

Corporate Real Estate: Leases and Licensing Audit

Recommendations and Management Responses



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Hamilton

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Introduction

The following 35 recommendations will help improve the governance and management of leases and licences at the City of Hamilton.

Recommendation 1

That the Corporate Real Estate Office (CREO) investigate how best to deploy its suite of system solutions, in order to improve the security and reliability of data, and administration of leases. This would involve an assessment of their current state of functionality as against administration needs, the feasibility of making improvements to ARCHIBUS and to the use of SharePoint technology (i.e. TRACKER), vs the costs and benefits of acquiring an integrated solution, and possibly the use of EAM (Enterprise Asset Management) (Appendix A, para. 32-39).

Management Response

Agree.

CREO has begun to investigate system solutions that address real estate and portfolio management functions corporate wide, with a view to lease administration. Connectivity to related facilities operational management and space management, EAM, and critically integration with financial systems, are important elements under consideration. Archibus, once it becomes available, and other tools will be used in the interim, while a business case is prepared for dedicated resources to address the need. Both a permanent solution and interim measures need to be addressed. A business case for dedicated resources will be brought forward during the 2025 Capital and Operating Budget submissions, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for permanent solutions.

Recommendation 2

That the City of Hamilton CREO evaluate alternatives to improve the administration of leases and licences including the efficacy of centralized administration and the use of, or enhancement with, software solutions that are available internally or in the marketplace (Appendix A, para. 40-46).

Management Response

Agree.

As noted in the report, recommendations respecting the implementation of a centralized model of lease administration have been provided by an independent consultant. Key to these recommendations is dedicated staff resources to establish the framework, systems and tools necessary to ensure a wholistic approach. A centralized model does not alleviate the need for the integration of supporting functions (legal, finance) and responsibility of "Asset Owners" and "Asset Managers" under the City's new Asset Management framework. Further noted is the report's acknowledgement that there may be circumstances under which elements of administration may functionally reside within a program (e.g., Recreation) area while deploying an overall consistent approach and centralized oversight. A business case for dedicated resources will be brought forward during the 2025 Capital and Operating Budget submissions, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for permanent solutions.

Recommendation 3

That CREO work with Facilities Management (FM) to update the Business Agreement to provide greater clarity with respect to responsibilities, and to add detail with respect to Legal Services' involvement and the renewal of leases (Appendix A, para. 40-46).

Management Response

Agree.

Current service level agreements between CREO and CFEM are under review respecting functions, roles, and responsibilities. Integration with Finance and Legal processes will be incorporated.

Estimated Completion: End of Year 2024.

Recommendation 4

That the CREO and the Recreation Division (REC) develop an accountability document or “Business Operating Agreement” to more clearly define cooperative roles and responsibilities with respect to Licence administration (Appendix A, para. 40-46).

Management Response

Agree.

CREO and Recreation will establish appropriate agreements consistent with current operating model and authorities. Integration with facilities management functions, Finance and Legal processes will be incorporated.

Estimated Completion: Q1 2025.

Recommendation 5

That CREO, in partnership with REC, develop a strategy and implementation plan for improving the management of licence data to ensure there is one single source of “truth” and clear accountability for information about the existence and status of licences (Appendix A, para. 40-46).

Management Response

Agree.

REC has initiated an internal review of its licence data. As part of Recommendation #4 workplan, CREO and Recreation will cooperate with CFEM (manages ARCHIBUS system corporately) on data integrity on an interim basis, subject to Management Response 1 and 2.

Estimated Completion: Q1 2025.

Recommendation 6

That CREO management review and renew the current criteria and processes for below market leases and licences, for improvement opportunities and consistency with City policies (Appendix A, para. 47-50).

Management Response

Agree.

The City requires an updated policy related to 3rd party use (lease/licence) of City property; incorporating below market rental scenarios (i.e. not for profit, community groups, etc.), distinct from facility use permits, and standardized agreements; clearly articulating criteria and processes, including roles and responsibilities among City divisions; and addressing capital and operating funding implications. CREO will lead a corporate wide review through the Portfolio Management Committee. In the interim, Recreation will be providing an overview of 3rd Party Agreements entered into and managed by Recreation to Emergency and Community Services Committee by Q4 2024.

Estimated Completion: Q1 2026.

Recommendation 7

That CREO management develop a process for making below market rental arrangements transparent to the public (Appendix A, para. 47-50).

Management Response

Agree.

Currently all below market leases and licences require approval by City Council, including any renewals or extensions, as they effectively represent grants provided by the City. Additional transparency mechanisms (such as annual reporting on the value of granting activity) will be examined and metrics articulated as part of the policy work identified in Management Response 6.

Estimated Completion: Q1 2026.

Recommendation 8

That CREO management review and update the delegations of authority for leases and licences, and ensure their inclusion in its official policy documents (Appendix A, para. 51-54).

Management Response

Agree.

Updated delegations are required for all real estate activities, including lease and licence administration. There is a corporate work program to update delegated authorities across all departments. The most recent real estate delegations will be incorporated into updated policy and a procedure manual (see Management Response 11), and posted on the City’s intranet along with other corporate policies (e.g., code of conduct, procurement, etc.).

Estimated Completion: Q3 2025.

Recommendation 9

That CREO management develop and maintain, in consultation with Legal Services, a standardized form of lease agreement that can be used to apply contractual requirements and legal mechanisms with a desirable degree of uniformity and comprehensiveness, and which also affords sufficient flexibility to allow tailoring for different circumstances (Appendix A, para. 55-60).

Management Response

Agree.

CREO and Legal will work together to update the current precedent library and establish procedures to enforce the implementation of the use of standardized terms and conditions as appropriate. Where possible, a standardized form of lease agreement will be utilized. It should be recognized that each property, tenant, and nature of occupation requires differences in terms and conditions that cannot fully be addressed in a uniform template, so sufficient flexibility will be required to allow tailoring for different circumstances, as noted by the OAG. Some agreements are quite complex and for which a template is inadequate.

Estimated Completion: Q3 2025.

Recommendation 10

That CREO management review older agreements and assess whether they continue to serve the interests of the City efficiently and effectively, and whether the City can and/or should pursue renegotiation, redrafting or termination in accordance with the existing terms (Appendix A, para. 55-60).

Management Response

Agree.

CREO is currently undertaking a strategic review of the City's entire inventory of property, with one lens being site utilization, including third-party use (leases/licences). As part of this process, existing tenancies and property uses are being examined for fit and compatibility with Council priorities and City objectives. Options and tactics to address identified changes are identified and articulated on a case-by-case basis, recognizing that leases and licences are contractual agreements that the City may not be in a position to unilaterally amend. Additionally, when existing agreements are coming up on expiry or renewal, arrangements are reviewed against the City's current priorities and policies, and agreements reviewed against current precedent documents.

Estimated Completion: On-going.

Recommendation 11

That management responsible for lease administration develop and adopt a leasing policy framework supported by standard operating procedures to assist in transitioning their delivery of lease administration and to respond to opportunities for improvement (Appendix A, para. 61-63).

Management Response

Agree.

A leasing policy framework supported by policies and procedures will be developed. A leasing administration policy and procedures manual will also be developed, based on the recommendations provided by an independent consultant and the Recommendations of this Report. As outlined in Management Response 2, a business case for dedicated resources will be brought forward during the 2025 Capital and Operating Budget submissions, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q1 2026 for new framework and processes.

Recommendation 12

That all lease and licence agreements include a provision to regularly increase rent payments by a set rate or the rate of inflation should they go into overhold (Appendix A, para. 87-88).

Management Response

Agree.

In accordance with Management Response 9, CREO will work with legal on incorporating a standardized approach and terms for consistent use of overholding provisions within lease and licence agreements to ensure the City's interests are adequately protected. There are certain agreements (Recreation licenses, for example) where annual increases to account for inflationary costs are consistently incorporated. While it is not uncommon to use overholding provisions in agreements to "incentivize" early discussion on renewal/expiry, there are circumstances under which such terms may become either punitive or undesirable (e.g. the City may wish to encourage short-term overholding as an interim measure prior to the City taking back the space for its own use). A leasing policy framework supported by policies and procedures, including information about how to address regularly increasing rent payments by a set rate or the rate of inflation should they go into overhold.

Estimated Completion: Q3 2025.

Recommendation 13

That CREO and its lease/licence administrators develop a process to ensure overholds are dealt with more expeditiously (Appendix A, para. 87-88).

Management Response

Agree.

In alignment with Management Response 11, and utilizing the enhanced tools referenced in Management Response 15, procedures addressing proactive approaches to the end of term will be developed. These procedures will be developed to ensure that overholds are addressed promptly, minimizing delays and potential financial or operational risks. CREO will lead efforts to identify opportunities for streamlining current processes and improving oversight mechanisms. By implementing a more structured approach to lease and licence administration, we aim to increase efficiency and enhance accountability within the organization.

Additionally, as outlined in Management Response 2, we recognize that dedicated resources are crucial to effectively manage and execute these improvements. The successful implementation of these enhancements will require focused staff resources to ensure timely actions and oversight of lease and licence agreements. To address this need, a detailed business case will be prepared and presented during the 2025 Capital

and Operating Budget submissions. This business case will outline the resource requirements necessary to support the proposed changes, subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q1 2026 for new processes.

Recommendation 14

That the accountabilities and processes for updating lease/licence information be strengthened to ensure data is more reliable, and timely, with possibly a more robust use and/or implementation of systems that will more accurately and completely track all necessary parameters of leases and licences information. This should include exploration of enhancements to SharePoint. This information is required by various staff in Real Estate, Legal, Corporate Facilities and Energy Management - Facilities Management and Business Solutions, Finance, and other departments on a more reliable, complete and timely basis (Appendix A, para. 87-88).

Management Response

Agree.

Consistent with Management Response 1, 2 and 5, we recognize the need for more robust and reliable systems to manage lease and licence data effectively. A business case for dedicated resources will be brought forward during the 2025 Capital and Operating Budget submissions. CREO has already begun investigating various data management tools and techniques to address the challenges associated with lease and licence administration. In collaboration with key stakeholders, including Legal, Corporate Facilities, Energy Management, Finance, and other departments, CREO will focus on strengthening accountability across all teams involved. This will ensure that the necessary information is accessible, reliable, and updated in a timely manner.

In addition to long-term solutions, we will explore enhancements for potential interim solutions to improve tracking and management of leases and licences. Where possible, interim measures will be considered, and we will implement these approaches as resources become available to ensure that improvements begin even prior to the formal approval of additional resources. By taking these steps, staff aims to improve overall data integrity, enhance inter-departmental collaboration, and ensure that reliable, complete, and timely information is available to all relevant teams.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for systems implementation.

Recommendation 15

That the CREO develop procedures and notification/tickler reports to ensure that staff are alerted in advance when leases or licences are about to expire in order to renew them on a timely basis and ensure uninterrupted payment (Appendix A, para. 87-88, 115, 118).

Management Response

Agree.

The CREO will collaborate with current lease/licence administrators to develop and implement a more enhanced system of proactive reporting and push notifications, complementing and improving the existing ARCHIBUS process. This enhanced system will improve notifications for initiating negotiations, monitoring accounts payable, and managing lease terms related to expiries and renewals. As noted in Management Response 11, interim resources will be sought, and a business case for dedicated resources will be submitted as part of the 2025 Capital and Operating Budget, subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for full systems implementation.

Recommendation 16

That management responsible for lease and licence agreements, working with Accounts Receivable in Finance, develop a more robust and timely process for monitoring rent collection, including considering the monthly use of Rent rolls to help identify and monitor overdue lease/licence payments (Appendix A, para. 93-94).

Management Response

Agree.

Staff among CREO, CFEM, and REC will work with Finance to determine more effective means of monitoring and addressing outstanding accounts on an interim basis, pending more comprehensive changes to systems and processes being developed and implemented, as identified in Management Response 1 and 2.

Estimated Completion: Q2 2025.

Recommendation 17

That management revise the accounting allocation for revenue credits to ensure that revenues that ultimately accrue to responsible departments will reflect actual revenue collected rather than revenue due (Appendix A, para. 93-94).

Management Response

Agree.

Financial Services will conduct a review of accounting treatment and reporting for allocation of revenues to determine opportunities for improving the way in which revenues are recorded and allocated to departments, consistent with the recommendation and in accordance with Canadian Public Sector Accounting Standards.

Estimated Completion: Q1 2025.

Recommendation 18

That management develop a standard process for arrears management that ensures all parties are accountable to affect a coordinated, timely response to rent arrears (Appendix A, para. 93-94).

Management Response

Agree.

This shortcoming had been identified during the consultant's engagement and report. This identified shortcoming is due to systems and processes. Changes in the financial processes need to be implemented and this will be accomplished through a combination of software and process and procedures. To make the requisite changes will require additional resources for which a business case will be brought forward during the 2025 Capital and Operating Budget submissions, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for systems implementation.

Recommendation 19

That prior to entering into lease and licence agreements with the City, all tenants be fully and properly vetted, and that key information on these agreements be checked for accuracy and reasonableness before the agreements are accepted and signed off by the City (Appendix A, para. 100-106).

Management Response

Agree.

CREO and Legal will review existing lease/licence negotiation processes respecting understanding the tenant/licensee, vetting and information gathering, and risk mitigation strategies. Where enhancements can be made or new tools/techniques deployed, on a continuous improvement review basis, staff training and education will be deployed.

Estimated Completion: Q2 2025 and on-going.

Recommendation 20

That clear guidelines be developed outlining how large the arrears outstanding can be before various actions will take place. The process should be robust enough to ensure recovery of arrears proceeds in a consistent, orderly manner, and is completed within a reasonable period of time (Appendix A, para. 100-106).

Management Response

Agree.

CREO and Legal will work together to establish standard operating procedures respecting default and outstanding accounts. To develop and implement such guidelines will require additional resources for which a business case will be brought forward during the 2025 Capital and Operating Budget submissions, and implementation subject to Council approval.

The Corporate Real Estate Office (CREO) and Legal Services will work together to develop standard operating procedures related to the management of default and outstanding accounts. These procedures will establish clear guidelines for how arrears are to be handled, including thresholds for the size of arrears that will trigger specific actions. The goal is to ensure a consistent, orderly, and timely recovery of outstanding debts.

The development and implementation of these procedures will require additional resources, such as dedicated personnel and technological support. A business case outlining these resource needs will be submitted for consideration as part of the 2025 Capital and Operating Budget process. Implementation of the guidelines will proceed upon approval by Council. This approach ensures that the necessary framework and resources are in place to enhance the efficiency and effectiveness of arrears recovery.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for systems implementation.

Recommendation 21

That standard procedures be developed to ensure that subsequent to entering into a lease or licence, collections begin promptly (Appendix A, para. 100-106).

Management Response

Agree.

Current procedures respecting collections are not consistent with industry practices. Consistent with Management Response 15, staff among CREO, CFEM, and REC will work with Finance to ensure timely sharing of information and current procedures are reinforced so that prompt collections is initiated in accordance with lease/licence terms.

Estimated Completion: Q1 2025.

Recommendation 22

That tenants not be permitted to use the leased property until the lease/licence document has been finalized and properly signed off by both parties (Appendix A, para. 100-106).

Management Response

Agree.

The principle and policy of "No-lease-no-key" will be reinforced. It needs to be recognized that in a renewal or extension situation, the tenant or licensee, are already occupants.

Estimated Completion: Immediate.

Recommendation 23

That for leases and licences billed monthly, the City consider obtaining security and/or damage deposits when the lessee/licensee signs the agreements (Appendix A, para. 100-106).

Management Response

Agree.

In alignment with Management Response 9, CREO and Legal will collaborate to thoroughly review the options and potential implications of introducing security and/or damage deposits for monthly billed leases and licences. This review will consider industry standards, legal considerations, and financial risk exposure. Based on this analysis, a structured framework will be developed to guide decisions on when and how to implement appropriate security measures. Each transaction will be evaluated, considering due diligence, risk assessments, and the specific terms of the agreement to ensure appropriate protection for the City while maintaining flexibility in commercial negotiations.

Estimated Completion: Q3 2025.

Recommendation 24

That the City sign off on lease and licence agreements only after the lessee/licensee has signed off (Appendix A, para. 100-106).

Management Response

Agree.

This currently is the general practice with only certain exceptions such as agreements with other levels of government, institutions or extraordinary circumstances. Legal will review current practices and procedures to ensure consistent adherence to the policy, and communication and procedures will be updated where enhancements are identified.

Estimated Completion: Q1 2025.

Recommendation 25

That a procedure be changed/developed so the signed agreements are received by the division/section responsible as soon as practicable and that a record is maintained of when these are received (Appendix A, para. 100-106).

Management Response

Agree.

This is the current practice. The current procedure for communicating and disseminating signed agreements, including documenting receipt, to lease/licence administrators will be reviewed and enhanced as appropriate.

Estimated Completion: Q1 2025.

Recommendation 26

That management consider how best to link lease/licence documents and lease/licence administration software and/or financial systems so that all information noted on an RFI is supported by the lease and/or licence documents (Appendix A, para. 107-110).

Management Response

Agree.

CREO and key stakeholders will examine existing documentation and systems to determine where enhancements to linkages can be made. Interim measures will be taken where possible, and training for administrators reinforced. In accordance with Management Responses 1, 2, 14, 15, and 16, integration of software systems and data are key elements to be addressed in a work program for which a business case will be brought forward during the 2025 Capital and Operating Budget submissions, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for interim measures / 2026+ for systems implementation.

Recommendation 27

That a standard operating procedure be developed, and the process followed, so that all agreements where the tenant is required to pay property taxes are monitored on a timely basis to ensure that these funds are being collected in an expeditious manner (Appendix A, para. 111-113).

Management Response

Agree.

Current procedures are in place for the collection of property taxes via A/R billing to ensure HST requirements are addressed and property taxes are collected. While MPAC often takes 2-3 years to catch up on reassessments for new leased locations (in which case tenants/licensees inherit a substantial liability retroactively), the current procedure will be reviewed, enhanced and formalized, and staff trained, to ensure techniques, such as annual reviews, and billing of estimated taxes with end of year reconciliation to actuals, are deployed on a consistent basis.

Estimated Completion: Q2 2025.

Recommendation 28

That the City avoid the practice of allowing rents to accumulate arrears to accommodate the administration of rate changes (Appendix A, para. 114).

Management Response

Agree.

Consistent with Management Response 21, staff among CREO, CFEM, and REC will work with Finance to ensure timely sharing of information and current procedures are revisited so that prompt collections is continued. It should be noted that finance charges (2% over prime) are automatically to unpaid invoices after 45 days.

Estimated Completion: Q1 2025.

Recommendation 29

That a procedure be developed, or system be implemented, for integration of billing and lease status using a unique identifying number to link lease information (currently in ARCHIBUS) records to AR Finance records (Appendix A, para. 116).

Management Response

Agree.

Such Archibus file numberings are presently identified in the completion of RFI's that are sent to Finance (A/R). Software systems integration is currently not available and will be sought with any new or updated systems. Current procedure, subject to Archibus availability, will be reinforced.

Estimated Completion: Immediate.

Recommendation 30

That management responsible for leases and licences undertake a regular periodic (monthly or quarterly) review of all lease and licence files to ensure that they are being properly managed and that they have not been overlooked/forgotten (Appendix A, para. 117).

Management Response

Agree.

Regular periodic reviews of all active lease/licence files will be part of the policy and procedures identified in Management Response 11. All managers and administrators will be trained accordingly. Currently there are insufficient staff resources to undertake the recommended practice. CFEM and CREO meet regularly to discuss and review lease/license issues including renewals, defaults etc., and REC had undertaken a review of its leases and licences with a view to verifying its inventory. A business case for dedicated resources will be brought forward during the 2025 Capital and Operating Budget submissions to address the recommended direction, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q1 2026 for new procedures.

Recommendation 31

That the CREO develop a policy and guideline outlining how to deal with existing tenants of properties that have been purchased by the City (Appendix A, para. 117).

Management Response

Agree.

A comprehensive policy framework will be developed to establish clear guidelines for managing the transition and ongoing administration of existing tenants in properties acquired by the City. This framework will ensure consistency in handling tenant-related issues, provide transparency in decision-making, and minimize disruptions for tenants during the transition. Additionally, it will help City staff navigate complex tenancy arrangements by offering clear procedures for integrating these properties into the City’s portfolio.

It should be recognized that when the City acquires properties with existing tenants, the City inherits the contractual arrangements between the previous property owner and the tenant, by virtue of an assignment. That contractual agreement may not be consistent with City standards, but is considered as part of the terms of the property Purchase and Sale Agreement.

Estimated Completion: Q4 2025.

Recommendation 32

That all management responsible for leases and licences implement a system to regularly review lease and licence files ensuring their status is accurately reflected and up to date (Appendix A, para. 123-124).

Management Response

Agree.

Consistent with Management Response 14 and 30, procedures will be updated to ensure regular reviews and updates to file status and respective data. Currently there are insufficient staff resources to undertake the recommended practice. CFEM and CREO meet regularly to discuss and review lease/license issues including renewals, defaults etc., and REC had undertaken a review of its leases and licences with a view to verifying its inventory. A business case for dedicated resources will be brought forward during the 2025 Capital and Operating Budget submissions to address the recommended direction, and implementation subject to Council approval.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for new procedures.

Recommendation 33

That all administrators of lease and licences be accountable to report to a central oversight authority to ensure that all fees associated with leases and licences that come due are collected in a timely manner, and that agreement revenues/overholds are being dealt with accurately and promptly (Appendix A, para. 123-124).

Management Response

Agree.

As outlined in Management Response 2, an independent consultant has provided recommendations to establish a centralized model for lease and license administration. The plan is for the CREO (Corporate Real Estate Office) to be the lead; the CREO is well-positioned to take on the oversight role, as this aligns with its strategic leadership in managing the City’s real estate portfolio. By centralizing oversight under CREO, we will aim to improve consistency, accountability, and efficiency in the administration of leases and licenses, ensuring that all fees due are collected promptly and that any overholds or revenue issues are resolved in a timely manner.

To achieve this, CREO will work collaboratively with key stakeholders, including lease administrators, Finance, and other relevant departments, to build a robust framework. This framework will include clearly defined processes, integrated systems, and effective tools to streamline fee collection, manage agreement terms, and ensure that all aspects of lease and license agreements are handled accurately and efficiently.

Implementing this centralized model will require dedicated resources. A business case outlining these needs will be presented as part of the 2025 Capital and Operating Budget submissions and will be subject to Council approval. The allocation of these resources will enable the City to fully operationalize this new model.

Estimated Completion: Q4 2024 for budget approval / Q4 2025 for new reporting procedures.

Recommendation 34

That management re-evaluate whether invoicing of lessees is necessary and justified or other practices would be more effective in assuring timely collection including the feasibility of automatic payment from lessees (Appendix A, para. 123-124).

Management Response

Agree.

CREO, Legal and Finance will undertake a review of collection practices. As articulated in Management Response 21, current procedures respecting collections are not consistent with industry practices. Consultants recommendations respecting the implementation of a new model of lease administration also include changes to collections practices. In conjunction with the activities articulated in Management Response 2 and 11, collections practices and procedures will be updated. Key to undertaking these changes is dedicated staff resources. A business case for dedicated resources and incorporating this Recommendation will be brought forward during the 2025 Capital and Operating Budget submissions.

Estimated Completion: Q4 2024 for budget approval / Q1 2026 for new procedures.

Recommendation 35

That management develop a lease/licence standard procedure to ensure regular validation of agreement insurance requirements, and which outline the measures it will take to deal with the risks posed by lessees and licensees that do not maintain their insurance-related agreement obligations (Appendix A, para. 125-126).

Management Response

Agree.

Updated procedures will be developed and implemented on an interim basis pending approval and implementation of a centralized lease administration program.

Estimated Completion: Q4 2024.