



Clerk of the Circuit Court
Board of County Commissioners
Marion County



Internal Audit Division

David R. Ellspermann
Clerk of the Circuit Court
Wallace K. Watford
Internal Auditor

Post Office Box 1030, Ocala, Florida 34478-1030
110 NW First Avenue, Ocala, Florida 34475

Telephone: (352) 671-5604
Facsimile: (352) 671-5600

MEMORANDUM

TO: Patrick G. Howard, County Administrator

FROM: David R. Ellspermann, Clerk of the Circuit Court

DATE: December 5, 2007

RE: FIFTH ANNUAL REVIEW AND AUDIT OF COUNTY AGREEMENT WITH THE VILLAGES OF LAKE-SUMTER, INC. FOR TRANSPORTATION IMPACT FEE CREDITS

Marion County and The Villages of Lake-Sumter, Inc. (Developer) entered into an Impact Fee Credit Agreement for Development of County Road 42, dated November 7, 2000. In accordance with the Section B.4 (C) of the Fourth Amendment to the Agreement, "Annual Review and Audit," the Internal Audit Division has performed the fifth annual review. This section states that "the County shall conduct an annual review and audit of performance under this agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this agreement."

This review was conducted by Wallace Watford, Internal Auditor. Internal Audit has performed four previous annual reviews (Audit Reports 2002-02, 2003-07, 2005-02 and 2006-11), as well as additional activities to assist the County to determine the total construction costs of the first two phases (Audit Report No. 2002-04).

Summary of Activities

Mr. John Wise, Vice President of Finance, of the Developer presented an invoice dated November 8, 2006 in the amount of \$4,648,746.79. This represented the eligible portion of the total construction and land costs of the Phase IV (Part A) project identified in the Fourth Amendment to the Agreement dated March 15, 2005. Part A involved improvements to the intersection of County Road 42 and US Highway 301.

We subsequently examined the supporting documentation and performed such tests as we considered necessary. The Fourth Amendment stated a methodology for determining the maximum reimbursable cost of the project. It also identified a procedure for calculating the impact fee and reimbursement for a "stormwater retention facility." The Fourth Amendment required that the County pay the Developer \$3,800,000.00, with the balance available as transportation impact fee credits that may be utilized by the Developer in accordance with the Fourth Amendment.

COUNTY IMPACT FEE CREDIT AGREEMENT WITH THE VILLAGES

The County Engineer and Transportation Department staff performed a separate and concurrent review of the invoiced costs. The County Engineer and Internal Auditor agreed upon an interpretation of the Agreement terms which determined the reimbursable total project construction costs, which was less than that determined by the Developer.

The County Engineer, Chief Assistant County Attorney and Internal Auditor held meetings with representatives of the Developer to discuss the issues. County staff had determined the total due to the Developer was \$4,494,758.24. The Developer's representatives offered their interpretation of the relevant Agreement terms which resulted in total reimbursable costs of \$5,241,746.79, a difference of \$746,988.55. The principal disagreement was whether a 15% increase in the stated estimated construction cost amount would be allowed to the Developer since the project was not competitively bid. The Agreement allowed up to an additional 20% if the project were competitively bid, but it also stated that the County waived the competitive bidding requirement. It was the position of County staff that since there had been no competitive bidding, no additional increase appeared to be due without express approval of the County Commission.

This issue was presented to the Board of County Commissioners at the meeting of September 18, 2007, in which it was decided that the total amount reimbursable to the Developer was \$4,494,758.24.

Agreement/Project Status

The Agreement has a remaining project to be completed, as described in the Fourth Amendment, Section B.1. "Part B of Phase IV of the Project includes, but is not necessarily limited to the preliminary and final design, engineering, and similar preconstruction activities for USH 301 from the Marion/Sumter County line to the existing four (4) lane section in Summerfield, excluding Part A of Phase IV." The Developer shall contribute \$1,884,600.00 to the Florida Department of Transportation towards the design and engineering costs. The Developer will then be entitled to reimbursement from transportation impact fees, subject to the conditions stated in the Fourth Amendment, Section B.3 (B).

Conclusion

Based on the review performed, we have concluded that the Developer has demonstrated good faith compliance with the terms of this Agreement. The total reimbursable cost of Phase IV, Part A is \$4,494,758.24. The Developer was eligible for and has received the required payment in the amount of \$3,800,000.00. The Developer is eligible for future impact fee credits in the amount of \$694,758.24.

c: Larry Thacker, Public Works Bureau Chief
Mounir Bouyounes, County Engineer
Mike May, Growth Management Bureau Chief
Dwight Gano, Planning Director
Thomas MacNamara, Chief Assistant County Attorney
John Garri, Finance Director
John Wise, Vice President Finance, The Villages of Lake-Sumter, Inc.