

**FLAGLER COUNTY
GOVERNMENT CENTER CAPITAL PROJECT
AND
OTHER ADMINISTRATIVE MATTERS**

Operational Audit



**BOARD OF COUNTY COMMISSIONERS, COUNTY ADMINISTRATOR,
AND CLERK OF THE CIRCUIT COURT**

Flagler County Board of County Commissioners, County Administrator, and Clerk of the Circuit Court, who served during the period October 2005 through December 2007, and through the date of this report, are listed below:

<u>Board of County Commissioners</u>	<u>District No.</u>	<u>Board of County Commissioners</u>	<u>District No.</u>
<u>As of November 2008</u>		<u>November 2007 to November 2008</u>	
Milissa Holland, Chair	2	James M. O’Connell, Chair	1
George E. Hanns, Vice Chair	5	George E. Hanns, Vice Chair	5
Alan Peterson	1	Millissa Holland	2
Barbara Revels	3	James A. Darby	3
Robert M. Abbot	4	Robert M. Abbott	4
 <u>November 2006 to November 2007</u>		 <u>October 2005 to November 2006</u>	
James A. Darby, Chair	3	James A. Darby, Chair	3
James M. O’Connell, Vice Chair	1	Herschel C. King, Vice Chair	4
Millissa Holland	2	James M. O’Connell	1
Robert M. Abbott	4	Blair R. Kanbar	2
George E. Hanns	5	George E. Hanns	5

County Administrator

Craig M. Coffey, from 12-4-07
James R. Jarrell, IV, Interim, from 7-23-07 to 12-3-07
Douglas Wright, from 1-17-06 to 9-21-07
James R. Jarrell, IV, Interim, from 12-20-05 to 1-16-06
M. David Haas, to 12-19-05

Clerk of the Circuit Court

Gail Wadsworth

The audit team leader was Nancy Heyman, CPA, and the audit was supervised by Michael J. Gomez, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at marilynrosetti@aud.state.fl.us or by telephone at (850) 487-9031.

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (www.myflorida.com/audgen); by telephone (850) 487-9024; or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

**FLAGLER COUNTY GOVERNMENT CENTER CAPITAL PROJECT
AND OTHER ADMINISTRATIVE MATTERS**

TABLE OF CONTENTS

	PAGE NO.
SUMMARY	1
BACKGROUND	2
FINDINGS AND RECOMMENDATIONS	2
Administration and Control over Major Capital Projects	2
Finding No.1: Use of Restricted Resources.....	6
Budgetary Controls	8
Finding No. 2: Capital Budget Preparation and Adoption.....	8
Finding No. 3: Capital Budget Monitoring.....	10
Procurement of Goods and Services	11
Finding No. 4: Payment Processing.....	11
Contractual Services	13
Finding No. 5: Construction Contract Monitoring and Administration.....	13
Other Administrative Matters	14
Finding No. 6: Written Policies and Procedures.....	14
Finding No. 7: Fraud Policies and Procedures.....	14
Finding No. 8: Reporting of Checks Issued From County Depository.....	15
Finding No. 9: Employment Agreements.....	15
Finding No. 10: Public Records Request.....	16
Finding No. 11: Preparation of Board Meeting Minutes.....	16
OBJECTIVES, SCOPE AND METHODOLOGY	17
AUTHORITY	18
EXHIBIT A - MANAGEMENT RESPONSES - BOARD OF COUNTY COMMISSIONERS	19
EXHIBIT B - MANAGEMENT RESPONSES – CLERK OF THE CIRCUIT COURT	31
EXHIBIT C - ATTACHMENTS TO CLERK OF THE CIRCUIT COURT’S RESPONSE	43

SUMMARY

The Auditor General is authorized by State law to perform independent audits of governmental entities in Florida. Pursuant to Section 11.45(2)(l), Florida Statutes, the Legislative Auditing Committee, at its March 10, 2008, meeting, directed us to conduct an audit of the Flagler County Government Center Capital Project. The summary of our findings for the period October 2005 through December 2007, and selected actions taken prior and subsequent thereto, is as follows:

Finding No. 1: Approximately \$5 million expended on the Judicial Center project was restricted for other uses.

Finding No. 2: The Flagler County Board of County Commissioners (Board) adopted the budget for its major capital projects at the fund level, limiting its control at the project level. Also, budget amendments were adopted at the sub-object code level rather than at the level originally adopted. Additionally, amounts brought forward from prior fiscal years were overstated for the 2005-06 and 2006-07 fiscal years, and capital budget control procedures did not ensure that capital budgets were amended to show the actual fund balances available from prior fiscal years when those amounts were known. Further, the County Administrator could enhance the policies and procedures regarding the capital projects budgetary process.

Finding No. 3: Although we noted no overexpenditures of major capital projects budgetary authority at the fund level, the level at which the Board adopted the budget, we did note overexpenditures at the project level. Also, the Board was not provided periodic financial information, including budget-to-actual expenditure reports at the project level, to monitor the status of capital projects and assist in decision-making.

Finding No. 4: Deficiencies in internal control over payment processing allowed one Flagler County Clerk of the Circuit Court (Clerk) employee to approve invoice payments for the Judicial Center project and also process invoices for payment without Board authorization. Also, some capital expenditures were paid without adequate supporting documentation and appropriate approval.

Finding No. 5: The Board had not required periodic construction progress reports for the Judicial Center project from the construction contractor, although provided for in the construction contract. Also, the Board approved an increase of \$217,500 to a fixed-price contract without a change in project scope.

Finding No. 6: Neither the Board nor the Clerk had developed written policies and procedures relating to capital project administration. Subsequent to our audit fieldwork, in November 2008, the Board adopted policies regarding payment processing.

Finding No. 7: The Board had not established policies and procedures for communicating and reporting known or suspected fraud.

Finding No. 8: Checks issued from the County depository and recorded in the Board meeting minutes did not contain all the information required by law.

Finding No. 9: The Clerk had not documented the public purpose served or the benefit to her office by providing 20-year employment agreements to two Clerk employees.

Finding No. 10: According to the County Administrator, as of January 21, 2009, the Clerk had not responded to his public records requests dated January 31, 2008.

Finding No. 11: The Clerk did not promptly prepare draft minutes of Board meetings for the Board to review, correct as necessary, and approve.

BACKGROUND

The Flagler County Board of County Commissioners (Board) adopted and approved Resolution No. 2008-06 at its meeting on January 22, 2008. The resolution provided that the Board ask the members of the Flagler County Legislative Delegation to request and support an audit by the Auditor General of the expenditures and associated spending authority relative to the public buildings constructed in the Flagler County Government Center. The resolution further provided that while the facilities in the government center have been constructed and are in use, issues and questions have arisen concerning public accountability of, and the exercise of proper authority in, the spending of public money. Also, the resolution included the following references:

- Flagler County Capital Improvement Revenue Bonds, Series 2005, in the amount of \$34,105,000, issued to finance the costs of acquisition and construction of various government facilities in Bunnell, Florida.
- Flagler County General Obligation Bonds, Series 2005, in the amount of \$32,990,000, issued to finance the costs of the acquisition and construction of a new judicial center at the government center in Bunnell, Florida.

The Legislative Auditing Committee, at its meeting on March 10, 2008, directed the Auditor General to conduct an audit of the expenditures made under bonds issued for construction of buildings within the Flagler County Government Center.

FINDINGS AND RECOMMENDATIONS

Administration and Control over Major Capital Projects

The Board is entrusted by the public with the proper and efficient administration over public funds. In 2004 and 2005, the Board authorized various major capital projects costing over \$70 million. The Flagler County Clerk of the Circuit Court (Clerk), as ex officio clerk of the Board, auditor, recorder, and custodian of all County funds, is responsible for the pre-audit of expenditures to determine if the expenditures are lawful prior to issuing warrants for payment. Additionally, pursuant to Section 125.17, Florida Statutes, the Clerk is required to keep the Board’s minutes and accounts, and perform such other duties as their clerk as the Board may direct.

On June 21, 2004, the Board adopted Resolution No. 2004-85 regarding the reimbursement, from the issuance of bonds, of costs and expenditures relating to the acquisition, construction, and equipping of certain capital improvements. The projects and estimated costs to be financed with bond proceeds, which were included in Resolution No. 2004-85 as exhibit A, as revised on August 15, 2005, are shown in Table 1.

Table 1	
Estimated Use of Bond Proceeds	
Courthouse	\$ 33,000,000
Government Services Building	14,527,283
Emergency Operations Center	7,642,436
Public Works	2,933,265
Public Works Security	178,705
Courthouse Site	3,718,311
Covered Arena	2,000,000
Youth Center	1,000,000
	65,000,000
Bond Issuance Costs	1,000,000
Bond Reserve	3,000,000
	\$ 69,000,000
Additional Funding Needed:	
Courthouse Site Work	\$ 3,647,352
Less:	
Anticipated Investment Earnings	(2,925,000)
Items Under Negotiation	(1,000,000)
Unspent Moneys	\$ (277,648)

On August 16, 2004, the Board adopted Resolution No. 2004-118 and, on November 2, 2004, the voters approved a referendum for the issuance of general obligation bonds not to exceed \$33 million for the construction of a new judicial center (courthouse). General obligation bonds totaling \$32,990,000, including a bond premium of \$7,085, were issued on September 1, 2005.

On August 15, 2005, the Board adopted Resolution No. 2005-99, authorizing the issuance of capital improvement revenue bonds not to exceed \$36 million for an “initial project” defined as the acquisition and construction of the County’s portion of an administration building to be jointly owned with the Flagler County District School Board, a multi-purpose facility, and a youth center “with such changes, deletions, additions or modifications to the enumerated improvements, equipment and facilities, or such other improvements, as approved by the Commission.” Capital improvement revenue bonds totaling \$34,105,000, including a bond premium of \$996,710, were issued on September 28, 2005.

On October 3, 2005, the Board adopted Resolution No. 2005-120 restating the definition of the “initial project” for the capital improvement revenue bond issue as the acquisition and construction of (1) an emergency operations center, (2) a road and bridge facility, (3) a security facility, (4) additional site improvements for the new judicial facility, (5) the County’s portion of the administration building, (6) a multi-purpose facility, and (7) a youth center, “with such changes, deletions, additions or modifications to the enumerated improvements, equipment and facilities, or such other improvements, as approved by the Commission.” According to Board staff, the Board made no subsequent revisions to the approved uses of this bond issue. Also, according to Board staff, some of the projects included in Resolution No. 2005-120 were referred to by other titles as described in Table 2.

Table 2		
Project Titles per Resolution No. 2004-85	Project Titles per Resolution No. 2005-120	Project Titles per Budget and Accounting Records
Courthouse		Judicial Center
Emergency Operations Center	Emergency Operations Center	Emergency Operations Center Emergency Operations Vehicle Storage
Public Works	Road and Bridge Facility	Public Works Complex Public Works Maintenance Shop Fuel Farm
Public Works Security	Security Facility	Public Works Security Facility
Courthouse Site	Site Improvement for Judicial Facility	Site Development
Government Services Building	Administration Building	Government Services Building
Covered Arena	Multi-purpose Facility	Covered Arena
Youth Center	Youth Center	Youth Center

The sources and uses of the moneys used to acquire and construct the various projects were primarily accounted for in a capital projects fund titled Fund 309. Bond proceeds totaling approximately \$33 million and \$35 million from the general obligation bonds and capital improvement revenue bonds, respectively, were deposited in Fund 309. In addition to the bond proceeds, local government infrastructure sales surtax revenues and other miscellaneous revenues were also deposited in Fund 309 during the 2002-03 to 2007-08 fiscal years, as well as investment earnings on these moneys. Also, approximately \$3.1 million from other County funds were used on the various projects during this period of time.

The overall sources and uses of funds in Fund 309 for the period October 1, 2002, through September 30, 2008 are shown in Table 3.

Table 3	
Fund 309	
Sources and Uses of Funds	
For the Period 10/1/02 through 9/30/08	
Sources:	
Capital Improvement Revenue Bond Proceeds	\$ 35,101,710
General Obligation Bond Proceeds	32,997,085
Local Government Infrastructure Surtax	4,249,849
Investment Earnings	3,059,462
Other Miscellaneous	31,189
Total Sources	\$ 75,439,295
Uses - Projects:	
Courthouse (Judicial Center)	\$ (39,659,276)
Government Services Building	(14,761,435)
Emergency Operations Center	(7,151,477)
Public Works	(2,417,037)
Public Works Security	(192,094)
Courthouse Site	(2,439,366)
Covered Arena	(2,624,519)
Youth Center	(1,017,706)
Total Uses - Projects	\$ (70,262,910)
Balance	\$ 5,176,385
Uses - Other:	
Transfers to Reserve Fund or Debt Service Fund	\$ (4,766,446)
Project Not Specified in either Bond Issue	(67,166)
Other Expenses	(65,597)
Balance at September 30, 2008	\$ 277,176

As discussed in finding Nos. 1 through 5, in certain instances, the Board or Board staff did not exercise sufficient control over aspects of its major capital projects, and the Clerk or Clerk staff did not act in a proper custodial capacity over County funds and as the clerk of the Board’s accounts. In addition to these project-specific issues, our review disclosed certain administrative issues, discussed in findings Nos. 6 through 11, which should be addressed by the Board and Clerk. In addressing the findings and recommendations included in this report, enhanced communication and cooperation between the Board/Board staff and Clerk/Clerk staff would help maximize the effectiveness and efficiency in administering their respective assigned duties.

In her response, the Clerk indicated that Table 1 in the report “does not fully depict all that was represented to the Board” and stated that the revised Exhibit A “clearly indicates the intent to spend additional funds beyond site work on the Justice Center project” and referred to a line in the revised Exhibit A that indicates “Courthouse Site and Other” totaling \$7,365,663. It is clear from the revised Exhibit A (and Table 1) that approximately \$3.6 million of those costs were intended to be funded by sources other than bond proceeds, which were generally the only funds deposited in Fund 309 for funding of non-site costs of the Judicial Center project (see additional discussion in finding No. 1). Table 1 shows that \$3,718,311 of the site work was intended to be funded by bond proceeds, whereas the remaining \$3,647,352, to equal the amount referenced by the Clerk, was placed under the category of “Additional Funding Needed,” indicating that moneys other than bond proceeds would be used. We, therefore, believe that Table 1 depicts the anticipated Courthouse site costs totaling \$7,365,663.

In her response, the Clerk also questioned the applicability of some of our findings to an audit of the government services complex projects. In directing us to perform this audit, the Legislative Auditing Committee authorized us to determine the scope and timing of the audit. In doing so, we considered several administrative matters that came to our attention during the course of our audit.

Finding No. 1: Use of Restricted Resources

On November 18, 2002, the Board approved an interlocal agreement between Flagler County and the municipalities within Flagler County relating to the distribution of local government infrastructure sales surtax revenues (surtax revenues). Similar to the subsequently issued capital improvement revenue bond proceeds described above, the surtax revenues were restricted for use on the government services (administration) building, the covered arena (multi-purpose facility), and the youth center projects. The total amount expended in Fund 309 for each project, as provided for in the enabling resolution for the capital improvement bonds and the interlocal agreement for the surtax revenues, are shown in Table 4.

Table 4	
Fund 309 - Sources and Uses of Capital Improvement Revenue Bond Proceeds and Local Government Infrastructure Sales Surtax Revenues For the Period 10/1/02 Through 9/30/08	
Sources:	
Capital Improvement Revenue Bonds	\$ 35,101,710
Local Government Infrastructure Sales Surtax	4,249,849
Investment Earnings - Bond Proceeds and Other	1,476,520
Total Sources	\$ 40,828,079
Uses - Projects:	
Emergency Operations Center	\$ (7,151,477)
Public Works	(2,417,037)
Public Works Security	(192,094)
Courthouse Site	(2,439,366)
Government Services Building	(14,761,435)
Covered Arena	(2,624,519)
Youth Center	(1,017,706)
Total Uses - Projects	\$ (30,603,634)
Uses - Other:	
Transfers to Reserve Fund	\$ (2,511,672)
Transfers to Debt Service Fund	(2,254,774)
Total Uses - Other	\$ (4,766,446)
Net Proceeds That Should Have Been Available as of September 30, 2008	\$ <u>5,457,999</u>

Shown in Table 3, but not included in Table 4, are the general obligation bond proceeds, including any investment earnings thereon, which were authorized for the acquisition and construction of the Judicial Center project. Moneys expended from Fund 309 for the Judicial Center project, excluding site improvements, as of September 30, 2008, totaled \$39,659,276, or \$5,079,249 more than the general obligation bond proceeds and applicable investment earnings

thereon. Considering the net proceeds of approximately \$5.5 million of the capital improvement revenue bonds and the surtax revenues that should have remained for projects authorized by Resolution No. 2005-120 and the interlocal agreement, or placed in reserve, and the approximately \$277,000 actual balance in Fund 309 at September 30, 2008, it is apparent that some of the capital improvement revenue bond proceeds and surtax revenues were spent on the Judicial Center project.

Capital improvement revenue bond proceeds could have been authorized for use on the Judicial Center project with specific Board approval through adoption of a resolution redefining the projects authorized or, the Board could have authorized the use of other moneys to fund those Judicial Center expenditures that exceeded the general obligation bond proceeds and applicable investment earnings. However, no such approval or authorization was granted by the Board.

Our review disclosed that both Board/Board staff and Clerk/Clerk staff were aware, or should have been aware, that capital improvement revenue bond proceeds and surtax revenues were being expended for project purposes which were not specifically authorized, as described below:

- By January 2006, the Board had authorized contracts for the design and construction of the Judicial Center project to be spent from Fund 309 that exceeded the net proceeds of the general obligation bonds and investment earnings thereon, thus utilizing the capital improvement revenue bond proceeds and surtax revenues remaining in the Fund. One contract alone approved by the Board on January 17, 2006, comprised 95 percent of the general obligation bond proceeds and applicable investment earnings. Additional purchase orders and contracts were authorized by the Board for the Judicial Center project subsequent to January 2006, continuing into the 2007-08 fiscal year. As a result, the Board or Board staff should have been aware that the resources dedicated to the Judicial Center project were completely committed by January 2006 and Board action was necessary to fund the remaining expenditures of that project.
- The Clerk, as ex officio clerk of the Board, auditor, recorder, and custodian of all County funds, who is responsible for the pre-audit of expenditures to determine if the expenditure is lawful prior to issuing a warrant for payment, had not established controls to prevent Judicial Center project expenditures from being paid from the capital improvement revenue bond proceeds, the surtax revenues, or the investment earnings thereon. Records provided for our review indicated that in June 2007, Clerk staff returned to Board staff several Board-approved invoices for authorized projects submitted for payment, inappropriately citing insufficient bond proceeds to pay for the requested items while capital improvement revenue bond proceeds totaling approximately \$7.4 million were set aside by Clerk staff to pay for non-site Judicial Center project expenditures, though the returned invoices were eventually paid from Fund 309 or other funds. June 2007 correspondence between Clerk and Board personnel indicated that Clerk staff was advised by Board staff that non-site Judicial Center project expenditures were not authorized uses of capital improvement revenue bond proceeds. Despite this communication, these moneys were used without Board authorization for Judicial Center project expenditures.

Recommendation: For future major capital projects, the Board should consider establishing separate accountability when there are multiple funding sources with dissimilar restrictions placed on the respective resources funding the projects. The Board should also establish procedures to monitor the availability of funding for specified projects to ensure that adequate funds are available prior to entering into contracts or issuing purchase orders. The Clerk and the Board should coordinate the establishment of appropriate procedures to ensure that restricted resources are used only as approved by the Board. Also, the Board should either replenish Fund 309 in the amount of \$5,079,249 using unrestricted resources and ensure, along with the Clerk, that the uses of these moneys are in accordance with the enabling bond resolution and interlocal agreement, or take action to revise the definition of initial project to include the Judicial Center project.

In her response, the Clerk indicated that she would not have established controls to prevent Judicial Center project expenditures from being paid from capital improvement revenue bond proceeds “because the Clerk believed that the intent of the Board was to expend capital improvement revenue bond proceeds, as evidenced by the actions of the Board/Board staff and as depicted in the documents approved by the Board.” She also indicated that “the Clerk/Clerk staff and the Board/Board staff to include legal staff did not make the realization that the language contained in Resolution 2005-120 was not accurately written to reflect the action taken in approving Resolution 2004-85 containing Exhibit A.” She further indicated that \$7.4 million dollars (of capital improvement revenue bond proceeds) was authorized to be set aside by the County Administrator. Although it is not apparent why the Clerk believes that language contained in Resolution 2005-120 was inaccurate, the point of our finding is that the Clerk, who is responsible for ensuring the legality of expenditures, should have controls in place to prevent the expenditure of restricted resources for purposes that were not authorized by the Board. As the use of the capital improvement revenue bond proceeds was authorized by Board resolution, the Clerk should have been aware that the County Administrator could not, on his own, amend the authorized uses. We continue to recommend that the Clerk establish controls to ensure the proper expenditure of restricted resources.

Budgetary Controls

The Government Finance Officers Association (GFOA) has issued several recommended practices regarding multi-year capital planning and preparation, adoption, and presentation of capital budgets. Since capital projects differ from programs adopted in the operating budget in that they may extend past one fiscal year, it is important that they be properly planned, budgeted, and tracked. Because of the unique nature of capital projects, the processes for preparing, prioritizing, and presenting them to the governing body may be different from the operating budget. GFOA recommends that capital budgets include, among others, the following information: definition of capital expenditure, summary information of capital projects by fund, category, etc.; descriptions of the general scope of each project; estimated costs of each project based on recent and accurate sources of information; identified funding sources for all aspects of each project; and funding authority based on estimated project costs for the upcoming fiscal year and the carry-forward funding for projects previously authorized. Periodic reports should be issued routinely on all ongoing capital projects. The reports should compare actual expenditures to the original budget, identify level of completion for each project, enumerate any changes in the scope of projects, and alert management to any concerns with the completion of the project on time.

Finding No. 2: Capital Budget Preparation and Adoption

As noted previously, the County accounted for the financial resources used for the construction of its various capital projects, including the projects enumerated in the two bond issues, in Fund 309. The financial resources in Fund 309 consisted primarily of bond proceeds from the Flagler County Capital Improvement Revenue Bonds, Series 2005, and the Flagler County General Obligation Bonds, Series 2005, and local government infrastructure surtax revenues. Since most of the transactions for the two bond issues were budgeted and expended during the 2005-06 and 2006-07 fiscal years, our audit focused primarily on the capital budgets for these two fiscal years.

Section 125.74(1)(d), Florida Statutes, requires the County Administrator to prepare and submit to the Board for its consideration and adoption an annual operating budget, a capital budget, and a capital program. Our review disclosed:

- Although the County Administrator prepared and submitted to the Board for its review and approval an annual operating budget, a capital budget, and capital program, they were not separately and specifically adopted by the Board.
- Notwithstanding the separate bond resolutions authorizing bond proceeds to be spent on specified projects, no formal Board action was taken to establish project-level budgets, except for the exhibit A attached to Resolution 2004-85, as revised and approved by the Board on August 15, 2005 (see Table 1). However, the intended use of exhibit A appeared to be a listing of projects to be acquired or constructed using the bond proceeds, and justification for the amounts for which bonds were issued, rather than establishment of project-level budgets. The annual budgets submitted to the Board by the County Administrator included budgetary detail at the project and sub-object code (not detailed by project) levels; however, the Board adopted the budgets at the fund level. In providing the detailed budgetary information to the Board, only the projected expenditures for the given fiscal year were presented, with no information provided to indicate actual project-to-date expenditures. Since the County's major capital projects were accounted for in Fund 309, by adopting the budget at the fund level, there was an inherent lack of Board control over expenditures at the project level. When the legal level of budgetary control is not established at a sufficiently detailed level (i.e. project), the effectiveness of the budget as a means of controlling expenditures within available resources is limited.
- Although the Board adopted the Fund 309 budget at the fund level, budget amendments were adopted by the Board at the sub-object code level. Budget amendments should be adopted at the same level as the original budget. Amendments among sub-object codes have no effect on the original budget adopted unless the total appropriation for the fund is changed. As mentioned above, establishing budgetary control at a sufficiently detailed level (i.e., project) is necessary for effectively controlling expenditures.
- Section 129.03, Florida Statutes, provides that County budgets consider amounts brought forward from the prior fiscal year. Amounts reported in the Fund 309 budget as available from the prior fiscal year were \$62,269,191 and \$27,771,654 for the 2005-06 and 2006-07 fiscal years, respectively. However, the County's audited financial statements reported total beginning fund balances for Fund 309 as \$60,488,345 and \$26,202,534 for the 2005-06 and 2006-07 fiscal years, respectively. The differences in amounts were the result of the County using estimated beginning fund balances in developing the budgets since the fiscal year had not ended when the initial budgets for the following year were prepared. Section 129.06(2), Florida Statutes, provides that the Board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for a prior fiscal year; however, the County did not subsequently amend the budget to reflect actual amounts brought forward once those amounts were known. As a result, budgeted amounts available from the prior fiscal years were overstated by \$1,780,846 and \$1,569,120 for the 2005-06 and 2006-07 fiscal years, respectively. When beginning balances brought forward are overestimated, the available financial resources contemplated in the budget may be unrealistic to carry out planned expenditures and reserves.
- Within the final detailed budgets for Fund 309 for the 2005-06 and 2006-07 fiscal years, there were "undesignated" line items totaling \$29,058,704 and \$8,488,768, respectively. Since these undesignated items were, in effect, items not budgeted for a particular purpose, it appears that the associated amounts should have been budgeted as reserves for future construction rather than expenditures. Amounts budgeted as reserves do not contain expenditure authority. Had these amounts been budgeted as reserves rather than expenditures, the

overexpenditure in the 2006-07 fiscal year for the Judicial Center project may have been detected in a more timely manner (see additional discussion in finding No. 3) as the Clerk would not have had the budgetary authority to issue warrants once Fund 309 had been fully expended without the Board adopting a budget amendment.

- Section 125.74(1)(e), Florida Statutes, provides that the County Administrator shall establish the schedules and procedures to be followed by all County departments, offices, and agencies in connection with the budget, and supervise and administer all phases of the budgetary process. Although the County Administrator established written policies and procedures regarding the capital projects budgetary process, the policies and procedures could be enhanced to include funding authority based on estimated project costs for the upcoming fiscal year and the carry-forward funding for projects previously authorized (see additional discussion in finding No. 6).

The Board should separately adopt annual operating budgets, capital budgets, and capital programs. In doing so, the Board should consider adopting project-level budgets for major capital projects. The Board should also ensure that budget amendments are adopted at the same level as the original budget. Finally, the Board should ensure that “undesignated” amounts are budgeted as reserves for future construction rather than as expenditures. In addition, the County Administrator should consider incorporating GFOA recommended budgetary practices, institute a procedure that ensures amendment of the budget when final amounts from the prior fiscal year differ from the estimates used in preparing the initial budget, and provide the Board with project-to-date expenditure data for multi-year projects.

In his response, the County Administrator indicated, regarding the “undesignated” appropriations, that since the budget is controlled both at the line item and project levels, it should make no difference whether or not the funds are transferred from project specific items to non-project items. The point of our finding is that the Board would have greater control if it budgeted at the project level and budgeted amounts for future construction as reserves rather than expenditures.

Finding No. 3: Capital Budget Monitoring

Section 129.07, Florida Statutes, provides that it is unlawful for the Board to expend or contract for the expenditure in any fiscal year more than the amounts budgeted. The Clerk, as ex officio clerk of the Board, auditor, recorder, and custodian of all County funds, is responsible for the pre-audit of expenditures to determine if the expenditure is lawful prior to issuing a warrant for payment. Additionally, pursuant to Section 125.17, Florida Statutes, the Clerk is required to keep the Board’s minutes and accounts, and perform such other duties as their clerk as the Board may direct.

As discussed in finding No. 2, although the County Administrator submitted budgetary information for Fund 309 to the Board at the project and sub-object code levels, the Board adopted its annual budgets at the fund level. The accounting records, including budgetary and actual expenditures for Fund 309, were maintained at the sub-object code level, with the capability to generate reports at the project level. A comparison of budget to actual expenditures in Fund 309 for the 2005-06 and 2006-07 fiscal years disclosed that, even though actual expenditures did not exceed budgeted expenditures at the fund level, as shown in Table 5, actual expenditures exceeded the budget amount for several capital projects, particularly the Judicial Center project by \$532,228 and \$5,466,847, respectively.

Table 5						
Capital Projects - Fund 309						
Comparison of Budget to Actual Expenditures						
Capital Projects (1)	2005-06			2006-07		
	Budget	Actual Expenditures	(Over) Under	Budget	Actual Expenditures	(Over) Under
Judicial Center	\$ 16,962,652	\$ 17,494,880	\$ (532,228)	\$ 15,361,011	\$ 20,827,858	\$ (5,466,847)
Government Services Building	15,766,157	8,734,879	7,031,278	3,397,702	2,063,695	1,334,007
Emergency Operations Center	5,050,730	5,123,720	(72,990)	59,583	59,583	0
Site Development	2,964,503	2,458,281	506,222	1,253,990	1,050,447	203,543
Public Works Complex	865,847	876,719	(10,872)	311,316	310,696	620
Fuel Farm	296,694	297,018	(324)	8,658	8,658	0
Public Works Maintenance Shop	152,785	152,800	(15)	1,086	1,180	(94)
Public Works Security Facility	131,482	131,482	0	582	582	0
Emergency Operations Vehicle						
Storage	105,282	105,282	0	497	497	0
Covered Arena	103,141	96,161	6,980	145,178	145,237	(59)
Courthouse Renovation		19,675	(19,675)			0
Undesignated	29,058,704		29,058,704	8,488,768		8,488,768
Total	\$ 71,457,977	\$ 35,490,897	\$ 35,967,080	\$ 29,028,371	\$ 24,468,433	\$ 4,559,938

Note (1) - Capital projects titles are those used in the County's budget documents and accounting records

While both Board and Clerk staff had access to budgetary and expenditure information during the fiscal year at the project level, our review of the financial information provided to the Board regarding budgets as they relate to these capital projects disclosed that budget-to-actual expenditure comparisons by project were not periodically presented to the Board either on a fiscal year basis or on a project-to-date basis. Without periodic financial information, including budget-to-actual expenditure comparisons that clearly present the financial status of each capital project, the Board may have a limited understanding of each of the capital project's financial status, which could lead to instances of financial mismanagement, including denying expenditures when resources are available, authorizing purchases when resources are not available, and not identifying or remedying critical budget shortfalls in a timely manner.

Recommendation: The Board should determine the nature and timing of financial information, including budget-to-actual expenditure comparisons, needed to establish proper accountability, assist in decision-making, and demonstrate good stewardship of public funds used for capital projects and direct Board staff or the Clerk accordingly in providing such information.

Procurement of Goods and Services

Finding No. 4: Payment Processing

The Board is responsible for establishing management controls to ensure that the process of acquiring goods and services is authorized and effectively and consistently administered. The Clerk, as accountant for the Board, is responsible for the pre-audit function to ensure that expenditures serve an authorized public purpose and are in compliance with applicable laws, ordinances, and other guidelines, and in accordance with the Board's authorization. Although there were no written policies and procedures governing the payment process (as discussed in finding No. 6),

Clerk personnel stated that payments were generally documented by contracts, contract change orders, completed purchase requisitions, purchase orders, vendor invoices and, in some instances, a shipping receipt. These documents, along with the appropriate authorized approval, were submitted to the Clerk from the various County departments for payment and, together with a duplicate copy of the check, comprised the voucher package maintained by the Clerk.

Our review of 70 expenditures, totaling \$13,265,474, for the various projects disclosed:

- Four invoices for the Judicial Center project, totaling \$107,352, were paid by the Clerk without a Board-approved purchase requisition, purchase order, or other documentation supporting preapproval. Although three of the invoices, totaling \$79,604, were supported by a Clerk's purchase order, the Clerk's purchase orders did not contain the Board's authorization to incur such expenses. Additionally, we noted that the Clerk's former Director of Finance prepared the three purchase orders and also approved payment of the invoices, resulting in incompatible duties.
- Eighteen invoices for the Judicial Center project, totaling \$1,213,047, were paid by the Clerk without authorized Board approval documented on the invoice. The Clerk's former Director of Finance reviewed and approved the invoices for payment as both a representative of the Judicial Center user group and payment processor in the Finance Department. However, although requested, we were not provided with the Board's delegation of authority to the former Director of Finance to act in this capacity. When the same individual is allowed to authorize invoices for payment and process payment, internal controls are compromised.
- One internal billing, dated April 19, 2007, totaling \$259,905, reimbursed the Clerk's accounts without Board approval for the salary expenses of two Clerk employees who worked on the Judicial Center project. The internal billing allocated 50 percent of two employees' salaries for the 2004-05, 2005-06, and 2006-07 fiscal years. Additionally, the 2006-07 fiscal year salary allocation included five months of future salary expense (\$94,393) that had not yet occurred at the time the billing was processed. The billing was solely approved by the Clerk's former Director of Finance, who was one of the two Clerk employees whose salaries were reimbursed on the internal billing. Furthermore, our review disclosed that the internal billing did not include adequate supporting documentation in the Clerk's records to support or explain the basis for the 50 percent allocation, the reason for three years of salary expense to be allocated in total in one fiscal year, the reason a portion of the salary allocation was for a future time period, and the public purpose served. Although requested from the Clerk, we were not provided the budget authority or Board authorization for the reimbursement of the Clerk's salary expenses for the Judicial Center project.

Additionally, we noted that the \$756,486 final change order on the construction contract with the primary contractor on the Judicial Center project was not approved by the Board or Board personnel. The documentation for the change order, which although requested was not provided to us, was the basis for the final \$300,000 payment on the construction contract. Also, our review of the invoice for this payment, as well as the invoices on several other payments to the primary contractor, disclosed that the invoices were not always reviewed by the County's engineer, who was the engineer of record on the contract. Without qualified staff reviewing and approving construction invoices, there is an increased risk that the work may not have been authorized or performed satisfactorily by the contractor.

Contracts, contract change orders, purchase requisitions, purchase orders, and authorized signatures serve to document management's authorization to acquire goods and/or services; to provide a basis for controlling the use of appropriated resources through encumbrances; to authorize vendors to provide goods and services; and to provide approval to process invoices for payment. The absence of adequate supporting documentation for capital expenditures, including

approved purchase requisitions, purchase orders, and authorized signatures, increases the County’s risk of making unsubstantiated or improper payments.

Recommendation: To strengthen internal control over payment processing, the Clerk should ensure that no one individual is in a position to approve an invoice and also process payment. Also, the Clerk should ensure that Board expenditures include adequate supporting documentation to support the Board’s authorization of purchases, including contracts and contract change orders, prior to making payment, and that expenditures are appropriately approved.

In her response, the Clerk indicated that, based on the language of Resolution 2002-42, Board approval was not required for the invoices discussed in this finding as the Board had approved contracts or purchase orders relating to those expenditures. She also indicated that “all construction invoices were signed by the project manager” and that the County Engineer was the project manager from January 2006 until March 1, 2007, when the County Administrator changed the project management to another individual in the engineering department. Correspondence provided for our review indicates that the County Administrator assigned the other individual, upon transfer to the general services department, to assist the Clerk’s office to “ensure the project proceeds timely and efficiently;” however, we were provided no evidence to support the assignment of this individual as project manager, replacing the County Engineer.

The Clerk also indicated that \$27,423 of the invoices were paid from a fund other than Fund 309 and, therefore, should not have been included in our analysis. Because the majority of the expenditures for these projects were paid from Fund 309, most of our audit work involved Fund 309; however, we also reviewed a sample of project expenditures paid from other funds.

Finally, while the Clerk indicates that we found “no inappropriate expenditures,” we did find that the internal billing from her office for \$259,905 was unsupported.

Contractual Services

Finding No. 5: Construction Contract Monitoring and Administration

Monitoring of construction contracts may be accomplished through periodic construction progress reports prepared by the construction manager and reviewed by the project manager and the Board. These reports would allow the Board to verify the progress of the capital project, the budgetary impact, actual completion as compared to estimated completion of the project, project budget and actual expenditures, and other pertinent construction data. Periodic construction progress reports may include information, such as, construction progress schedules, critical construction issues, change orders, projected tax savings, architect field reports, and owner direct purchase reports.

Our review of the construction contracts and construction progress reports for the Government Services Building and the Judicial Center projects disclosed:

- Although required by the terms of the Judicial Center contract, periodic construction progress reports were not provided to the Board from the construction contractor. Our review disclosed that capital improvements meeting minutes of October 12, 2006, included a statement that the Clerk’s former Director of Finance did not want any progress reports on the project. However, it was not evident as to why Board personnel agreed with the decision and did not insist on receiving the progress reports, similar to the Government Services Building project, to appropriately monitor the project.
- On May 23, 2005, the Board entered into a fixed-price contract with an architectural/engineering firm in the amount of \$1,653,750, plus \$30,000 for estimated reimbursable expenses and \$122,500 for furniture and furnishing design. On March 6, 2006, the Board approved a contract amendment totaling \$217,500, for increased design costs, which was subsequently paid to the firm. However, under a fixed-price contract, no

additional moneys are due to the consultant unless there is a change in scope of the services to be performed. Board records did not evidence a change in the scope of the project; therefore, it was not evident why the Board approved and paid the increase to the contract. Furthermore, although requested, we were not provided additional information to demonstrate how the increased amount was determined.

Recommendation: The Board should ensure that all construction progress reports are prepared and presented to the Board on a periodic basis to enhance its monitoring of construction projects and ensure compliance with terms of the contract. Furthermore, the Board should ensure that fixed-price contracts are only amended in accordance with the terms of the contract.

Other Administrative Matters

Finding No. 6: Written Policies and Procedures

Written policies and procedures, which clearly define the responsibilities of employees, are essential to provide both management and employees with guidelines regarding the efficient and consistent conduct of County business and the effective safeguarding of County assets. In addition, written policies and procedures, if properly designed, communicated to employees, and effectively placed into operation, provide management additional assurance that County activities are conducted in accordance with applicable laws, ordinances, and other guidelines; and that County financial records provide reliable information necessary for management oversight. Written policies and procedures also assist in the training of new employees.

Our review of the operations of the Board and the Clerk, in her capacity as ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds, disclosed that neither the Board nor the Clerk, as appropriate, had written policies and procedures regarding the level at which capital project budget information should be prepared and the reporting of related expenditures; procurement, administration, and monitoring of capital projects; owner direct purchasing of construction-related materials; debt issuance; and payment processing. A comprehensive operating policies and procedures manual would provide additional controls to clearly define responsibilities of each department and would help to identify and resolve any overlapping functions or inconsistencies between departments. To be useful, these policies and procedures need to be available to all staff and be periodically updated. Subsequent to our audit fieldwork, in November 2008, the Board adopted policies regarding payment processing.

The instances of noncompliance with applicable laws, ordinances, and other guidelines, or inadequate management controls discussed in this report may have resulted, at least in part, from a lack of adequate written policies and procedures.

Recommendation: The Board and Clerk, as appropriate, should establish comprehensive written policies and procedures relating to the administration of capital projects that are consistent with applicable laws, ordinances, and other guidelines. In doing so, the Board and the Clerk should ensure that the written policies and procedures address the instances of noncompliance and control deficiencies discussed in this report, as applicable.

Finding No. 7: Fraud Policies and Procedures

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. Fraud policies should clearly identify actions constituting fraud, incident reporting procedures, responsibility for fraud investigation, and consequences for fraudulent behavior. 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 damaging the 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 authority.

Our review disclosed that, although the Board had adopted a policy regarding a code of ethics, the Board had not developed policies and procedures specific to fraud. Our review also disclosed that, subsequent to our inquiry, the Clerk instituted a formal written fraud policy effective July 1, 2008.

Recommendation: To aid in the prevention, detection, and reporting of fraud, the Board should develop fraud policies and procedures.

Finding No. 8: Reporting of Checks Issued From County Depository

For the 2006-07 fiscal year, the County issued 9,546 checks totaling approximately \$328 million. Section 136.06, Florida Statutes, provides, in part, that “All money drawn from any county depository shall be upon a check or warrant issued by the board or officer drawing the same, said check or warrant, both as to number and amount, person to whom drawn and purpose for which drawn shall be recorded in the minutes of the board having ordered the same drawn . . .”

Our review of the County’s procedures for presenting the required check information to the Board for approval disclosed that, according to Clerk personnel, certain reports were available at the regularly scheduled meetings of the Board for its review. However, according to Board personnel, the Board was unaware that supporting documentation for the checks was on-hand at the Board meetings.

Notwithstanding the availability of the supporting documentation for the checks, our review of reports provided to us by Clerk staff contained an expenditure approval list, including the check date, vendor name, general ledger account code, description, and check amount. Also, the reports included a weekly summary of total bills paid by fund, which included, effective June 2008, the ranges of check numbers issued. However, the individual check numbers were not correlated with the applicable payees in the various reports. Consequently, the required information was not completely recorded as specified in law.

Recommendation: For all checks issued from the County depository, the Clerk should timely provide the Board with the necessary reports to ensure that the specified check information is presented to the Board for approval and included in the Board minutes in accordance with law.

Finding No. 9: Employment Agreements

In February 2007 and November 2007, the Board entered into employment agreements with the newly hired County Attorney and the County Administrator, respectively. Both agreements were for a term of three years, with an automatic renewal for an additional three years if the County does not notify the employee of its plan not to renew the agreement. Both agreements contained severance provisions granting the employees, if terminated before expiration of the term of employment, a lump sum severance payment equal to six months of gross annual salary plus pension benefits and any accumulated, unpaid leave time. The Board also agreed to increase the severance pay by three months on the anniversary date of the first and second years of the agreement. The annual salaries for the County Attorney and the County Administrator at the execution of the employment agreements were \$135,000 and \$140,000, respectively. Although the employment agreements for the County Administrator and County Attorney provide for severance pay, the County would not owe severance pay to these employees if the Board chose not to renew the agreements at the end of each three-year term.

By comparison, in July 2007, the Clerk executed agreements with two existing members of her management staff, the Chief Deputy Clerk-Administrative Services, who is now deceased, and the Director of Finance. Both agreements were for a term of 20 years and contained severance provisions granting the employee, if terminated by the Clerk during the term of the agreement, a lump sum equal to the employee's annual base salary. The annual base salary for each employee at the execution of the employment agreements was \$95,077.

Upon inquiry, the Clerk stated that she instituted these employment agreements to give a comfort level to her key people. However, Florida Law is clear that a public officer without home rule powers may not enter into a contract for a governmental purpose that extends beyond the term of office of that officer, and that such contracts must be for a reasonable length of time. We are aware of nothing that authorizes a Clerk to enter into 20-year employment agreements.

In addition, it is a basic tenet of law that an expenditure of public funds must primarily or substantially serve a public purpose, and may only incidentally benefit private individuals. Since termination of the Director of Finance's employment agreement during the 20-year term of the agreement would entitle the Director of Finance to a severance payment of her annual base salary, it is not apparent that this employment agreement is primarily for a public purpose. While severance pay provisions in employment agreements may sometimes serve a public purpose, such as attracting particularly qualified employees, the Clerk provided no documentation demonstrating the public benefits derived by entering into these particular agreements. Documentation of the public purpose associated with the granting of extensive severance pay provisions in an employment agreement to an existing employee is particularly important in view of the significant financial burden that such agreements may place upon newly elected Clerks.

Recommendation: The Clerk should not enter into employment agreements for terms in excess of that authorized by Florida law, and should consult with legal counsel to determine what steps can be taken to bring the Director of Finance's employment agreement into compliance with Florida law.

Finding No. 10: Public Records Request

Section 119.07, Florida Statutes, provides that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Our review disclosed that the County Administrator made certain public records requests to the Clerk, as clerk for the Board, through memoranda dated January 31, 2008, and February 20, 2008. The public records requests consisted of electronic correspondence of Clerk employees and other documentation associated with the Government Services Complex projects. However, as of January 21, 2009, the County Administrator stated that responses to these requests had not been completed.

Recommendation: The Clerk should provide the records requested to the County Administrator and ensure that all future public records requests are completed in a timely manner and appropriately documented.

Finding No. 11: Preparation of Board Meeting Minutes

Pursuant to Sections 28.12 and 125.17, Florida Statutes, the Clerk of Circuit Court is the clerk and accountant of the Board, and is responsible for the preparation and maintenance of the minutes of Board meetings. Section 286.011(2), Florida Statutes, requires that all minutes of a Board meeting be promptly recorded and open to public inspection, but does not specify a time period. Although approval by the Board of the minutes prepared by the Clerk is not required

by law, such approval provides verification that the minutes were accurately transcribed. For purposes of our review, we considered approval of transcribed minutes within 35 calendar days after the meeting date to be timely.

Our review disclosed that Board minutes for the 72 various meetings during the period October 3, 2005, through January 22, 2008, excluding the six-month period of June to December 2007, were approved by the Board from 39 to 124 days (average of 75 days) after the Board meeting date. During the period between June and December 2007, the average number of days for approval of meeting minutes for the 37 meetings held was 168 days, which, according to Clerk staff, was due to the Clerk's office operations moving to a new facility and training new staff. Our review also disclosed that, as of June 9, 2008, the minutes from all Board meetings held between February 2008 and May 2008 had not been approved by the Board, recorded in the official record book, or made available for public inspection. As of July 8, 2008, the Board minutes for the meetings held from February 4, 2008, to March 31, 2008, were approved by the Board, recorded in the official record book, and made available for public inspection.

According to the Director of Board Records in the Clerk's office, the Clerk provides "unofficial results" within days of a meeting. However, the unofficial results were not in sufficient detail for the Board to approve as its official minutes. Our review noted instances in which it took several months following the meeting date for the draft minutes, which were in sufficient detail, to be provided to the Board for its review, correction (as necessary), and approval. When draft minutes are not provided to the Board in a timely manner, it may be difficult for Board members to recall specific discussions or actions taken during the meeting without referring to audio tapes of the meetings. Additionally, these delays result in delays in the recording of official minutes and making them available for public inspection.

Subsequent to our inquiry, in November 2008, the Board approved a resolution requesting the Clerk to prepare and present to the Board, in final form, official minutes for each meeting of the Board within 60 days following the meeting.

Recommendation: The Clerk should take the necessary action to ensure that the draft Board minutes are timely prepared and provided to the Board for approval and, once approved, made available for public inspection in a timely manner.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit focused on the County's administration of the government center capital project. The overall objectives of the audit were:

- To document our understanding of the County's management controls relevant to the organizational structure and minutes, capital budget, long-term debt, procurement of goods and services, contractual expenses, and other matters as identified by specific allegations. Our purpose in obtaining an understanding of management controls and making judgments with regard thereto was to determine the nature, timing, and extent of substantive audit tests and procedures to be performed.
- To evaluate County management's performance, including the Clerk of the Circuit Court who serves as accountant for the Board, in achieving compliance with controlling laws, administrative rules, ordinances, bond

covenants, and other guidelines; the economic, efficient, and effective administration of the government center capital project; the relevance and reliability of records and reports; and the safeguarding of assets.

Our audit included examinations of various records and transactions (as well as events and conditions) occurring during the period October 2005 through December 2007, and selected actions taken prior and subsequent thereto, inquiry of County officials and personnel, and observation of procedures in practice. In conducting our audit, we examined actions related to allegations, including the public accountability of and the exercise of proper authority in the expenditure of public money; accountability of staff whose time is charged to capital projects; appropriate project monitoring systems for capital projects; and the proper use of bond proceeds, to determine whether such actions were executed, both in manner and substance, in accordance with governing provisions of laws, ordinances, bond covenants, and other guidelines. In some instances, certain allegations required us to examine actions related to certain specified County officials, employees, or contractors that were the subject of the allegations or could provide information on such matters.

Our audit did not extend to an examination of the financial statements of Flagler County or the Flagler County Clerk of the Circuit Court. The financial statements for the fiscal year ended September 30, 2007, were audited by a certified public accounting firm, and the audit reports are a public record and are on file with the County.

AUTHORITY

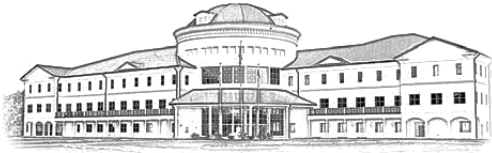
Pursuant to the provisions of Section 11.45(2)(l), Florida Statutes, I have directed that this report be prepared to present the results of our operational audit of Flagler County Government Center Capital Project and Other Administrative Matters for the period October 1, 2005, through December 31, 2007, and selected actions taken prior and subsequent thereto

David W. Martin, CPA
Auditor General

MANAGEMENT RESPONSES

The Board of County Commissioners' response to our findings is included as Exhibit A. The Clerk of the Circuit Court's response is included as Exhibits B and C.

EXHIBIT A
MANAGEMENT RESPONSES – BOARD OF COUNTY COMMISSIONERS



Flagler County
Board of County Commissioners



1769 East Moody Boulevard ♦ Bunnell, Florida 32110 ♦ (386) 313-4000 ♦ fax: (386) 313-4100 ♦ www.FlaglerCounty.org

March 27, 2009

Mr. David W. Martin, CPA
Auditor General
State of Florida
Post Office Box 1735
Tallahassee, Florida 32302

Dear Mr. Martin:

**Audit
Report
Finding
Number**

1

Thank you for the opportunity to respond to the recommendations made by your office in connection with their audit of the Flagler County Government Center Capital Project. This response is offered pursuant to the provisions of Section 11.45(6), Florida Statutes which provide for "The officer's written statement of explanation or rebuttal concerning the auditor's findings, including corrective action to be taken". In order to make the process more efficient, I will begin by restating the recommendation in full, followed by our response.

Use of Restricted Resources

Recommendation: For future major capital projects, the Board should consider establishing separate accountability when there are multiple funding sources with dissimilar restrictions placed on the respective resources funding the projects. The Board should also establish procedures to monitor the availability of funding for specified projects to ensure that adequate funds are available prior to entering into contracts or issuing purchase orders. The Clerk and the Board should coordinate the establishment of appropriate procedures to ensure that restricted resources are used only as approved by the Board. Also, the Board should either replenish Fund 309 in the amount of \$5,079,249 using unrestricted resources and ensure, along with the Clerk, that the uses of these moneys are in accordance with the enabling bond resolution and interlocal agreement or take action to revise the definition of initial project to include the judicial center.

Response: Inasmuch as there are multiple recommendations contained in this one recommendation, the response will be to the individual components of the recommendation:

James M. O'Connell
District 1

Milissa Holland
District 2

James A. Darby
District 3

Bob Abbott
District 4

George Hanns
District 5

Mr. David W. Martin, CPA
 March 27, 2009
 Page 2 of 11

**Audit
 Report
 Finding
 Number**
1

- A. For future major capital projects, the Board should consider establishing separate accountability when there are multiple funding sources with dissimilar restrictions placed on the respective resources funding the projects.

Response: In the future, in the event that there are multiple capital projects in progress at the same time, actions will be taken to ensure the integrity of the various restricted funding sources. In those instances where the restrictions on expenditure are material different, the method used may include, but may not necessarily be limited to, creating a separate fund or other equally effective accounting segregation.

- B. The Board should also establish procedures to monitor the availability of funding for specified projects to ensure that adequate funds are available prior to entering into contracts or issuing purchase orders.

Response: Steps have already been taken to ensure that sufficient funds are available to fund the costs associated with a project prior to entering into contracts or issuing purchase orders. For all items which require action by the Board of County Commissioners, the agenda cover sheet which accompanies the requested action includes a fiscal impact statement tailored for that specific item. Included in the fiscal impact statement is confirmation that funds have been budgeted for the intended purpose in an amount sufficient to fund the full cost of the item (or that a budget amendment will be required if funds are not sufficient), as well as a statement that the funds, i.e. cash, required for the item are available or will be available by the time they are needed. The information contained in the fiscal impact statement is generally stated both in terms of the line item budget as well as the project budget (where applicable).

- C. The Clerk and the Board should coordinate the establishment of appropriate procedures to ensure that restricted resources are used only as approved by the Board.

Response: While we will not speak for the Clerk in response to the findings directed to that office, it is important to note that a number of policies have been adopted by the Board, particularly during calendar year 2008, which the Board and Board staff believes will tighten control over the expenditure of all County funds, including those which are restricted as to their use, including bond proceeds. Input from the Clerk was sought in advance of the adoption of these policies and, where appropriate, included into the policy documents presented to the Board of County Commissioners for adoption. We are committed to the implementation and maintenance of an effective internal control system and believe that the development and maintenance of an effective internal control system is a dynamic process which requires constant evaluation and revision as appropriate.

Mr. David W. Martin, CPA
 March 27, 2009
 Page 3 of 11

**Audit
 Report
 Finding
 Number**
1

D. Also, the Board should replenish Fund 309 in the amount of \$5,079,249 using unrestricted resources and ensure, along with the Clerk, that the uses of these moneys are in accordance with the enabling bond resolution and interlocal agreement or take action to revise the definition of initial project to include the judicial center.

Response: For a number of reasons, it is neither practical nor logical to “replenish Fund 309 in the amount determined using unrestricted resources”. First, the Board does not currently possess \$5,079,249 in “unrestricted resources” which can be utilized for this purpose. However, even if there were funds available for use in this fashion, it would seem illogical to apply them in this way. All of the projects which were to be financed using the proceeds of either the \$32,990,000 General Obligation Bonds, Series 2005 or the \$34,105,000 Capital Improvement Revenue Bonds, Series 2005, or even the suggested projects to be funded from the proceeds of the infrastructure sales surtax (as set forth in the interlocal agreement providing for the distribution of said tax), namely the judicial center, the county administration building, the multi-purpose facility, and the youth center have been completed. As a consequence, by replenishing these funds I presume you are suggesting that we subject them to the same restrictions as originally in place. However, we will be unable to utilize them for project related costs since the projects have already been completed. Similarly, we are unable to use any proceeds returned for the purpose of early extinguishment of debt since all of the long-term debt obligations issued to finance these projects were issued as interest rate swaps. As such, it is virtually impossible to call the debt prior to maturity. I believe that a more rational resolution would be to broaden the definition of initial project as included in the documents authorizing the issuance of the \$34,105,000 Capital Improvement Revenue Bonds, Series 2005 to include a provision permitting them to be used on the judicial center. This action is simply intended to make the expenditures already incurred conform to the provisions of the various bond resolutions, but should not be considered as relieving any particular party from responsibility.

**Audit
 Report
 Finding
 Number**
2

Capital Budget Preparation and Adoption

Recommendation: The Board should separately adopt annual operating budgets, capital budgets, and capital programs. In doing so, the Board should consider adopting project-level budgets for major capital projects. The Board should also ensure that budget amendments are adopted at the same level as the original budget. Finally, the Board should ensure that “undesignated” amounts are budgeted as reserves for future construction rather than as expenditures. In addition, the County Administrator should consider incorporating GFOA recommended budgetary practices, institute a procedure that ensures amendment of the budget when final amounts from the prior fiscal year differ from the estimates used in preparing the initial budget, and provide the Board with project-to-date expenditure data for multi-year projects.

Mr. David W. Martin, CPA
 March 27, 2009
 Page 4 of 11

**Audit
 Report
 Finding
 Number**
2

Response: Once again, there are multiple recommendations contained in this recommendation, so the response will be formatted to the individual components of the recommendation:

- A. The Board should separately adopt annual operating budgets, capital budgets, and capital programs. In doing so, the Board should consider adopting project-level budgets for major capital projects.

Response: We have provided the auditors with excerpts from the adopted fiscal year 2004-05, 2005-06, and 2006-07 budget documents. The adopted budget document includes operating budgets, capital budgets and a five-year capital improvement program. In addition, the adopted budget document, at least for fiscal years beginning with 2005-06, includes details of the budget both by line item as well as by major capital project. While it is true that the resolution adopting the budget for each of the fiscal years included contained an exhibit detailing the amount budgeted in total by fund, in actuality, the budget document used for the purpose of populating the financial accounting management information system was created both at the line item, as well as individual project level. In the future, we will modify the resolution to adopt the budget, so that it incorporates, by reference, the adopted budget document including the detailed information available therein.

- B. The Board should also ensure that budget amendments are adopted at the same level as the original budget.

Response: As discussed in great detail with the auditors both verbally and in writing, the budget is adopted (as memorialized in the adopted budget document and not in the resolution adopted by the Board of County Commissioners) at both the project level as well as the line item level. Amendments to the budget have historically been approved at the same level of detail as the adopted budget document. We believe that we have historically adopted and amended the budget at the same level of detail which is the line item/project level. Again, the only change we will contemplate with regard to this specific recommendation is that the resolution memorializing the final adoption of the budget will be modified to incorporate, by reference, the adopted final budget document including the detailed information available therein.

- C. Finally, the Board should ensure that "undesignated" amounts are budgeted as reserves for future construction rather than as expenditures.

Response: Reserves for future construction are authorized pursuant to the provisions of Section 129.02(4)(a), Florida Statutes which states in part as follows: "It (the capital outlay reserve fund budget) may contain also an estimate for the reserves as hereinbefore provided and for a reserve for future construction and improvements." We are familiar with this statutory provision,

Mr. David W. Martin, CPA
March 27, 2009
Page 5 of 11

**Audit
Report
Finding
Number**
2

however, given our position that the budget is controlled both at the line item level as well as the project level, it would appear that there might be alternative means of reaching the same objective which in the case of utilizing the "undesignated" project is to set aside funds which are carried forward to projects from the prior fiscal year to the current fiscal year and which acts as a control (or should act as a control) to prevent additional expenditures against those projects in the prior fiscal year. To that end, as long as we are able to control expenditures at the project level, it should make no difference whether or not the funds are transferred from project specific capital outlay line items to non-project specific capital outlay items, or alternatively to a non-project specific "reserve for future construction and improvements".

- D. In addition, the County Administrator should consider incorporating GFOA recommended budgetary practices, institute a procedure that ensures amendment of the budget when final amounts from the prior fiscal year differ from the estimates used in preparing the initial budget, and provide the Board with project-to-date expenditure data for multi-year projects.

Response: This recommendation actually includes three separate subjects. First, as to incorporating GFOA recommended budgetary practices, we believe that our adopted budget policy accomplishes this goal. While preparing this response, our staff had the opportunity to speak with several individuals at GFOA, including Mr. John Fishbein, Senior Manager in the Technical Services Center, who oversees GFOA's Distinguished Budget Presentation Award Program. Based on our conversations with Mr. Fishbein, we believe that the goal intended by the auditor's recommendation has been accomplished by the adoption of the budget policy in February, 2008. Second, concerning the auditor's recommendation that we "institute a procedure that ensures amendment of the budget when final amounts from the prior fiscal year differ from the estimates used in preparing the initial budget", we generally concur. The only mitigating circumstance during the audit period about which we have direct knowledge is that for the fiscal year ending September 30, 2007, audited financial statements (which would have included "final amounts from the prior fiscal year" such as ending fund balance which would have served as the basis for any such amendment) were not received until September 2008. At that point, the usefulness of that information as a control is significantly diminished. Nevertheless, upon receipt of the audited financial statements for the fiscal year ending September 30, 2008, we will compare ending fund balance information with the original budget and propose modifications to the adopted budget as appropriate. Finally, concerning the auditors recommendation that we "provide the Board with project-to-date expenditure data for multi-year projects", we concur and are in the process of developing a capital projects reporting system for all capital projects, not just for multi-year projects.

Mr. David W. Martin, CPA
March 27, 2009
Page 6 of 11

Audit Report Finding Number **Capital Budget Monitoring**

3 **Recommendation:** The Board should determine the nature and timing of financial information, including budget-to-actual expenditure comparisons, needed to establish proper accountability, assist in decision-making, and demonstrate good stewardship of public funds used for capital projects and direct Board staff or the Clerk accordingly in providing such information.

Audit Report Finding Number **Response:** Again, as noted in the concluding response to the previous recommendation, we are in the process of developing a capital projects reporting system which, when finalized, will serve as the basis for periodic reports to the Board of County Commissioners.

4 **Payment Processing**

Recommendation: To strengthen internal control over payment processing, the Clerk should ensure that no one individual is in a position to approve an invoice and also process payment. Also, the Clerk should ensure that Board expenditures include adequate supporting documentation to support the Board's authorization of purchases, including contracts and contract change orders, prior to making payment, and that expenditures are appropriately approved.

Response: While this recommendation is directed to the Clerk of the Circuit Court, we will offer that at their November 3, 2008 meeting, the Board of County Commissioners adopted a resolution "establishing a system of controls and guidance for the processing of claims for payment...". Section 2 of the adopted resolution provides as follows:

- 2. The Clerk of the Circuit Court (in his or her constitutional role as the custodian of county funds) shall not produce a check for payment unless the claim for payment is submitted by the Board of County Commissioners (or authorized members of their staff) that includes a payment approval stamp and is physically signed by the Board of County Commissioners employee authorized to sign for the approval of the expenditure and/or disbursement pursuant to the current "Approval Process Authority" list.

As a result of the implementation of this particular provision, there have been numerous examples of invoices being forwarded to Board of County Commissioners employees for approval which we do not believe were previously being reviewed by the Board or Board Staff for approval prior to processing for payment. As a consequence, we believe that the majority of claims for payment being processed are now being approved by the appropriate employee of the Board of County Commissioners prior to payment.

Mr. David W. Martin, CPA
 March 27, 2009
 Page 7 of 11

**Audit
 Report
 Finding
 Number**
5

Construction Contract Monitoring and Administration

Recommendation: The Board should ensure that all construction progress reports are prepared and presented to the Board on a periodic basis to enhance its monitoring of construction projects and ensure compliance with terms of the contract. Furthermore, the Board should ensure that fixed-price contracts are only amended in accordance with the terms of the contract.

Response: As noted by the auditors, this comment was directed at the judicial center project. There is documentation that progress reports were provided to the Board of County Commissioners on a periodic basis for the other major construction projects in progress during this period and that the judicial center project was excluded from this process based on the guidance of an individual not employed by the Board of County Commissioners. Nevertheless, it is our intention that, for all future construction projects, the Board will be provided with periodic progress reports. In addition, other than for the judicial center, "fixed-price contracts are only amended in accordance with the terms of the contract" and applicable provisions of the Flagler County Procurement Code. This frequently requires that change orders or other contract modifications be presented to the Board of County Commissioners for approval. Finally, as noted earlier in this correspondence, we are in the process of developing a capital projects reporting system which, when finalized, will serve as the basis for periodic reports to the Board of County Commissioners.

**Audit
 Report
 Finding
 Number**
6

Written Policies and Procedures

Recommendation: The Board and Clerk, as appropriate, should establish comprehensive written policies and procedures relating to the administration of capital projects that are consistent with applicable laws, ordinances, and other guidelines. In doing so, the Board and the Clerk should ensure that the written policies and procedures address the instances of noncompliance and control deficiencies discussed in this report, as applicable.

Response: As it relates to the interface between the Board of County Commissioners and the Clerk of the Circuit Court and their respective staffs, as reported to our auditors and referenced elsewhere in this response, on November 3, 2008, the Board of County Commissioners adopted, by resolution, a number of policies, including the following:

- i. A Resolution Amending and Restating Flagler County Resolution Number 2002-42; Providing Direction and Authorization to the Clerk of Courts, Finance Department, for the Procedures to be Followed in Order to Pay Bills Owed by Flagler County on a Timely Basis
- ii. A Resolution Establishing a Policy for the Payment of Claims

Mr. David W. Martin, CPA
March 27, 2009
Page 8 of 11

**Audit
Report
Finding
Number**
6

- iii. A Resolution Establishing a Policy for Internal Billings
- iv. A Resolution Establishing Guidelines for the Preparation of Minutes

In addition, as referenced above, on February 14, 2008, the Board of County Commissioners adopted a comprehensive budget policy. Section 3.01(H) of the policy provides for the adoption of a five-year Capital Improvement Program as follows:

- H. As part of the budget adoption process, a five-year Capital Improvement Program (CIP) shall be prepared and presented to the Board for approval. Capital outlay in the operating budget shall match the CIP, except that operating capital outlay not meeting the definition of a CIP project may be excluded from the CIP. In order to qualify for inclusion in the Capital Improvement Program (CIP), a project must have both an estimated useful life of at least 10 years and a total cost of at least \$25,000 or increase the total square footage more than 5% of a new or existing facility. All operating and staffing costs associated with CIP projects should be submitted with CIP requests. Each CIP project must identify an appropriate source of funding. Funds may be borrowed for capital expenditures only with the issuance of debt not to exceed the useful life of the improvement, but in no event to exceed forty years. The County, when constructing or acquiring a public facility, shall evaluate if it is able to adequately provide for subsequent annual operation and maintenance costs of the facility. Revenues sources will only be pledged for debt when legally available. In those situations where the revenue sources have previously been used for general operating expenditures, then it should only be pledged for debt when other sufficient revenue sources are available to replace them.

Finally, in 2002, the Board of County Commissioners adopted a comprehensive purchasing policy. The adopted purchasing policy has been amended on a number of occasions over the years and contains a number of provisions related to the procurement and execution of construction projects.

Nevertheless, as County Administrator, one of my initiatives has been to create a "Project Champion" system in an attempt to assign authority, responsibility and accountability for the completion of major capital projects to a single Board of County Commissioners Employee. This system is still being developed. However, had it been in place previously, some of the issues which arose during your review may have been avoided.

**Audit
Report
Finding
Number**
7

Fraud Policy

Recommendation: To aid in the prevention, detection, and reporting of fraud, the Board should develop fraud policies and procedures.

Mr. David W. Martin, CPA
 March 27, 2009
 Page 9 of 11

Audit Report Finding Number
7 **Response:** As noted by the auditors in the report, “the Board had adopted a policy regarding a code of ethics”. The code of ethics is incorporated as Section 2.04 of the Flagler County Personnel Policies and generally parallels the provisions of Part III of Chapter 112, Florida Statutes (Code of Ethics for Public Officers and Employees). Nevertheless, during your audit fieldwork, our staff discussed this issue with your auditors. We requested, and your staff graciously provided, examples of fraud policies in place in other jurisdictions which they felt were exemplary. We used the policy recommended by your staff as a template to prepare a draft Flagler County Fraud Policy. Although the effectiveness of such a policy in detecting or more importantly preventing fraud is open to question, we will consider presenting the draft policy to the Board of County Commissioners for their consideration.

Audit Report Finding Number
8 **Reporting of Checks Issued From County Depository**

Recommendation: For all checks issued from the County depository, the Clerk should timely provide the Board with the necessary reports to ensure that the specified check information is presented to the Board for approval and included in the Board minutes in accordance with law.

Response: Although this particular finding is intended to be answered by the Clerk, we must report that there has been a significant improvement in reporting in this regard since the conclusion of the audit fieldwork. As noted by the auditors, “Section 136.06, Florida Statutes, provides, in part, that “All money drawn from any county depository shall be upon a check or warrant issued by the board or officer drawing the same, said check or warrant, both as to number and amount, person to whom drawn and purpose for which drawn shall be recorded in the minutes of the board having ordered the same drawn...”. Historically, information provided to fulfill this statutory requirement had been both incomplete and delinquent, even though both the Board of County Commissioners and their staff had made frequent requests for the required information. I am pleased to report that both the volume as well as the timeliness of the information required by the provisions of Section 136.06, Florida Statutes have recently experienced dramatic improvement and we applaud the Clerk for her efforts in this regard.

Audit Report Finding Number
9 **Employment Agreements**

Recommendation: The Clerk should not enter into employment agreements for terms in excess of that authorized by Florida law, and should consult with legal counsel to determine what steps can be taken to bring the Director of Finance's employment agreement into compliance with Florida law.

Response: Although the response to this finding should be prepared by the Clerk of the Circuit Court, the Board of County Commissioners and their staff are concerned,

Mr. David W. Martin, CPA
March 27, 2009
Page 10 of 11

**Audit
Report
Finding
Number**

10

nevertheless, that long-term funding commitments unilaterally created by any of the constitutional officers could potentially become the responsibility of the Board of County Commissioners or any other entity responsible for the provision of funding to the constitutional officers.

Public Records Requests

Recommendation: The Clerk should provide the records requested to the County Administrator and ensure that all future public records requests are completed in a timely manner and appropriately documented.

Response: As included in the auditor’s report, “the County Administrator made certain public records requests to the Clerk, as clerk for the Board, through memoranda dated January 31, 2008, and February 20, 2008. The public records requests consisted of electronic correspondence of Clerk employees and other documentation associated with the Government Services Complex projects. However, as of January 21, 2009, the County Administrator stated that responses to these requests had not been completed.” Although we would anticipate that the Clerk of the Circuit Court will be primarily responsible for the preparation of the response to this finding, we should report that on March 24, 2009, correspondence was received from the Director of Board Records in the Flagler County Clerk’s Office indicating that the two referenced public records requests “were complete and ready for pick up” and on March 25, 2009, Board Staff received 8 boxes of documentation in connection with these requests. Unfortunately, as a result of the fact that physical delivery of the documentation occurred this week and is fairly voluminous, we have not yet been able to establish the completeness of the response received.

**Audit
Report
Finding
Number**

11

Preparation of Board Meeting Minutes

Recommendation: The Clerk should take the necessary action to ensure that the draft Board minutes are timely prepared and provided to the Board for approval and, once approved, made available for public inspection in a timely manner.

Response: This finding should also be responded to by the Clerk of the Circuit Court. However, as a part of their audit for the fiscal year ending September 30, 2007 (which was accepted by the Board of County Commissioners at their meeting on September 15, 2008), our independent auditors, Berman, Hopkins, Wright & LaHam, CPAs and Associates, LLP, recommended “that the Board establish a timeline for presentation of draft minutes and Board approval.” In spite of the fact that we pointed out to our auditors that the applicable constitutional and statutory guidance (Article V, Section 16 of the Florida Constitution and Section 28.12, Florida Statutes) assigns the responsibility for keeping the minutes to the Clerk of the Circuit Court (in his or her role as Clerk to the Board of County Commissioners) the Board of County Commissioners were placed in the position of having to respond to the management letter comment addressed to them. As a consequence, as noted

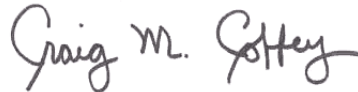
Mr. David W. Martin, CPA
March 27, 2009
Page 11 of 11

**Audit
Report
Finding
Number**
11

above in our response to audit report finding number 6, on November 3, 2008 the Board of County Commissioners adopted a resolution establishing guidelines for the preparation of minutes. A pertinent portion of Section 1 of the resolution "requests that the Clerk of the Circuit Court, in his or her role as ex-officio Clerk to the Board of County Commissioners, prepare and present to the Board of County Commissioners, in final form, official minutes for each meeting of the Board of County Commissioners within 60 calendar days following the meeting." Although somewhat unconventional, the adoption of this policy has resulted in some improvement to the timeliness of presentation for approval of the minutes. Even so, a member of the Board of County Commissioners has requested that we further reduce the timeframe for the preparation and presentation of the official meeting minutes from 60 to 45 calendar days. The requested modification to the policy is tentatively scheduled for consideration by the Board of County Commissioners at the April 6, 2009 meeting. In any event, at this juncture, it is our belief that the actions taken by the Board of County Commissioners clearly exceeds any constitutional or statutory responsibility or authority with respect to the preparation and presentation of minutes for approval and no additional actions on the part of the Board of County Commissioners or their staff are contemplated in this regard.

Let me take this opportunity to thank both you and your staff for the professional and courteous manner with which you completed this most delicate process. I look forward to completing the process and would welcome the opportunity to further discuss any of the comments made in this correspondence. As always, should you have any questions or require any additional information, please contact me.

Sincerely,



Craig M. Coffey
County Administrator
Flagler County, Florida

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EXHIBIT B
MANAGEMENT RESPONSES – CLERK OF THE CIRCUIT COURT



GAIL WADSWORTH, Clerk of the Circuit Court

1769 East Moody Blvd., Building #1 • Bunnell, Florida 32110
Website: www.flaglerclerk.com

David W. Martin, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

March 27, 2009

Dear Mr. Martin:

I have reviewed the list of preliminary and tentative audit findings and recommendations report prepared on your operational audit of Flagler County Government Center Capital Projects, for the period of October 2005 through December 2007 submitted by your office February 25, 2009.

Please find attached my response for your consideration. I have noted several items that are relevant to the preliminary and tentative findings listed and have provided backup to my statements.

You will find the information attached as provided by my office is vital.

If you have any questions or desire further discussion on any of the items mentioned in this report, please feel free to contact me.

Cordially,

Gail Wadsworth
386-313-4400

Attachments: Clerk Response to Preliminary & Tentative Findings

Flagler County Clerk of Court's response to the Auditor General's preliminary and tentative findings and recommendations of the report prepared on the operational audit of the Flagler County Government Center Capital Projects.

"Notwithstanding any other section of the Constitution, the duties of the Clerk of the Circuit Court...serving as ex officio Clerk of the Board of County Commissioners, auditor, recorder and custodian of all county funds." From Article V, Section 16, State of Florida Constitution

As the Chief Financial Officer, the Clerk of the Circuit Court is the custodian of all county funds and is responsible for the collection, safe depositing, investing, expenditure and distribution of these funds in accordance with law and administrative regulation including and not limited to the Florida Constitution, Florida Statutes, Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards as pronounced by the Governmental Accounting Standards Board (GASB), etc.

The Flagler County Clerk of Court (Clerk) has fully supported the notion of the operational audit requested of the Auditor General. Consequently, Clerk staff has cooperatively and collectively worked with the Auditor General's staff in providing all information and documents necessary to complete this audit.

The numerous findings outlined evidence that prior to commencing many significant projects; adequate planning and controls should have been implemented by the Board of County Commissioners (Board) to allow for healthier management and monitoring of those projects.

The Clerk appreciates that the benefits of good relations, between the Board / Board Staff and the Clerk / Clerk staff, is immeasurable and has worked toward and continues to strive to that end. The taxpayers of Flagler County expect and deserve nothing less.

Administration and Control over Major Capital Projects

Although the Auditor General has summarized the resolutions surrounding the capital projects; it is clear that Table 1, which is said to represent Exhibit A as revised on August 15, 2005, does not fully depict all that was represented to the Board. The part of the Exhibit A that has been excluded from Table 1 is significant in that it *clearly illustrates the intent to spend additional funds beyond site work on the Justice Center project (see the line item labeled Courthouse Site and Other \$7,365,663)*. It is also significant in that this portion of Exhibit A ties to the working documents (aka "the Matrix") used by the Board staff, Office of Management and Budget. Attached for reference are resolution 2004-85 to include revised exhibit A and "the Matrix".¹ Also attached are project reports that depict the budget for the Justice Center Project #610630 as maintained by the Board's staff during the projects life cycle, which further solidify the objective.²

¹ Attachment - Resolution No. 2004-85 including Exhibit A and Revised Exhibit A and Flagler County Governmental Complex Matrix

² Attachment - Project budget reports printed on August 31, 2007 and January 18, 2008 for the Justice Center Project #610630

Finding No. 1: Use of Restricted Resources

It is apparent, based upon the actions of the Board / Board staff, that the Board “intended” to expend funds beyond the general obligation bonds for the construction of the Justice Center.

- As stated by the Auditor General, “our review disclosed that both the Board / Board staff and Clerk / Clerk staff were aware, or should have been aware, that capital improvement revenue bond proceeds and surtax revenues were being expended for project purposes...”
- Upon review of the timeline surrounding the Boards’ approval of the design and construction of the Judicial Center project, it was noted by our office that through January 2006, the Board had approved a total of \$35,951,200 of Judicial Center expenditures. Bond proceeds of \$32,541,895 were available (Bond issued \$32,997,086 less bond closing costs of \$455,191). Clearly revealing a project overage of \$3,409,305; an amount significantly exceeding potential interest earnings. Beyond the items listed below; additional contracts, purchase orders and expenditures were incurred through January 2006; thereby increasing the overage to exceed \$3.4M.

Sept 1, 2005	General Obligation Bond Closing Proceeds	\$ 32,997,086
	Less: Closing Costs	<u>(455,191)</u>
	Total Bond Proceeds available for project	<u>\$ 32,541,895</u>
Apr 18, 2005	BOCC Approved Architectural Design Contract with Spillis Candella	\$ 1,683,750
June 6, 2005	BOCC Approved Pre-Construction Contract with Elkins	196,000
Aug 15, 2005	BOCC Approved relocation of EOC operations to temporary location	256,837
Nov 7, 2005	BOCC Approved additional scope changes to contract with Spillis Candella	135,000
Nov 21, 2005	BOCC Approved Change Order #1 to PPI Contract for the Chiller Plant	962,463
Jan 17, 2006	BOCC Approved GMP Contract for the construction of the Justice Center with Elkins	<u>32,717,150</u>
	Total Justice Center expenditure approved as of January 2006	<u>\$ 35,951,200</u>
	Expenditure approved beyond available bond proceeds as of Jan 2006	<u>\$ 3,409,305</u>

- It is regrettable that the Boards’ management and legal staff did not advise the Board of the need to revise Resolution 2005-120 prior to the Board taking action to approve contracts and/or purchase orders in excess of the general obligation bond proceeds and any potential interest earnings. As stated by the Auditor General, “Capital improvement revenue bond proceeds could have been authorized for use on the Judicial Center project with specific Board approval through

adoption of a resolution redefining the projects authorized or, the Board could have authorized the use of other moneys to fund those Judicial Center expenditures that exceeded the general obligation bond proceeds and applicable investment earnings. However, no such approval or authorization was granted by the Board”.

- It is clear, project management and monitoring to include the construction of buildings and or infrastructures is a function of the Board.

As stated by the Auditor General, the Clerk as ex officio clerk of the Board, auditor, recorder and custodian of all County funds is responsible for “the pre-audit of expenditures to determine if the expenditure is lawful prior to issuing a warrant of payment”. A statement is being made by the Auditor General that the Clerk, “had not established controls to prevent Judicial Center project expenditures from being paid from capital improvement revenue bond proceeds...”. The Clerk would not have established these controls because the Clerk believed that the intent of the Board was to expend capital improvement revenue bond proceeds, as evidenced by the actions of the Board / Board staff and as depicted in the documents approved by the Board. The Clerk / Clerk staff and the Board / Board staff to include legal staff, did not make the realization that the language contained in Resolution 2005-120 was not accurately written to reflect the action taken in approving Resolution 2004-85 containing Appendix A.

Upon review of the correspondence between Clerk and Board personnel of June 2007, it is apparent that the \$7.4 million dollars was authorized to be set aside by the County Administrator, Doug Wright³; not the Clerk. It was set aside for the balance of the Judicial Center costs authorized by Resolution 2004-85. Fortunately, as a result of Mr. Wright’s forethought in reserving cash; adequate funding was available for the covered arena project when it began.

Per Florida Statute 136.05, “The board of county commissioners shall keep an accurate and complete set of books...for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balance to the credit of that fund as kept by the said board”. The County Administrator took action in authorizing the reserve of these funds to ensure the fund had ample cash to meet its obligations. The realization that Board staff had helped the Board to obligate itself without providing the funding to meet the obligations should have been recognized and dealt with long before this point in time and was consequently not addressed at all. This is in no way as a result of any action or lack of action taken by the Clerk / Clerk staff.

For clarity in the recommendation; at the Clerk’s exit conference with the Auditor General, representative confirmed that they found **no** (emphasis added) inappropriate expenditures paid; a statement that corresponds with the findings of the Boards’ independent external auditors. The Clerk inquired of the Auditor General, “Since it is apparent that there was intent to use revenue bond proceeds for the Justice Center expenditures, could the Board amend Resolution 2005-120 to correct the language to correspond with that of Resolution 2004-85? The Auditor General’s representative indicated that this was a viable solution. The Board could either replenish Fund 309 or amend the resolution.

³ Doug Wright’s authorization dated April 12, 2007

Finding No. 2: Capital Budget Preparation and Adoption

Per Florida Statute 125.74, the County Administrator has “the following specific powers and duties to prepare and submit to the Board of County Commissioners for its consideration and adoption an annual operating budget, a capital budget and a capital program”. This is an audit finding to be addressed by Board management since this is a task entrusted to the County Administrator. The Clerk stands ready to assist the Board in implementing any recommendations provided by the Auditor General.

The budget approved by the Board at the fund level was not over-expended, therefore, the Clerk is in full compliance with Florida Statutory requirements.

Finding No. 3: Capital Budget Monitoring

Similar to finding number 2, this is an audit finding to be addressed by Board management since this is a task entrusted to the County Administrator. The Clerk stands ready to assist the Board in implementing any recommendations provided by the Auditor General.

For clarity in the recommendation of finding number 3:

The Clerk makes available to Board management / Board staff, in-time financial information through the use of financial software that allows viewing and printing of financial data. Board staff has access to software provided demand reports such as trial balances, statements of revenues, budget vs. actual statements of expenditures and project expenditure reports as well as the capability of creating custom reports through the use of report writing software.

The Clerk recognizes the importance of timely and accurate financial information in the decision-making and budget management of Board staff and therefore makes a conscious effort to support the County Administrator’s efforts by closing each month by approximately the twentieth day of the subsequent month.

Finding No. 4: Payment Processing

The Clerk as the accountant to the Board is charged with payment processing. There are three steps in the resource outflow control cycle as identified by the industry standards which demonstrates that payment processing is not an isolated duty of the Clerk and in fact begins at the Board level. The cycle is depicted as follows:

Step 1: Issuance of a contract, issuance of a purchase order – This is the applying resources step. This task is performed by Board / Board staff designated with this function.

Step 2: Receipt of goods and services – This is the step ensuring that conditions outlined in step 1 were met. This step is performed by the individual in charge of a task such as: project managers, department heads, etc.

Step 3: Managing payables and making cash payments – This step is to make the payments for the services authorized in step 1 and received in good condition in step 2. This task is performed by the Clerk of Court.

Resolution 2002-42⁴ approved by the Board on April 1, 2002, further provides “direction and authorization to the Clerk of Courts, Finance Department, for the procedures to be followed in order to pay bills owed by Flagler County on a timely basis”.

Through this resolution the Board has authorized the Clerks’ Office in the following manner: “All invoices relating to contracts, purchase orders or agreements, which obligations have been previously approved by the Board, shall be deemed payable by the Board, and shall be paid in whole or in part when received by the Clerk’s Office without requiring additional approval by the Board”.

Although the Board has a purchasing policy which governs the procurement process and Resolution 2002-42 which is clear in its direction; **no** (emphasis added) additional Board payment processing procedures were in place during the period of time in question.

The Clerks’ office requires a stamp of approval be made on each invoice detailing the account number, project number (where applicable), purchase order number and amount, along with an approved signature acknowledging receipt of goods and/or services prior to issuing payment. The County Administrator maintains a signature authorization list that provides guidance on who is designated to sign, acknowledging the receipt of goods and/or services, delineated by Board department; it was not defined for grants (grant managers) or projects (project managers). Please note that this was not a process required by the Board and was not part of a formal policy and/or procedure implemented by the Board. In connection with this thought process and for the record, the Auditor General’s statement in the first paragraph for finding number four beginning with “These documents” should read, “along with recognition of receipt of goods or service, were submitted to the Clerk...”

In relation to the Justice Center project, the Director of Finance for the Clerks’ Office was also serving as the user group representative. The user group was comprised of representatives of each office that operates in the Justice Center building to include: the Courts, Court Administration, State Attorney, Public Defender, Sheriff and Clerk of Court⁵ and the Board facilities department which is responsible for the building maintenance.

Upon review of the items described in the finding by the Auditor General, the following is noted:

- Regarding the four invoices for the Judicial Center project, totaling \$107,352; the invoices supported by the Clerk purchase order in the amount of \$79,604 were for security screening equipment in the front lobby of the Judicial Center. The construction contract included the millwork although not the equipment. The equipment quotes were obtained from the contract manager Elkins’ security consultant, who created/wrote the security protocol for the Judiciary. The other invoice in the amount of \$27,749 was to house the server containing the Justice Center Security software.

⁴ Attachment – Resolution No. 2002-42

⁵ Attachment – Letter from Judge Kim C Hammond relating to the user group

- The eighteen invoices totaling \$1,213,047 referenced by the auditor general are illustrated below.

The following four bullets depict expenditures that were processed in accordance with resolution 2002-42 and did not require additional Board approval documented on the invoice. *“All invoices relating to contracts, purchase orders or agreements, which obligations have been previously approved by the Board, shall be deemed payable by the Board, and shall be paid in whole or in part when received by the Clerk’s Office without requiring additional approval by the Board”.*

- ❖ \$918,250 was from the architectural design contract that was entered into by the Board on April 18, 2005. Notice to proceed was given by Faith Alkhatib, County Engineer, on May 23, 2005⁶. The invoices were submitted by the design firm to Ms. Alkhatib and subsequently forwarded by her office to the user group representative as stated in the Flagler County Engineering Status Report dated 10/13/2005 as presented to the Board of County Commissioners by the County Administrator, October 17, 2005, Item number 36⁷.
- ❖ \$98,000 was from the construction management firm’s contract that was entered into by the Board on June 6, 2005 for pre-construction services
- ❖ \$29,500 was for a design firm that was issued Board purchase order #010587
- ❖ \$6,294 was for a design firm that was issued Board purchase order #010735

Invoices totaling \$133,580 were for bond closing costs which were authorized within the bond documents⁸. These invoices were processed accordingly and did not require additional Board approval documented on the invoice.

Finally, the \$27,423 was paid to the security consultant that was working with the Judiciary on a security protocol and was paid from the Court Facilities fund, not fund 309 and should not be a part of this analysis.

- Regarding the internal billings as distinguished by the County’s independent external auditor in findings for fiscal year 2007; *“the County does not have formal policies regarding the use of internal billings. When internal services are performed, the servicing department will establish an invoice for several departments and send the bill to accounting to be paid. The invoices are not required to be sent to the respective departments for approval”.*

Internal billings are not an area under the supervision of the Clerk. The Clerk stands ready to assist the Board in implementing any recommendations provided by the Auditor General.

- The final change order mentioned by the Auditor General report had no effect on the scope of the project; therefore, it neither increased nor decreased the bottom line cost of the project. The last version received was attached to the partial retainage payment and was provided to the Auditor General as part of the voucher package. This change order represents an accounting entry to

⁶ Attachment – Letter and facsimile of notice to proceed from Faith Alkhatib to the Project Manager at Spillis Candella

⁷ Attachment – Flagler County Engineering Status Report dated 10/13/2005; created by the Faith Alkhatib, County Engineer in concert with Tammy Bong, Office of Management and Budget.

⁸ Attachment – Page 1 and 2 of the bond document for the General Obligation Series 2005

adjust the purchase orders for invoices processed through the “Owner Direct Purchase” system. As it had a zero affect when the project was complete and the building occupied; it was redundant to process at that juncture.

- The Clerks’ office is unaware of any instances where invoices were approved without “qualified staff reviewing and approving construction invoices”. All construction invoices were signed by the project manager. Faith Alkhatib, County Engineer, was the project manager from January 2006 at notice of commencement of construction until March 1, 2007. The County Administrator, Doug Wright, changed the project management at that time to the field/staff engineer of the engineering department; this change was made approximately 90 days before the substantial completion mark. Although it was never made clear why Mr. Wright made this change, it is evident that he must have had reasons. As County Administrator, Mr. Wright would not have assigned staff to such a significant project if he did not feel they were qualified to perform the duty satisfactorily.

To conclude, the Clerks’ office agrees with the Auditor General on the importance of segregation of incompatible duties and recognizes that it was an unusual occurrence, where the Director of Finance also served as the User Group Representative. As noted, the Auditor General found **no** (emphasis added) inappropriate expenditures.

Although policies and procedures are later addressed in Finding No. 6, it is the opinion of the Clerk that recommendations for this finding should also include implementation of policies and procedures to guide Board staff in its’ responsibilities to this particular process (payment processing); to include procedures as they relate to internal billings. It is a relevant truth that should be disclosed at this point.

Finding No. 5: Construction Contract Monitoring and Administration

Capital project construction monitoring and management is a Board function and should be addressed by Board management since it is not a task that is entrusted to the Clerk / Clerk staff. The Clerk stands ready to assist the Board in implementing any recommendations provided by the Auditor General.

Upon review of the Auditor General’s comments, it is important to note that the Director of Finance was not a decision making authority on the contracts; simply the user group representative. It remains unclear why the County Engineer and project manager, Faith Alkhatib, did not provide the progress reports to the Board; particularly if they were included in the contract.

Finding No. 6: Written Policies and Procedures

The Clerks’ office is governed by the Florida Constitution, Florida Statutes, Generally Accepted Accounting Principles (GAAP) and the Governmental Accounting Standards as pronounced by the Governmental Accounting Standards Board (GASB).

Although the Board / Board staff implemented resolutions in November 2008 relating to payment processing; it should be noted that these policies were not as a result of collaborative effort with the Clerk’s office, as directed by the Board. In fact, the resolutions were created solely by Board administration and have created operational obstacles and inefficiencies which have yet to be addressed.

The Clerks' office agrees with the Auditor General's recommendation to establish *comprehensive* written policies and procedures and further emphasizes the importance of *enforcing* strong and complete policies and procedures of internal control. While it is clear the task is challenging, given the lack of available resources during these increasingly difficult economic times; the Clerks' office will strive toward implementation where economically feasible and where current resources allow.

Finding No. 7: Fraud Policies and Procedures

This finding is in relation to the Board function and should be addressed by Board management. The Clerk stands ready to assist the Board in implementing any recommendations provided by the Auditor General.

Finding No. 8: Reporting of Checks Issued From County Depository

Although all of the information required by law was present at the meetings of the Board of Commissioners; the Clerk recognizes the information was not in the format required by law.

The Clerk has created a report that meets the requirement of the law and which has been acknowledged by the County Administrator, to include: check number, check date, payee, amount and description. The Clerk also transmits the information to the Board in a trackable format to provide evidence of its existence.

Finding No. 9: Employment Agreements

In reference are the key employee agreements entered into by the Clerk and those employees on or about July 16, 2007; more specifically to the "terms" of said agreements. (See paragraph 2.A.)⁹

Although it is not clear as to the relevance of this comment during an audit of the government services complex projects, the following is provided:

As the Flagler County Board of County Commissioners has committed itself to many key employment agreements through its existence which had terms extending beyond the election cycles of two or more of its members¹⁰; and as the Clerk chose to be represented by an attorney who had previously represented her in matters "pertaining specifically to employment law and risk management personnel matters;" and as the Clerk has not allowed contractual agreements with software vendors to extend beyond her election cycle, by example and counsel, she was made comfortable with the terms of her key employee agreements.

Although it is not a part of the recommendation, the Clerk finds it important to address the public benefit of said agreements with those existing employees who had been asked to accept "key" positions:

Not only do employment agreements attract capable, competent employees (existing or not); such contracts also retain those qualified, long-term individuals in key positions; thereby maintaining a continuation of service to and for the taxpaying public.

⁹ *Employment Agreement*, Director of Finance, page 1, paragraph 2.A.

¹⁰ *Employment Agreement*, County Administrator, page 1, paragraph 2.A.

The Clerk would also note that these agreements had no impact on, with or to the governmental services complex project(s).

Finding No. 10: Public Records Request

In reference are the public record requests made by the County Administrator to the office of the Clerk of the Circuit Court on both January 31, 2008 and February 20, 2008.

Although it is not clear as to the relevance of this comment during an audit of the governmental services complex projects, the following is provided:

As the County Administrator requested **all** (emphasis added) emails of many employees for an extensive period of time; and the aggregate total of those emails exceeded twelve thousand at the time of his request; and as those emails required review as to compliance with the General Records Schedule for State and Local Government Agencies, GS1-SL; and review for confidentiality requirements under Florida Statutes and Florida Rules of Court which may and did cause manual redaction, his assumption that his request could easily be provided electronically was false.

As was noticed by the Auditor General's team during their first walk through of the Clerk of Court's offices, there was then and continues to be limited staff; therefore limited hours, to perform this type of function.

It should be known that this request was made during the time of our external audit as well as the state audit. The Clerk did give priority to the requests of the external auditor and the Auditor General. It should also be recognized that the Clerk personally dedicated one to one and a half hours a week to the completion of this request.

The Auditor General should acknowledge their discussion with the Clerk of her telephonic notice to the County Administrator's office during the week of November 12, 2008, that his request was complete and ready for pick up. Subsequently, a verifiable follow up letter was sent to the County Administrator reiterating that the public records request remains available; it was picked up on March 25, 2009.

Finding No. 11: Preparation of Board Minutes

In reference is the fact that "the Clerk of the Circuit Court . . . is responsible for the preparation and maintenance of the minutes of Board Meetings."

Although it is not clear as to the relevance of this comment during an audit of the governmental services complex projects, the following is provided:

Pursuant to Sections 28.12 and 125.17, Florida Statutes, the Clerk of Circuit Court is the clerk and accountant of the Board, and is responsible for the preparation and maintenance of the minutes of Board meetings. Section 286.011(2), Florida Statutes, requires that all minutes of a Board meeting be promptly recorded and open to public inspection, but does not specify a time period. Although approval by the Board of the minutes prepared by the Clerk is not required by law, as a courtesy to the Board of County Commissioners, the current Clerk of the Circuit Court has afforded the Board the opportunity to review

and accept its record prior to it being made available for public inspection.

Further, during its regularly scheduled meeting March 2, 2009, by consensus of the Board and agreement with the Clerk, the Clerk will:

- Stop submitting “unofficial results;”
- Stop submitting “draft” minutes;
- Submit minutes for acceptance as they are completed;
 - ❖ If changes are desired, there will be a motion to accept with the suggested change if said change is supported by the audio of that meeting;
 - ❖ Otherwise extenuating circumstances, completion of minutes and submission thereof will be no later than 45 days of a meeting. *Extenuating circumstances could simply be multiple meetings in any given month. An example is this month (March, 2009) in which 9 meetings and/or workshops are scheduled.*

The Clerk clearly understands her obligations as to the preparation and maintenance of Board minutes under the laws of the State of Florida. The Clerk notes the period of concern, between February and December, 2007 (specifically the six months between June and December), as a time of extenuating circumstances in which the County Engineer Faith Alkhatib determined the Clerk’s housing to be unsafe thus prompting an untimely move¹¹; the training of new clerks within the Board Records division, and moving her office, staff and all related equipment, product and records, both public and official, into a new facility.

Again, it must be recognized that the Board, as well as any other interested party, could view any meeting via FCTV; access audio CD’s of any meeting within hours of that meeting; and read the “unofficial results” within 48 hours of that meeting’s conclusion. Therefore, it is unclear how the lack of minutes in their final form could have had an impact on the government services complex projects.

Flagler County Clerk of Court’s Response Conclusion

To conclude, there was a time, when Flagler County was small and verbal or understood policies and procedures, along with strong leadership and communication were sufficient. Managers left much of the issue of internal controls to their auditors. After years of review and experience, it has become apparent that managers must take the lead if internal controls are to function effectively.

The county has grown very quickly and managers have been reactive rather than proactive and are just now realizing the effect of the lack of strong effective leadership. As with any entity, policies and procedures should periodically be reviewed to ensure that all are working as they were designed and intended and should be modified where necessary.

¹¹ Attachment – It has since been determined that said housing was not unsafe; hence, the untimely move and its impact on the Clerk’s offices seems unjustified. See Bowen Engineering Corporation document.

While it is clear that there are significant flaws in the Board's processes in the areas of administrative and budgetary controls, internal controls for capital projects, communication of financial data to the Board and construction contract monitoring and administration, as represented by the Auditor General; implementation of additional policies and procedures will create internal controls and provide the Clerk with the necessary tools to enforce those controls; hence providing for stronger accountability. The Clerk agrees with the Auditor General in that enhanced communication and cooperation between the Board and the Clerk, will allow for effectiveness and efficiency in managing respective duties as well as strengthening the processes.

When faults repeatedly occur at the inception of a process; it makes it very difficult for the process to end favorably. It is important to note, in considering the many flaws, all projects anticipated were completed with the balance in the fund at September 30, 2008 (\$277,176), having less that a \$500 difference from the original overall estimates as depicted in Resolution 2004-85, Revised Exhibit A (\$277,648).

For the future, the Clerk will continue striving to communicate and work with the Board and its employees to enhance Board payment processing procedures as well as any other intergovernmental operational procedures. Further, the Clerk offers assistance to the County in implementing any recommendations provided by the Auditor General.

EXHIBIT C
ATTACHMENTS TO CLERK OF THE CIRCUIT COURT'S RESPONSE

**THE FOLLOWING DOCUMENTS INCLUDE THE ATTACHMENTS
REFERRED TO IN CLERK OF THE CIRCUIT COURT'S RESPONSE (EXHIBIT B).**