determining the value. The appraiser's report acknowledged recent significant declines in the commercial and industrial market conditions. However, the report did not indicate how the market conditions in 2009, when the property was valued by the appraiser, compared to those at the time of the prior sale for the same price in 2004 to test the reasonableness of his value estimate. Consequently, the appraiser's analyses and conclusions did not appear to conclusively support that the value in 2009 was the same as the 2004 sale price.

CRA Board consideration and adoption of real property appraisal policies and procedures would better ensure the reasonableness of value estimates and the CRA's acquisition of real property at the best price possible.

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Recommendation: The CRA Board should adopt written policies and procedures for real property acquisitions. In doing so, the CRA Board should require that appraisals be acquired for all real property acquisitions; that at least two appraisals be acquired for acquisitions over a given dollar limit; that a professional appraisal review be obtained in instances in which two appraisals are widely divergent; and that the use of nonprofit, governmental, or quasi-governmental purchases be discouraged from consideration as comparable sales for appraisals obtained.

Contractual Services

Finding No. 17: Contractual Agreements

As a matter of good business practice, contractual arrangements should be evidenced by written agreements embodying all provisions and conditions of the procurement of such services. The use of a formal written agreement protects the interests of the CRA, identifies the responsibilities of both parties, defines the services to be performed, and provides a basis for payment. The CRA is responsible for establishing controls to provide assurance that the process of contracting for services is effectively and consistently administered. Such controls should include execution of written contracts with clearly defined deliverables; Board approval of all contracts, amendments, and work orders; monitoring of contract payments to ensure they are in accordance with contract terms; and contract provisions requiring the contractor to provide invoices in a detail sufficient for proper pre- and postaudit.

Our review of ten contracts for various professional services, and ten interlocal agreements with the City, disclosed the following:

- **No Contract.** The latest contract the CRA had on file for General Counsel services was dated January 26, 2006, for a two-year term. Although there was a renewal provision stated in the contract, CRA records did not evidence that the contract was renewed. Upon audit inquiry, CRA personnel indicated that the rates had not changed and there was no regular evaluation of the firm by the CRA Board. In addition, our review of the payments for these services disclosed that the firm was paid \$6,759 for out-of-pocket expenses (copying costs, title and lien searches, and messenger services) that were not supported by receipts or other appropriate documentation. Inadequate review of invoices prior to payment increases the risk of overpayments or that the CRA will pay for services not provided.

- **Contract Provisions.**
 - **Audit Services.** Section 218.391, Florida Statutes, requires that a procurement of audit services be evidenced by a written contract that includes certain provisions, such as a requirement that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract. Although the auditors' contract with the CRA for the 2011-12 fiscal year included a statement that invoices for fees will be rendered each month as work progresses and indicated the hourly rates for each position within the firm, it did not include a provision requiring submittal of sufficiently detailed invoices, and our tests disclosed an instance in which a CRA payment for audit services was not supported by a detailed invoice. Specifically, the CRA received and paid a progress billing invoice for \$17,300 for services rendered through January 2013 related to the 2011-12 fiscal year audit; however, the invoice did not detail the amount of hours spent and applicable hourly rates for the work performed through January 2013. As such, CRA records did not demonstrate that the amount invoiced and paid was in accordance with the contract.

 - **Contingent Fees.** Section 287.055(6), Florida Statutes, requires contracts for professional services to contain a prohibition against contingent fees stating that the contractor warrants that he/she has not paid anyone other than a bona fide employee working solely for the contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the

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agreement. In May 2011, the CRA entered into a contract with a firm for a period of three years commencing June 1, 2011, for general consulting and other architectural services. However, the contract did not contain the above-noted provision, contrary to law.

Recommendation: The CRA should ensure that written contracts are used for all professional services, contracts include all required terms and conditions, and that payments for contractual services are supported by detailed invoices sufficient to allow a determination of contract compliance prior to payment.

Finding No. 18: Contract Monitoring

We reviewed 20 contracts and interlocal agreements, each of which included provisions requiring the contractor to provide performance and financial reports to assist the CRA in monitoring the services being performed. Our review disclosed that reports submitted for 6 contracts or interlocal agreements did not include the information required by the contract or interlocal agreement, as follows:

- The quarterly reports submitted for real estate broker services did not contain the foreclosure status in the targeted area or tax deed data in the targeted area.
- An interlocal agreement with the City for construction/professional services required monthly reports detailing the progress of the specific projects, including but not limited to the contract amount, the amount of funds paid to the contractor, the status of the project, and the total change orders. However, CRA records did not evidence that the CRA received the required reports.
- The interlocal agreement with the City for shuttle bus services required the City to submit quarterly ridership reports on or prior to the 30th day of January, April, July, and October. However, CRA records did not evidence that the CRA received reports for April 2012, October 2012, or January 2013.

Absent the receipt and review of the required reports, there is an increased risk that the CRA will pay for services that were not rendered in accordance with contract terms.

Recommendation: The CRA should enhance its monitoring procedures to ensure that required reports are received and contain all information required by the contract.

Travel

Finding No. 19: Travel Expenditures

Pursuant to Section 112.061(3)(b), Florida Statutes, travel expenses of CRA officials and employees are limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the CRA and must be within the limitations prescribed by that Section. During the period October 2011 through March 2013, CRA travel expenditures totaled \$12,282.

Our review of the CRA's Human Resources Policies and Procedures (Policy) disclosed the following:

- Section 29 of the Policy, provides that automobile travel for employees will be reimbursed at the mileage rate set by Section 112.061(7)(d), Florida Statutes. Section 31 of the Policy, covering travel advances and expense reconciliations, states that employees shall be reimbursed for use of a personal car for CRA business at the current published Internal Revenue Service mileage reimbursement rate in effect when the travel took place. Section 112.061(14), Florida Statutes, provides the CRA Board with the authority to establish by resolution per diem, subsistence, and mileage rates that vary from those provided in Section 112.061, Florida Statutes, provided that the rates established be applied uniformly to all CRA travel. Our tests disclosed that CRA employees were reimbursed for mileage based on the Internal Revenue Service-published rate; however,

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because the CRA's Policy prescribes two different mileage reimbursement provisions, the Policy is contrary to law.

- The Policy did not require travel vouchers to be approved by supervisory personnel and our tests disclosed no evidence that supervisory personnel reviewed or approved travel vouchers.

In addition, our test of 8 travel vouchers and 7 credit card payments for hotels or airport parking, during the period October 2011 through March 2013, disclosed that these expenditures were not always adequately supported or in accordance with Section 112.061, Florida Statutes, or CRA policies. For example, contrary to Section 31j. of the Policy, for the 8 travel vouchers reviewed, the traveler had not certified that the expenses were necessary for performance of the travelers' official duties. We also noted that 6 of the 8 travel vouchers reviewed did not list vicinity mileage claimed for reimbursement as a separate line item, contrary to Section 112.061(7)(d)3., Florida Statutes. In addition, we noted some minor overpayments to two CRA Board members and an employee.

Enhancement of the Policy and improved review of travel expenditures would decrease the risk of unauthorized travel or improper payments.

Recommendation: The CRA should revise its Policy to establish uniform mileage reimbursement rates as required by Section 112.061(14), Florida Statutes, and to require supervisory approval of travel vouchers. The CRA should also enhance its controls to ensure that all travel reimbursements are in accordance with the CRA's Policy and Section 112.061, Florida Statutes.

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