



# Clerk of the Circuit Court Board of County Commissioners

Marion County



## Internal Audit Division

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*Clerk of the Circuit Court*

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### MEMORANDUM

**TO:** Janet Y. Tutt, Deputy County Administrator  
Stuart McElhaney, Life Safety Services Bureau Chief  
Andy Race, Facilities Management Director

**FROM:** David R. Ellspermann, Clerk of the Circuit Court  
Wallace K. Watford, Internal Auditor

**DATE:** June 21, 2004

**RE:** INTERNAL AUDIT ACTIVITIES: AGREEMENT TO CONSTRUCT FIRE STATION ON COUNTY ROAD 225A

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The Marion County Board of County Commissioners entered into an Agreement that required certain Internal Audit Division activities. This is our report on those completed activities, including our findings, conclusions and recommendations.

#### **Background**

Marion County and RLR Investment LLC, the developer of Golden Ocala (Developer), entered into an Agreement, dated July 15, 2003, to construct a fire station on CR 225A. The Developer conveyed 1.46 acres to the County on September 19, 2001 for the location of a fire station, for which it was allowed \$23,545.00 in future Fire Rescue Impact Fee credits. County and Developer agreed that the total cost of construction would be \$706,992.00. Of that cost, the first \$300,000.00 would be paid to Schatt Construction Company (Contractor) by Developer and would be subsequently reimbursed by County from budgeted funds. The next \$100,000.00 of construction cost would be contributed solely by Developer. The remaining \$306,992.00 will be reimbursed to Developer from future Fire-Rescue impact fees, as stated in section 4(c) of the Agreement.

Section 4(a) of the Agreement states that "County shall reimburse Developer no later than ten (10) days after receipt of proof of expenses and payment and verification by the Marion County Auditor." The Agreement section 4(d) further states "The County shall have the right to audit or verify the amount and accuracy of project costs and project documentation throughout the term of this Agreement and for a period of twelve (12) months following project completion."

#### **Activities Performed**

In accordance with the required Internal Auditor activities stated in the Agreement, we reviewed the two reimbursement requests submitted by Developer. Both Developer reimbursement requests covered the

first 8 draw requests to the Developer from the Contractor. We verified and recommended payments to Developer totaling \$300,000.00, as follows.

We recommended payment in the amount of \$190,359.00 for the first reimbursement request in a reporting memo, dated December 30, 2003, to the Life Safety Services Bureau Chief and Facilities Management Director. The Developer originally had requested \$208,742.00, which we reduced by \$18,383.00, as explained in the following Findings section. This revised request was returned to us in the amount of \$190,359.00, and we formally recommended payment of the amount on January 27, 2004. We recommended payment of the second reimbursement request for \$109,641.00 in our reporting memo dated March 17, 2004. This was the remaining balance of the County's budgeted \$300,000.00 after the first reimbursement.

Pursuant to section 4(c) of the Agreement, County is obligated to reimburse Developer the remaining balance of the construction cost, which was identified in the Agreement as \$306,992.00. We calculated the estimated credits from impact fees due to the Developer, as shown in the following Findings section.

We completed our review by examining the remaining draw requests from Contractor to Developer in order to determine the total cost of the facility under the Agreement. This is discussed in the following Findings section.

### **Findings**

The County timely paid its \$300,000.00 obligation under the Agreement, after receiving the formal reimbursement requests by the Developer. We interpreted the "ten (10) days" described in section 4(a) of the Agreement to mean ten business days rather than calendar days. We believe this is reasonable to allow the required verification procedures, particularly considering the normal time to process routine County expenditures. We therefore concluded the County made payments timely to Developer on each of the two reimbursement requests. Since it is not clearly stated in the agreement whether business days are intended, we suggest any future agreements use such specific terms.

The total contract sum noted on both reimbursement requests included change orders. Section 4(c) of the Agreement prohibits any payments of change orders either by Developer or the County "unless approved by the County as an amendment to this agreement." We believe this to mean approved by the Board of County Commissioners (BCC). No amendments to this Agreement have been submitted to BCC for approval as of June 16, 2004.

As referenced above, we noted that draw request #2 from Contractor to Developer, which was a part of the first reimbursement request, included a change order of \$20,426.00. Because no amendment had been approved as required in the Agreement, we recommended that the "net of retainage" amount of the change order (\$18,383.00) be deducted from the total requested amount in the first reimbursement request. This was done. We further noted an additional Contractor change order of \$35,541.00 in draw request #7, which was included in the second reimbursement request from Developer. However, the total construction costs without consideration of any change order had already exceeded \$300,000.00. Therefore, there was no effect on the recommended reimbursement amount of \$109,641.00

Documentation provided by Facilities Management, received from the Developer, disclosed that there are presently five (5) contract change orders between the Developer and Contractor. These total \$81,097.00 to date. County management appears to have considered these changes as being necessary to the project. If BCC approves these changes, the total authorized cost of the facilities will be \$788,089.00.

We have calculated the anticipated credit due to the Developer from Fire-Rescue Impact Fees. As shown below, the total impact fee credit should be \$388,089.00, if the previously mentioned change orders are approved by BCC.

Total anticipated costs, per section 4	\$706,992.00
County obligation, per section 4(a)	(300,000.00)
Developer obligation, per section 4(b)	(100,000.00)
Net anticipated credit amount, per section 4(c)	\$306,992.00
Change orders, if approved by BCC	81,097.00
Total anticipated available credits	<u><u>\$388,089.00</u></u>

**Conclusions and Recommendations**

Based on the review performed, we have concluded that the Developer demonstrated good faith compliance with the Agreement and was entitled to the reimbursement of \$300,000.00 previously received. The Developer provided necessary documentation as support for the County to pay the Developer. The County departments appear to have performed their required duties promptly.

Our one question pertains to the change orders completed and paid prior to the required amendment to the Agreement. **We recommend** that County management promptly address the issue of the change orders to allow for subsequent reimbursements from the impact fees and ensure compliance with the Agreement. No portion of the impact fee credits related the change orders should be made available to Developer until this matter is resolved.

The Developer is due a total credit from Fire-Rescue Impact Fees of \$388,089.00 as reimbursement for construction costs of the fire station, if the change orders are approved by BCC. In addition, the Developer is due another credit of \$23,545.00 from Fire-Rescue Impact Fees as compensation for the conveyed real property. This credit “may be used by Developer and Developer’s affiliated companies on any project located in Marion County at any time and until the credit is fully utilized” as per section 2 of the Agreement. **We recommend** that County Management determine that the actual impact fee credits are properly calculated and ensure that the appropriate procedures are in place to account for the credits and future payments. We suggest procedures similar to those used for the CR42 road construction project.

The Internal Audit Division intends to exercise the right to audit contained in section 4(d) of the Agreement and shall notify the Developer of this intent. A separate report will be issued upon completion of that audit.

C: Patrick G. Howard, County Administrator  
 John Carter, Management Services Bureau Chief  
 John W. Garri, Finance Director