AUDITOR GENERAL

WILLIAM O. MONROE, CPA

CITY OF WEEKI WACHEE, FLORIDA

Operational Audit

For the Period October 1, 2002, Through April 30, 2004,

And Selected Actions Taken Prior and Subsequent Thereto

CITY OF WEEKI WACHEE, FLORIDA

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SUMMARY OF FINDINGS

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Finding No. 11: In many instances, leased employee timesheets were manually overridden without evidence of supervisory approval. One leased employee had either clocked in or out for an entire week but never both in the same day. Instead, the time worked and total hours worked each day were manually recorded. In addition, worksheets generated from the time management system, although reviewed, were submitted to the payroll leasing company for the preparation of payroll checks without any evidence of supervisory approval.

Finding No. 12: City Commission members, the City Clerk, and an animal trainer were classified as independent contractors rather than as employees and, as such, no employment taxes were withheld or paid on their compensation; however, it appears that some or all of these individuals should have been

treated as employees pursuant to Internal Revenue Service (IRS) regulations. In addition, no compensation, as either an employee or an independent contractor, was reported to the IRS for a deputy sheriff and a City Commission member who was provided free living accommodations at the LLC park in return for providing park security.

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Finding No. 18: Contrary to the City Commission's approved action at its September 2002 meeting, the City has not collected from the LLC its $3,200 share of a $6,400 lawn mower purchased for use by both the City and the LLC through a reduction in City rent payments to the LLC for office space.

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Finding No. 20: Contrary to Section 112.3145(2), Florida Statutes, two City Commissioners failed to annually file statements of financial interest.

This audit was conducted by Denis Jessen, CPA, and supervised by Ted J. Sauerbeck, CPA. Please address inquiries regarding this report to James M. Dwyer, CPA, Audit Manager, via e-mail at jimdwyer@aud.state.fl.us or by telephone at **(850) 487-9031**.

This report, as well as other audit reports prepared by the Auditor General, can be obtained on our Web site at http://www.state.fl.us/audgen; by telephone at **(850) 487-9024**; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

FINDINGS AND RECOMMENDATIONS

Financial Management

Finding No. 1: Acquisition of Weeki Wachee Springs LLC

Effective July 31, 2003, the City accepted, through a Donation Agreement, the entire right, title, and interest in the Weeki Wachee Springs, LLC (LLC), a Florida limited liability company whose principal purpose, as stated in its articles of incorporation, is to own and operate the Weeki Wachee Springs tourist attraction and recreational park (park), including all fee and leasehold interests in the real estate, buildings, structures, and equipment. The land on which the park is located, and any permanent improvements thereon, is owned by the Southwest Florida Water Management District (District).

The LLC had entered into a thirty-year lease agreement with the District in August 2001 that included a provision prohibiting the LLC from assigning the lease without the prior written approval of the District. The agreement also provided that any lease assignment made without the District's prior written consent would be void and without legal effect. On March 30, 2004, the City and LLC filed a Complaint for Declaratory Judgment in Hernando County Court alleging the District had threatened to declare the lease in breach and evict the LLC because the acquisition of the LLC by the City constituted an unauthorized assignment of the lease. Relief sought by the City and LLC included a judicial declaration that the acquisition of the LLC was constitutional, that no assignment of the lease had occurred, and that the lease had not been breached. On March 31, 2004, the District filed a Complaint for Declaratory Judgment against the LLC and the City in Hernando County Circuit Court, Fifth Judicial Circuit. The Complaint sought relief including a declaration that, among other things, the transfer of the LLC to the City constituted an assignment of the lease; that such assignment without the District's prior written approval is void and without legal effect, that the transfer of the LLC to the City required dissolution of the LLC; and that, to the extent that the acquisition of the LLC by the City without dissolution of the LLC constitutes an illegal act, such action by the LLC is a material breach of the lease agreement and the District shall have the right to take possession of the property. On April 2, 2004, the District filed in Hernando County Court an Answer and Counterclaim to the City and LLC's complaint requesting relief identical to that sought in the Complaint for Declaratory Judgment. The actions were still pending as of March 17, 2005.

After the donation, the City Attorney requested an opinion from the Florida Attorney General as to whether the City could accept the donation of the entire ownership of the LLC without violating Article VII, Section 10 of the State Constitution, and if so, whether the City must dissolve the LLC. The Attorney General noted in an informal opinion dated November 3, 2003, that the City had already accepted ownership of the property so his office "must presume the validity of action that has already been taken by a governmental body until declared otherwise by a court." However, the Attorney General also noted that substantial issues exist regarding the donation of the LLC, which can only be resolved by a determination of a number of questions of fact that appear to be in dispute, and would more properly be addressed in an appropriate judicial proceeding. The Attorney General further noted that while the Attorney General and Florida courts had recognized that Article VII, Section 10 of the State Constitution was not violated by the acquisition by a governmental entity of all interest in a company, such cases involved situations in which none of the liabilities of the corporation was assumed by the governmental entity and the corporation was dissolved. The Attorney General noted that the LLC has not been dissolved and has not been relieved of its obligations, and that substantial questions exist as to the liabilities and assets of the LLC and as to the potential liability of the City with respect to the LLC. The Attorney General concluded that while the City maintains

that the City is not responsible for the liabilities of the LLC, the LLC is wholly owned by the City and City assets may be placed in jeopardy.

The Donation Agreement does not include provisions that specifically preclude the City from using its resources to benefit the LLC, or that relieve the City of any responsibility for assisting the LLC should it experience deteriorating financial condition. The Attorney General noted that he had no information that the revenues generated would be sufficient to sustain the continued operation of the attraction without requiring the use of the City's ad valorem taxing power. Use of such taxing power to aid any private individual or enterprise is contrary to Article VII, Section 10 of the State Constitution.

Because of the potential impact the LLC's operations could have on the City, the City Commission should have thoroughly assessed the LLC's financial condition prior to accepting the donation of the LLC; however, although requested, we were not provided evidence that such an assessment was done. Further, it is important that the City Commission ensure that the LLC maintains sound financial condition so as to avoid the possibility of adversely impacting City resources. Based on our review of the LLC's financial records, the LLC appears to be showing signs of deteriorating financial condition, as follows:

- Cash Shortage. As discussed in finding No. 10, subsequent to the donation of the LLC to the City, the LLC received two loans totaling $50,000 that, according to the City Mayor, who is also the LLC General Manager (referred to in this report as the Mayor or Mayor/General Manager), were intended to remedy an operating cash shortage. Had the LLC not received the loans, it would have likely incurred a deficit cash balance in February 2004. In addition to these loans, the LLC borrowed money to finance its property and general liability insurance premiums, resulting in approximately $3,300 in financing charges, and made several late payments to the financing company during the period December 2003 through March 2004 resulting in approximately $3,000 of late fees. While it is customary for governments to finance the costs associated with the acquisition or construction of capital assets, so that the cost can be more closely aligned with the benefits derived over the life of the assets, the financing of operating costs that benefit only the current fiscal period are neither customary nor advisable. The operating cash shortage may have necessitated the LLC's financing of the insurance premiums and contributed to the late payments.

- Operating Losses. According to unaudited LLC financial statements provided to us, the LLC had operating losses of $177,300 and $173,765 for the 2002 and 2003 calendar years, respectively, including an operating loss of $88,176 for the period July 31, 2003, to December 31, 2003, the first five months of City ownership. Unaudited LLC financial statements for the 2004 calendar year reported a $30,220 operating loss; however, the 2004 financial statements did not include depreciation expense, which totaled $50,598 in 2003. As such, assuming that the 2004 depreciation expense is comparable to the 2003 depreciation expense reported, the total net operating loss for 2004 would be approximately $80,000.

- Available Resources. As a result of the operating losses, the LLC had a deficit retained earnings of approximately $152,000 (as adjusted for estimated unreported depreciation) as of December 31, 2004. In addition, cash and accounts receivable totaled only $33,820, while current liabilities totaled $164,512 as of December 31, 2004.

Legal fees incurred in connection with the above-noted civil actions with the District, and other litigation, will further negatively impact the City and the LLC's financial condition. As of March 2005, the City had paid $2,121 in fees to a law firm for services rendered in connection with the above-noted civil actions and owed the firm an additional $9,717 for legal fees. The LLC had not paid any legal fees in connection with the above-noted civil

actions, but owed the same firm $2,303 for legal fees. In addition, the City, as of January 2005, still owed another law firm approximately $58,000 for services rendered in connection with its attempted condemnation of a water utility system (see finding No. 2). In response to our inquiry, the Mayor/General Manager indicated that the City did not pay the balance because it had insufficient revenues to do so. We were also advised that the individual that the City contracted with to act as City Attorney had rendered legal services to both the City and LLC for which he had not yet billed either the City or LLC; however, we were not advised as to how much the City and LLC owe the City Attorney for such services, and in responding to our request as to the amounts owed for unbilled legal services rendered, this individual did not provide an amount. It is also likely that the City or LLC will incur significant additional legal fees in connection with pending litigation.

The City Commission has a fiduciary responsibility not only to City residents (which consist primarily of LLC leased employees), but also to persons operating businesses within City limits. Because of these fiduciary responsibilities, the City Commission should closely monitor the City and LLC's financial condition. Depending on the outcome of the pending litigation, and the LLC's ability to improve its financial condition, the City's financial condition may be adversely impacted by the acquisition and retention of the LLC. Because of its failure to timely file audit and other financial reports, the City will not be entitled to certain municipal revenue sharing funds (see finding No. 5). Additionally, we noted the following indications that the City is experiencing financial difficulties:

- The City Attorney, in response to a letter from the Legislative Auditing Committee regarding the City's failure to comply with the audit requirements of Section 218.39, Florida Statutes (see finding No. 5), indicated that the City currently lacks sufficient resources to pay for an audit.
- According to unaudited City financial statements provided to us, the City had a $71,430 deficit fund equity balance as of September 30, 2003. Although requested, we were not provided with financial statements for the fiscal year ended September 30, 2004. However, according to the City's budget summary for that fiscal year total budgeted expenditures/expenses exceed total budgeted revenues by $35,592.

Based on the above, there is a question as to whether the City will be able to continue as a going concern and be able to meet its obligations as they come due without substantial dispositions of assets outside the ordinary course of business, externally forced changes to its operations, or similar actions.

Recommendation: The City Commission should demand invoices for all legal services provided to date by attorneys representing the City and LLC so that the impact of such billings on the financial condition of the City can be assessed. The City Commission in conjunction with LLC management should analyze existing fees for park admissions and other charges to determine their sufficiency in covering park expenses, and should explore all available options for increasing park revenues or decreasing park expenditures. In addition, the City Commission, if it is determined that the LLC's ability to generate a profit is not viable, should consider selling or leasing the LLC. Further, absent the ability to generate sufficient revenues or reduce expenditures, the City Commission should evaluate whether or not the City should continue as an incorporated municipality and, if determined to be appropriate, consider dissolution under the provisions of Section 165.051, Florida Statutes.

Mayor's Response and Auditor Clarification

The Mayor, in response to this finding, stated that the finding "incorrectly asserts that the LLC owns all of both the '. . . fee and leasehold interest in the real estate, buildings, structures, and equipment . . .' constituting the Weeki Wachee Springs tourist attraction" and "The LLC has no fee interest in any of the same, its interest being solely a leasehold interest." However, the Mayor's statement is incorrect. Section 3.1 of the LLC's Articles of Incorporation states that the purposes of the LLC "shall be to acquire and operate the Weeki Wachee Springs tourist attraction and recreation park (the Facility) and related assets . . . including all fee and leasehold interests in the real estate, buildings, structures, and equipment on, from, in, and with which the Facility exists and is operated . . ." The LLC has fee simple ownership of its personal property, such as its equipment and inventory.

The Mayor also stated that our finding "assumes that the CITY is responsible for the obligations of the LLC," and indicated that it is inappropriate to include the LLC as part of the audit report regarding the City because Florida law would not allow LLC creditors to "pierce the corporate veil and attach assets to satisfy LLC debts." Contrary to the Mayor's assertion, we did not conclude in our report that the City assumed responsibility for the LLC's obligations. However, as stated in the finding, the Florida Attorney General noted that substantial questions exist as to the potential liability of the City with respect to the LLC. Further, the City has the ability to control the LLC's operations (see additional discussion below) and, as such, we believe it is appropriate to include the LLC within the scope of our audit. The point of our finding, which was not addressed by the Mayor, is that the City, as owner of the LCC, faces a difficult challenge in continuing the operations of the LLC in view of the recent financial history of the LCC. The Mayor, who is also the manager of the LLC park operations, did not provide any information as to how the LLC will discontinue the incurrence of such losses and continue to operate. If City resources unrelated to the LLC will not be provided to support the LLC operations, as the Mayor states, then the question remains as to where the LLC will obtain the resources needed to continue operations in the face of the losses identified in the finding.

The Mayor also indicated that any implications in our report that the City can and should take actions regarding the management of the LLC are incorrect. On the contrary, we believe it would be unreasonable to assume that the City would not take actions to benefit the LLC. As indicated in our finding, the Donation Agreement does not include provisions that specifically preclude the City from using its resources to benefit the LLC. Given that the City Mayor and the LLC manager are the same person, we believe there exists a reasonable possibility that the City would use its resources to assist the LLC.

The Mayor further stated that the LLC's Operating Agreement provides that it is "manager managed," that she (the Mayor) is the sole LLC manager and, in that capacity, she, and not the City, has full, exclusive, and complete authority and discretion in the management and control of the LLC. In addition, the Mayor, in numerous instances in responding to other findings in our report, indicated that the City has no management authority over the LLC but has made suggestions to the LLC regarding implementation of our recommendations. However, the City is the sole member of the Single-Member Limited Liability Company and, pursuant to Sections 4.6 and 11.1.6 of the LLC's Articles of Incorporation, the City may remove any LLC manager with or without cause. As such, the City Commission, by virtue of its power to remove LLC managers at will, has the ability to direct the operations of the LLC, and to enforce any suggestions it may make to LLC management.

Finding No. 2: Attempted Condemnation of Utility System

The City adopted Resolution 2003-07, on July 22, 2003, authorizing eminent domain proceedings to take certain water, wastewater, and refuse assets of a utility system located outside the municipal limits. The recommendation to pursue such a condemnation was made to the City Commission by the Mayor with the stated purpose of providing additional City revenue as well as assuring the preservation and quality of Weeki Wachee Springs. The City filed an action in eminent domain against the utility system on July 22, 2003, in Hernando County Circuit Court. Hernando County had been in negotiations with the utility system for the purchase of its assets located in Hernando County for an extended period of time and was reportedly close to a negotiated agreement at the time the City filed its action.

Hernando County enacted Resolution 2003-243, on August 26, 2003, authorizing eminent domain proceedings against the identical assets of the utility system and on August 28, 2003, filed its eminent domain action in the same court. These two cases were consolidated on November 7, 2003. Hernando County and the utility system entered a Stipulated Final Judgment on October 30, 2003, allowing the County to acquire the utility system assets located in the County.

Sections 3.(i), 3.(j), 110 and 111 of the City Charter preclude the City from acquiring and operating a water utility. For example, Section 110 of the City Charter states that, "The city may purchase the properties of a privately owned public utility, excepting a public utility engaged in the sale or transportation or delivery of water." Section 111 of the City Charter states that, "The city shall have power to own and operate any public utility, except a public utility for the sale, transportation or delivery of water, to construct and install all facilities that are reasonably needed, and to lease or purchase any existing utility properties used and useful in public service, except a public utility for the sale,

transportation or delivery of water. The city may also furnish service except water service in adjacent and nearby communities which may be conveniently and economically served by the municipality."

The City, in the above-noted eminent domain litigation, argued that the Charter language was ambiguous or that it had been repealed by the enactment of the Municipal Home Powers Act. The Court, in an order dated November 10, 2003, denied the City's Petition in Eminent Domain and determined the City's arguments were without merit, stating the Charter "clearly prohibits Weeki Wachee's acquisition or operation of a water supply system." The City filed a Notice of Appeal to this Order, but voluntarily dismissed the appeal on January 28, 2004.

According to City records, during the period July 15, 2003, through October 8, 2003, the City incurred legal fees related to these proceedings totaling at least $63,203, of which only $5,000 had been paid as of March 2005. Since the City Charter clearly prohibits the City from acquiring, owning, or operating a water utility system, the City's pursuit of this condemnation, and the incurrence of costs associated with the attempted condemnation, was clearly not within the City's authority.

Recommendation: The City Commission should ensure that all City actions are taken in strict accordance with the City Charter.

Mayor's Response and Auditor Clarification

The Mayor, in response to this finding, indicated that the City relied upon "the advice of competent and knowledgeable counsel" to conclude that the City was authorized to acquire, own, maintain, and operate the water utility system referred to in the finding. During our audit, the City provided us with an undated, unattributed, and unsigned draft legal opinion, the substance of which is reproduced in the Mayor's response, which the City relied upon. We disagree with the legal conclusion expressed therein that the Charter provision prohibiting the City from operating a water utility engaged in the sale or transportation or delivery of water should not be interpreted according to its plain meaning. The Mayor also stated that our reliance on an order of the Hernando County Circuit Court concluding that the City Charter clearly prohibits the City's acquisition or operation of a water supply system was inappropriate because the Order was appealed. However, because the City voluntarily dismissed its appeal, an appellate judication of this issue was never issued. We disagree that the Hernando County Circuit Court's Order addressing this specific issue is not appropriate for consideration on audit.

General Management Controls

Finding No. 3: 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 business and the effective safeguarding of assets. In addition, written policies and procedures, if properly designed, communicated to employees, and effectively placed into operation, provide management additional assurance that activities are conducted in accordance with applicable laws, ordinances, and other guidelines; and that financial records provide reliable information necessary for management oversight. Written policies and procedures also assist in the training of new employees.

During the audit period, the City had not established written policies and procedures for most of its accounting and other business-related functions. For example, written procedures were not available to document controls over budgets, revenues, fixed assets, disbursement processing, or bank reconciliations. Instances of noncompliance or inadequate management controls, which may have resulted, at least in part, from a lack of written policies or procedures, are discussed in subsequent findings.

Recommendation: The City should adopt comprehensive written policies and procedures that are consistent with applicable laws, ordinances, and other guidelines. In doing so, the City should ensure that

the written policies and procedures address the instances of noncompliance and control deficiencies discussed in this report.

Finding No. 4: Separation of Duties

To the extent possible, duties should be separated so that no one employee has access to both physical assets and the related accounting records, or to all aspects of a transaction. Failure to adequately separate duties increases the possibility that errors or irregularities could occur and not be promptly detected. Our review of controls relating to the areas included within the scope of our audit disclosed inadequate separations of duties as follows:

- The City Clerk processed the mail, including checks made payable to the City; prepared and delivered bank deposits; prepared bank reconciliations; issued purchase orders; and maintained the City's accounting records.
- In the park operations finance area, one leased employee approved invoices for payment, prepared the checks, signed the majority of the checks issued, and recorded the information in the accounting records. In addition, in the food service and retail departments, the department supervisors had the ability to place an order with a vendor, acknowledge receipt of the goods, and approve the related invoices for payment.

Some risk related to inadequate separation of duties can be mitigated through the implementation of compensating controls. Compensating controls could include, for example, designating an individual unrelated to the ordering or approving function to receive and verify ordered goods, and designating a different individual to compare the purchase order, receiving report, and invoice, and approve the invoice for payment.

Recommendation: The City should separate duties so that one employee does not have control of all aspects of a transaction (i.e., both recording responsibility and custody of assets), or implement adequate compensating controls.

Finding No. 5: Financial Reporting

Pursuant to Section 218.39, Florida Statutes, municipalities meeting a specified audit threshold are required to provide for an annual financial audit and file a copy of the audit report with us no later than twelve months after the end of the fiscal year. Timely audits are necessary to ensure that the financial transactions are properly reported and management is promptly informed of control deficiencies and financial-related noncompliance. In addition, pursuant to Section 218.32, Florida Statutes, municipalities must file with the Florida Department of Financial Services an annual financial report no later than twelve months after the fiscal year end.

Entities that fail to comply with these reporting requirements are included on notifications submitted to the Legislative Auditing Committee and may be subjected to State action pursuant to Section 11.40, Florida Statutes. Our review of the City's compliance with these requirements disclosed the following:

- Contrary to Section 218.32, Florida Statutes, the City did not file its annual financial report for the fiscal years ended September 30, 2000, 2001, and 2002, until August 2004. The City timely filed its annual financial report for the fiscal year ended September 30, 2003.
- According to the City's annual financial report for the fiscal year ended September 30, 2003, the City's revenues and expenditures (including those of the LLC) exceeded $250,000 for the 2002-2003 fiscal year, and the City's unaudited financial statements provided to us indicated that the City's expenditures (excluding those of the LLC) for the 2002-2003 fiscal year exceeded $100,000. Accordingly, since it had not

provided for an annual financial audit for the two previous fiscal years, the City, pursuant to Section 218.39(1)(b) or (1)(g), Florida Statutes, was required to provide for an annual financial audit for that fiscal year. However, contrary to Section 218.39, Florida Statutes, the City has not filed a financial audit for the 2002-2003 fiscal year with us. Accordingly, in a letter dated January 18, 2005, as required by Section 11.45(7)(a), Florida Statutes, we notified the Joint Legislative Auditing Committee of the City's failure to comply with the audit report requirements.

Due to the untimely filing of these annual financial reports, the Florida Department of Revenue (FDOR), as directed by the Legislative Auditing Committee, did not make distributions to the City totaling $6,384 (consisting of $5,144 in municipal revenue sharing and $1,240 in communications services taxes) from September 2002 through December 2004. According to the FDOR, although the City has now complied and filed its annual financial reports, the City will not be entitled to receive $4,192 of the $6,384 withheld. Further, because of the City's failure to file its 2003 audit report, as discussed above, receipt of future entitlements could be in jeopardy.

Recommendation: The City should ensure that all required audits and annual financial reports are completed, and that copies of audit reports are filed with us, and other appropriate entities, within statutorily mandated time frames.

Mayor's Response and Auditor Clarification

The Mayor, in response to this finding, indicated that the City's financial obligations fall significantly short of the audit threshold. However, there is no apparent basis for this statement because, as indicated in the finding, the 2002-03 fiscal year expenditures reported by the City (whether including or excluding the LLC's expenditures) exceeded the audit threshold established by Section 218.39, Florida Statutes.

The Mayor also stated that there is no foundation for the consolidation of the LLC's operations with the City's operations for the purpose of determining whether the audit threshold was met. However, as previously discussed in our clarification of the Mayor's response for finding No. 1, the City has 100 percent ownership of the LLC and, by virtue of its ability to remove LLC managers at will, has control over the LLC. Therefore, in accordance with generally accepted accounting principles, the LLC's financial transactions are required to be blended with those of the City for financial reporting purposes.

Cash

Finding No. 6: State-Distributed Funds

The City failed to deposit in its accounts State warrants totaling $3,713 issued to the City by the Florida Department of Revenue (FDOR) from September 2001 through March 2003 for the City's share of municipal revenue sharing and communication services taxes. State warrants are canceled if not presented for payment within one year after the last day of the month in which they were originally issued. Funds represented by a warrant so canceled are presumed abandoned by the payee and are reported and remitted to the Florida Department of Financial Services (FDFS) as unclaimed property pursuant to Section 717.117, Florida Statutes. Such funds may be reclaimed by the payee through application to the FDFS. For several of the State warrants issued to the City that had been canceled, totaling $3,134, the City made application to the FDFS in December 2003, and the City has since recovered this amount from the FDFS. However, the City did not make application for, and has not recovered, the remaining $579 of cancelled State warrants. In response to our inquiry, we were advised that the City did not apply for the remaining cancelled warrants because it was unaware of the additional warrants totaling $579 that it was entitled to reclaim.

Wire deposits of revenue sharing and other State-distributed funds, in lieu of other payment options offered by the FDFS are available to municipalities upon request. Receipt of funds via electronic funds transfer (EFT) eliminates the need to physically deposit the warrants into the City's accounts.

Recommendation: The City should contact the FDFS to recover the remaining $579 in State warrants that have been canceled due to failure of the City to present them for payment. To ensure that State-distributed funds are actually deposited into City accounts and are made available to the City as soon as possible, the City should consider contacting the FDOR to request receipt of State funds through EFT.

Finding No. 7: Bank Reconciliations

An essential element of control over assets entrusted to a governmental organization is the periodic comparison of such assets actually determined to be on hand with the recorded accountability for the assets. Because of the susceptibility of cash to loss, this is particularly important for cash on deposit with banking institutions. Accountability for such deposits is accomplished by the preparation of bank reconciliations as soon as possible after the receipt of monthly bank statements. In the event of a loss of cash, failure to reconcile bank accounts to the accounting records could result in a failure to detect and recover the loss.

The account ledger balances were maintained and reconciled to bank account balances on a periodic basis. Our review of nine bank statements and reconciliations each for the LLC Operating and the LLC Merchant bank accounts, disclosed the following:

- Six Operating and six Merchant bank account statements were reconciled from 92 to 143 days after the bank statement date.
- None of the nine bank reconciliations for each account included the initials of the preparer and there was no indication that the reconciliations were reviewed by supervisory personnel.

The lack of timely bank reconciliations increases the risk that errors or irregularities could occur without being promptly detected, and impairs the ability to manage cash flow.

Recommendation: The City should enhance controls to provide for sufficient monitoring of available cash on deposit and timely reconciliation of bank accounts. Additionally, bank reconciliations should be signed and dated by the preparer and appropriate supervisory personnel.

Fixed Assets

Finding No. 8: Fixed Assets Records

According to the City and LLC's unaudited financial statements, fixed assets as of September 30, 2003, totaled approximately $170,000, all but $315 of which was reported for the LLC. To ensure proper accountability and safeguarding of fixed assets, the City Commission should maintain an adequate record of, and properly identify, each property item. Our audit tests disclosed the following deficiencies relating to administration of property records:

- **Control Accounts.** General ledger control accounts were not established for fixed assets. Control accounts are summary accounts intended to provide a basis for accountability for reported fixed assets. Entries to control accounts should be posted simultaneously with entries to the subsidiary records.
- **Lack of Necessary Information in the Property Records.** The subsidiary records generally did not disclose all of the information necessary to properly identify and evidence the establishment of

accountability for tangible personal property items. Missing information included name of manufacturer; model number; serial number; method of acquisition and, for purchased items, the vendor and check number; the dollar amount paid for the items; the custodian with assigned responsibility for the item; and method of disposition, if applicable.

The deficiencies noted above weaken control over fixed assets, and increase the possibility that errors or loss of property could occur and not be detected in a timely manner.

Recommendation: The City should establish general ledger control accounts for fixed assets and ensure the proper recording of all assets, including asset descriptions, and acquisition and disposal information in the subsidiary records.

Restricted Resources

Finding No. 9: Accountability for Restricted Resources

For the period October 1, 2002, through July 31, 2004, the City maintained a separate bank account titled Federal Revenue Sharing and accounted for moneys held in the account in a special revenue fund. During that period, there were no disbursements of these funds. In 2004, moneys remaining in the account, which totaled $2,480 after payment of bank charges, were transferred to the City's General Fund bank account. The City did not maintain separate accountability for subsequent disbursements of these moneys from the General Fund bank account. Although requested, we were not provided with documentation evidencing the original source, and the nature, of these moneys. As such, neither we, nor the City, could determine whether any restrictions had been placed on the use of these moneys. In the absence of documentation identifying the source of these moneys and corresponding expenditure restrictions placed thereon, if any, the City cannot be assured that disbursements of these moneys were for allowable purposes.

Recommendation: The City should communicate with the appropriate Federal agency to determine what restrictions, if any, exist regarding disbursements of these moneys. The City should ensure that the moneys are used for their intended purpose, as appropriate.

Finding No. 10: Loan Proceeds

As discussed in finding No. 1, the LLC was donated to the City effective July 31, 2003. Subsequently, the LLC received two $25,000 loans. The first loan was received on November 28, 2003, and the second loan was received on January 22, 2004, only 119 and 174 days, respectively, after the City accepted the donation of the LLC. According to the Mayor/General Manager, the loans, of which $15,000 had been paid off as of March 2005, were intended to remedy an operating cash shortage.

The loans were not reduced to writing in the form of documented loan notes setting forth the repayment schedules, interest rates, if any, and other provisions generally found in similar business loans. In response to our inquiry, the Mayor/General Manager stated that the loans were provided by an individual that requested to remain anonymous and there are no interest requirements or required repayment schedules. However, we were not provided documentation to substantiate these assertions. As such, we could not conclusively determine the nature of the loans, the amount of loans actually received, any restrictions as to the use of the loan proceeds, and whether there were any loan terms with which the LLC had not complied, including scheduled repayments.

Recommendation: The City should ensure that all loans to the City and LLC are reduced to written form with all terms, including the required repayment schedule and interest rate, clearly defined.

Personnel and Payroll Administration

Although, as discussed in finding No. 12, certain individuals may be employees for Federal employment tax purposes, no employees were compensated directly by the City other than perhaps the City Clerk. LLC park personnel are provided through a payroll leasing company, which processes all payroll transactions, including payments to payroll taxing authorities. According to an agreement entered into between the LLC and the payroll leasing company, prior to the donation of the LLC to the City, the LLC is responsible for determining compensation due to leased employees and paying to the leasing company amounts sufficient to cover such compensation, applicable Federal payroll taxes and insurance, and a service fee (1.75 percent of wages) to which the leasing company is entitled for its payroll processing services. An average per payroll of 92 employees were leased from July 31, 2003, to April 30, 2004, and the leasing company processed payroll transactions totaling $669,332 during that period. The leased employees handle all of the park's personnel administration matters such as hiring, establishing wages, time recordkeeping, employee supervision, and the delivery of paychecks. An Employee Handbook, previously implemented by the LLC and most recently revised on February 20, 2003, provided guidance to the leased employees regarding their employment. Our audit disclosed deficiencies in personnel and payroll administration, as discussed below.

Finding No. 11: Payroll Time Keeping Procedures

Certain supervisory and management leased employees are paid through the payroll-by-exception basis. That is, they are considered to have worked the required hours for the payroll period unless otherwise reported to their immediate supervisor. For leased employees not considered supervisory or management, an electronic time management system was utilized. Each leased employee is issued an electronic time card which must be swiped through an electronic time card reader at the beginning and the end of each work day and the system then calculates the amount of hours worked for the day. A timesheet subsequently produced for each leased employee includes the payroll period, the time the employee clocked in and out, the daily hour total, and the total hours worked. Our review of the electronic time management system disclosed the following:

- Pursuant to the Employee Handbook, any corrections on a leased employee's timesheet must be initialed by the employee and the employee's supervisor. In many instances, timesheets were manually overridden without evidence of supervisory approval. Our review of timesheets for the week of October 12, 2003, through October 18, 2003, disclosed 57 of 89 leased employee timesheets for which the clocked hours were manually overridden and 38 of the overrides had no written evidence of supervisory approval and the reasons for the overrides were not always documented. In some instances, the leased employees' timesheets were overridden to reflect the fact that the employees had not taken a thirty-minute lunch and the time was added to the clocked hours. In other instances, leased employees forgot to clock in or clock out, and the timesheet was overridden to provide clock in or clock out times.

- Our review of the October 12, 2003, through October 18, 2003, timesheet for the Maintenance Lead leased employee disclosed that the employee had either clocked in or out for the entire week but never both in the same day. Instead, the time worked and total hours worked each day were manually recorded, including overtime for that week totaling 29.5 hours. These manual corrections to the

employee's timesheet were not initialed by the employee or his supervisor. During the audit period, this employee was paid $7,377 for 477.5 overtime hours without the benefit of supervisory approval. The amount of overtime hours worked by this employee averaged 25 hours for each two-week payroll period.

- Payroll worksheets generated from the time management system, although reviewed, were submitted to the payroll leasing company for the preparation of payroll checks without any evidence of supervisory approval.

Manual overrides to the electronic time management system, coupled with the absence of documented supervisory reviews of leased employee timesheets and payroll worksheets, compromises the effectiveness of the electronic time management system as a time keeping control and could result in unauthorized payroll transactions occurring without timely detection.

Recommendation: The City should require documentation of the supervisory review of all time cards or timesheets and other payroll-related documents. In addition, manual overrides to the electronic time management system should be kept to a minimum; however, in the event that such overrides become necessary, supervisory review and approval of all such manual overrides should be documented, including the reason for each manual override.

Finding No. 12: Compensation of Selected Individuals

To determine how to treat compensation to an individual, a determination must be made as to whether the individual is an employee or an independent contractor. This distinction is important because there are certain laws that apply when an individual serves in the role of an employee rather than an independent contractor. For example, compensation to independent contractors is not subject to withholding for employment taxes, such as Federal Insurance Contributions Act (FICA) and Medicare taxes.

Elected Officials. In Revenue Ruling 61-21, 1961-1 C.B. 431, the Internal Revenue Service states that "state officials, whether appointed or elected, are considered to be employees of their respective state or instrumentalities and their services are considered as being in the employ thereof." The Internal Revenue Service, in Chapter 3, Federal-State Reference Guide (IRS Publication 963), indicates that because an elected official is responsible to the public and usually can be removed by the public or a superior, the elected official does not have the freedom from supervision that is characteristic of an independent contractor. As such, the Mayor and other City Commission members should be considered employees for the required withholding and payment of employment taxes.

During the audit period, the Mayor and other City Commission members were paid $10 monthly compensation pursuant to the provisions of Section 6 of the City Charter. The compensation was treated as though they were independent contractors and no employment taxes were withheld or paid on their compensation.

Other Individuals. Pursuant to Section 3121(d)(2) of the Internal Revenue Code, employee status, for purposes of FICA employment taxes, must be determined under the usual common law rules applicable in determining the employer-employee relationship. In Revenue Ruling 87-14, 1987-1 C.B. 296, the Internal Revenue Service identified twenty factors to assist in determining whether an individual is an employee under common law rules. Generally, the relationship of employer and employee exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services. Factors to be considered in determining whether an employer/employee relationship exists include (1) whether the employer has the right to require compliance with instructions about when, where, and how the individual is to work; (2) whether the work

performed is frequently recurring although at irregular intervals; (3) whether the employer has the right to set the hours of work of the individual; (4) whether the work is performed on the employer's premises, especially if the work can be done elsewhere; and (5) whether the employer/individual has the right to discharge/terminate the relationship without incurring liability.

Section 29 of the City Charter indicates that the City Commission may appoint a City Clerk who shall be under the direction and control of the City Commission. The Charter also indicates that the City Commission shall set the salary of the City Clerk and can remove the City Clerk by a majority vote. The Charter further describes some of the official duties of the City Clerk such as giving notice of meetings and keeping various City records. The former City Clerk was paid $2,800 and $2,240 for the 2002 and 2003 calendar years, respectively, and the current City Clerk was paid $9,200 for the 2003 calendar year as compensation for carrying out official duties. The compensation of the City Clerks was treated as though they were independent contractors and no employment taxes were withheld or paid on their compensation. Further, although a Form 1099-MISC was filed for the payments to the current City Clerk for 2003, this Form was not filed for the compensation paid to the former City Clerk for the 2002 or 2003 calendar years. Although the Mayor/General Manager indicated that the City Clerk sets her own hours and determines where and when the work will be done, maintenance of City records and recording minutes of City Commission meetings would infer a need to perform work at the City's office/designated meeting place. Additionally, since the City Commission sets the salary and can remove the City Clerk, it appears that it may be appropriate to treat the City Clerk as an employee.

During the audit period, one of the City Commission members was employed as an animal trainer at the LLC park, with responsibility for the performance of daily animal variety shows, for $1,000 per week and, according to the Mayor/General Manager, was provided free park living accommodations to care for animals that also reside on-site (see further discussion in finding No. 13). This individual appears to have met some of the factors that indicate she is an employee, such as when and where the work will be performed as well as the frequency of such work; however, this individual was treated as an independent contractor and no employment taxes were withheld or paid on her compensation. Instead, the weekly payments were reported on Form 1099-MISC for 2003.

During the audit period, the LLC provided free park living accommodations to a deputy sheriff and to one of the City Commission members. According to the Mayor/General Manager, the on-site presence of the deputy sheriff and his patrol car "were a diversion to potential criminal activity." The Mayor/General Manager also indicated that the City Commission member serves as a "security spotter" and provides a presence of someone, for security purposes, in the residential areas of the park during the day while park customers are wandering about. No compensation was reported to the Internal Revenue Service for these individuals as either an employee or independent contractor (see further discussion in finding No. 13).

Pursuant to Section 3509 of the Internal Revenue Code, if any employer fails to deduct and withhold FICA taxes with respect to any employee by reason of treating such employee as not being an employee, the employer is liable for the taxes. As a result of classifying the individuals noted above as independent contractors, the City or LLC may be liable for unpaid employment taxes.

Recommendation: The City should contact the Internal Revenue Service to determine how the compensation to the City Clerk, animal trainer, deputy sheriff, and City Commissioner should be treated and what corrective actions, if any, should be taken regarding unpaid employment taxes. Additionally, the members of the City Commission, and those individuals determined to be employees, should be treated as employees rather than independent contractors and appropriate employment taxes should be withheld and paid on their compensation.

Finding No. 13: Fringe Benefits

Pursuant to United States Treasury Regulations, Section 1.61-21(a)(3), a fringe benefit provided to any person in connection with the performance of services by that person is treated as compensation for such services. Fringe benefits are taxable unless specifically excluded by a provision of the Internal Revenue Code. Examples of excluded benefits are education assistance, group-term life insurance coverage, and working condition fringes. As discussed below, our review of payroll and other records disclosed instances in which the value of fringe benefits may have been improperly excluded from employees' Forms W-2, Wage and Tax Statements or from independent contractors' Forms 1099-MISC.

United States Treasury Regulations, Section 1.119-1(b) provides that the value of lodging furnished by an employer to an employee may be excluded from the employee's taxable income if: (1) it is furnished on the employer's premises; (2) it is furnished for the convenience of the employer; and (3) the employee must accept the lodging as a condition of employment. During the audit period, the on-site living accommodations were provided to certain individuals as follows:

- The LLC park's General Manager and Marketing Manager were provided separate on-site park living accommodations at no cost to these employees. The value of the living accommodations was not determined, of record, and was not included as gross income in the employees' 2003 calendar year Forms W-2. In response to our further inquiry, the Mayor/General Manager stated that it has been common practice, but not a requirement, that the she live on the property to be available for any situations that may arise, and that the Marketing Manager lives on the property due to an oral agreement with a former General Manager. Since living on-site is apparently not a condition of employment, the value of on-site living accommodations should have been included in gross income in these employees' Forms W-2 for the 2003 calendar year.

- A deputy sheriff and two City Commission members, one of who was employed as an animal trainer and one who reportedly provided security for residential areas of the park, were provided on-site park living accommodations at no cost. The animal trainer was treated as an independent contractor, but the value of the on-site lodging was not reported as the individual's Form 1099-MISC for the 2003 calendar year. Nor was the value of the on-site lodging reported as compensation to the Internal Revenue Service (IRS) for the deputy sheriff or other City Commission member as either an employee or independent contractor. As discussed in finding No. 12, there is a question as to whether these individuals should be treated as independent contractors or employees. If they are determined to be employees under United States Treasury Regulations and the IRS Code, and required, as a condition of employment, to live on-site for the convenience of the LLC park's operations, then the value of the living accommodations would not be includable as compensation reportable to the IRS. However, if they are determined to be independent contractors, then the value of on-site living accommodations should be included as compensation and reported to the IRS on Forms 1099-MISC.

Recommendation: The City should contact the Internal Revenue Service to determine the extent to which the above-noted fringe benefits should be included in employee Forms W-2 or independent contractors' Forms 1099-MISC, and determine what corrective actions, if any, should be taken regarding unreported amounts.

Procurement of Goods and Services

The authority for City officials to expend moneys is set forth in various provisions of general or special law and in ordinances enacted by the City Commission. Expenditures of public funds must, to qualify as authorized expenditures, be shown to be authorized by applicable law or ordinance; reasonable in the circumstances and necessary to the accomplishment of authorized purposes of the governmental unit; and in pursuit of a public, rather than a private, purpose. These limitations require City officials seeking to expend public funds to identify the authority relied upon for the contemplated expenditure and to adequately describe how the expenditure will further an authorized public purpose.

The documentation of an expenditure, in sufficient detail to establish the authorized public purpose served and how that particular expenditure serves to further the identified public purpose, should be present at the point in time when the voucher is presented for payment of funds. Unless such documentation is present, the request for payment should be denied. To provide documented assurances that expenditures of City funds are for authorized public purposes, the City Commission is responsible for establishing and maintaining controls, including the adoption of sound accounting practices that will provide for the proper recording, processing, summarizing, and reporting of financial data. Because the City has 100 percent ownership of the LLC, and given the potential impact that the LLC's operations may have on the City's resources as discussed in finding No. 1, the City Commission should ensure that LLC resources are expended only for reasonable and necessary purposes.

Our detailed findings and recommendations concerning the public purpose for particular expenditures and the adequacy of documentation to demonstrate such public purpose are presented under appropriate subheadings below.

Finding No. 14: Unauthorized Expenditures

The Attorney General has indicated on numerous occasions that documentation of an expenditure must be in sufficient detail to demonstrate to the postauditor and the public the authorized public purpose served by such expenditure. Our audit disclosed expenditures totaling $3,348 for which the City's records did not clearly demonstrate the public purpose served. Specifically, we noted expenditures of: $723 for Christmas ornaments; $125 for Christmas lights; and $2,500 for artificial snow. In response to our inquiry, the Mayor/General Manager stated that these expenditures were related to the City's Christmas tree lighting event and a multi-day event for children to play in the snow, and for the City's share of expenses of a Holiday Festival that has been jointly sponsored by the City and LLC for many years. The City should limit its expenditures to those that are essential to carrying out the City's responsibility to conduct municipal government, perform municipal functions, and render municipal services consistent with Article VIII, Section 2.(b) of the State Constitution, Section 166.021(1), Florida Statutes, and the City Charter. This is particularly important in view of the concerns regarding the City's financial condition as discussed in finding No.1, including an operating cash shortage that has contributed to the City's inability to pay legal fees. It was not apparent, of record, how these expenditures were necessary for the health and welfare of the City's citizenry, including citizens operating businesses within City limits, or were otherwise necessary to carry out the City' authorized municipal functions.

Recommendation: The City should ensure and document in its public records that expenditures serve a public purpose, are reasonable, and necessarily benefit the City.

Finding No. 15: Disbursement Processing

Controls should be established that provide assurance that the process of acquiring goods or services is effectively and consistently administered, and that expenditures of funds are for authorized purposes. Our tests of expenditures disclosed the following deficiencies in disbursement processing procedures that may limit the City's ability to ensure that goods and services are received in the quantity and quality contemplated by management's authorization:

- Purchasing practices related to the LLC park operations did not include the use of purchase orders unless a vendor requested one. Purchase orders serve to document management's authorizations to acquire goods and services, and the specifications and prices of the goods and services ordered, and provide a basis for controlling the use of appropriated resources through encumbrances, and authorize vendors to provide goods and services to the ordering agency.
- The City did not begin using purchase orders for other operations until September 2003. Our review of purchase orders used subsequent to that date disclosed that none of the purchase orders issued were signed by the Mayor although the purchase order form requires the Mayor's signature to demonstrate approval.
- Our tests of disbursements disclosed the following instances in which there was a lack of vendor invoices, receipts, or other appropriate supporting documentation for payments evidencing that goods or services had been received for which payment was made:
    - Payments totaling $7,849 from the City's General Tax Fund bank account for electricity service, advertising, telephone service, maintenance service, organization dues, and a payment to the former City Clerk; and
    - Payments totaling $6,526 from the LLC Operating or Merchant bank accounts for maintenance service, notary services, consulting fees, Halloween supplies, telephone system purchase, and the purchase of a boat. In response to our inquiry, we were provided supporting documentation for the purchases of telephone system and boat, which totaled $3,885.

The absence of adequate supporting documentation at the time of payment, including approved purchase orders and supporting invoices, receipts, or other appropriate supporting documentation, increases the risk of payment for unsubstantiated, improper, or unnecessary expenditures.

Recommendation: The City should ensure that written purchase orders are used to document the approval of purchases prior to incurring an obligation for payment. In addition, the City should ensure that appropriate supporting documentation, such as vendor invoices or receipts, is maintained for all payments made.

Finding No. 16: Contractual Services

Controls should be established that provide assurance that the process of acquiring contractual services is effectively and consistently administered. As a matter of good business practice, procurement of services should be done using a competitive selection process to provide an effective means of equitably procuring the best quality services at the lowest possible cost. In addition, contractual arrangements for services should be evidenced by written agreements embodying all provisions and conditions of the procurement of such services. The use of a formal written contract protects the interests, and identifies the responsibilities, of both parties; defines the services to be performed; and

provides a basis for payment. Further, to ensure that contractors comply with applicable terms and conditions of the contract and that the contractor's performance is effective in accomplishing the objectives established in the contract, effective monitoring procedures should be established.

As discussed in finding No. 3, the City had not established purchasing policies and procedures. Purchasing policies and procedures normally provide the appropriate personnel guidance in requiring competitive bidding for purchases exceeding a specified dollar amount and for entering into written agreements for various services. A purchasing policy also typically provides that competitive bids normally will be solicited by advertisement in a local or area newspaper, or, if newspaper advertising is not feasible, by direct mailings, posted notices, or other means of advertisement, and requires approval by the governing body for the awarding of bids.

During the audit period, expenses incurred for contractual services totaled $253,780. Such services included general legal services provided by the City Attorney ($20,000); legal services for the City Commissioners in connection with an ethics commission hearing ($3,704); legal services relating to a utility system condemnation proceeding ($63,203); renovation, remodeling, and contractual repair services ($116,738); medical services for the supervision of emergency medical technicians employed for the LLC park operations ($4,500); public relation services ($8,635); and the services of an animal trainer who was responsible for the performance of daily animal variety shows and caring for the animals ($37,000). Our review of procedures for procuring various types of contractual services disclosed the following control deficiencies or noncompliance with good business practices:

- **Competitive Selection.** With the exception of the legal services relating to the ethics commission hearing, each of the above amounts involved a single contractor. A competitive selection process was not used to procure contractual services. As such, there was limited assurance that contractual services were obtained at the lowest cost consistent with acceptable quality and performance. In addition, a competitive selection process would have demonstrated that the selection of contractors was conducted fairly and without bias. For example, the contractor selected to provide renovation, remodeling, and contractual repair services ($116,738) is the husband of the LLC park's Finance Manager. The lack of a competitive selection process in selecting this contractor could raise questions of favoritism, regardless of the quality of the contractor's work.

- **Written Agreements.** With the exception of the medical services contractor, payments for contractual services were made without benefit of written agreements signed by City or LLC park officials or employees and the contractor. In addition, we noted that the invoice supporting a $20,000 payment to the City Attorney in March 2004 did not contain the number of hours or the details of any out-of-pocket expenses that may have been included. Absent written agreements specifying the nature of services to be performed and the amount of compensation to be provided, and adequately detailed invoices, there was limited assurance that contractors were properly compensated and that services for which payments were made were received.

Recommendation: The City should establish and adopt written policies and procedures that address the purchase of goods and contractual services. The City, as a matter of good business practice, should use a competitive selection process to acquire contractual services and enter into written agreements with selected contractors to document the nature of services to be performed and the amount of compensation to be provided. In addition, the City should obtain adequate invoices for all services rendered.

Mayor's Response and Auditor Clarification

The Mayor, in response to this finding, indicated that the cost of services related to renovation, remodeling, and repair services are substantially less than the market for such services. However, we were not provided documentation supporting this assertion, nor is it apparent how this could have been determined without use of a competitive selection process.

Communications Expenses

Finding No. 17: Cellular Telephone Usage

According to City records, cellular telephone service charges totaled $1,190 during the period October 1, 2002, through July 31, 2004, for a cellular telephone used by the City Clerk, and totaled $3,828 during the period August 1, 2003, through April 30, 2004, for cellular telephones used by three leased LLC park employees. Policies and procedures relating to cellular telephone usage had not been established, which may have contributed to the following deficiencies:

- The cellular telephone users were not required to sign written agreements specifying acceptable uses of the cellular telephones.
- The City reimbursed the City Clerk for the cost of the City Clerk's personal cellular telephone. Such reimbursements were made based on bills submitted by the cellular telephone vendor that did not provide details as to the times and dates of the calls, or the telephone numbers called or from which calls were received. Absent such documentation, there was no assurance that the City Clerk was reimbursed only for calls related to authorized City purposes. In response to our inquiry, the Mayor/General Manager indicated that the City reimbursed the City Clerk for the cost of her personal cellular telephone because the City Clerk was expected to be available and on-call 24 hours a day; however, given the nature of the City Clerk's responsibilities, it was not apparent why the City Clerk needed to be available on a 24-hour basis.
- Payments for the leased park employees' cellular telephone usage were made based on bills submitted by the cellular telephone vendor that did not provide, for all calls made, details as to the times and dates of the calls, or the telephone numbers called or from which calls were received (such information was only provided for calls that resulted in charges in excess of the basic monthly charge for each employee). Absent such documentation, there was no assurance that calls made by the leased employees were only for authorized purposes.

Recommendation: The City should implement policies and procedures relating to cellular telephone usage and require cellular telephone users to sign written agreements specifying acceptable uses of the cellular telephones. The City should also cease reimbursing the City Clerk for calls made using her personal cellular telephone except to the extent that she can demonstrate that such calls were for authorized City purposes, and should take appropriate action to recover from the City Clerk the amount paid for calls not related to City business. For leased employees, the City should request that the cellular telephone vendor provide detailed billings and implement appropriate controls to ensure that cellular telephone usage is for authorized purposes.

Mayor's Response and Auditor Clarification

The Mayor, in response to this finding, indicated that the City Clerk was unavailable to perform the City Clerk's duties during "normal working hours." However, the Mayor did not provide examples of situations whereby the City needed to quickly contact the City Clerk because of an urgent and immediate need for the City Clerk's services.

Other Matters

Finding No. 18: City Hall Rental

The City rented office space from the LLC to use as City Hall. In response to our inquiry, we were advised that there was no written agreement between the City and the LLC setting forth the lease terms; however, the Mayor/General Manager advised us that the rent was $350 per month for 120 square feet of office space. At its September 2002 Commission meeting, prior to the donation of the LLC to the City, City Commissioners approved the purchase of a $6,400 lawn mower, to be used by both the City and LLC for grounds maintenance, with the provision that the City and LLC would each be responsible for $3,200 of the cost. According to the minutes of the meeting, the LLC was to contribute its share of the cost by waiving the City's $350 per month rental fee until the $3,200 balance was paid. The City made no rent payments for the period September 2002 through December 2003; however, on January 8, 2004, the City paid $5,950 to the LLC for 17 months rent to include the months of September 2002 through January 2004. In response to our inquiry, we were advised that the untimely rent payments occurred because of an administrative oversight; however, as a result of the City's $5,950 payment to the LLC, the LLC still owed the City for its $3,200 share of the lawn mower. Subsequent to our inquiry, the LLC, beginning in July 2004, began waiving the City's $350 per month rental fee in payment of the $3,200 owed to the City. Through February 2005, the LLC had waived $2,800 of the amount owed.

Recommendation: The City should continue waiver of the rental fee until the LLC has fully repaid its share of the lawn mower.

Finding No. 19: Commission Meetings

Section 14 of the City Charter provides that all regular meetings of the City Commission shall be fixed by ordinance but there shall not be less than one regular meeting each month. During the audit period, the City Commission scheduled one regular meeting per month and several special meetings.

Contrary to Section 14 of the City Charter, the City Commission did not, of record, enact an ordinance fixing regular meetings, and regular Commission meetings were not held monthly. Of the 19 regular monthly meetings scheduled during the period, 12 were canceled. According to City records, the 3 scheduled meetings for the months of February through April 2003 were cancelled due to the lack of a quorum; however, City records did not document why at least two Commissioners could not meet at any time during this 89-day period. City records did not indicate the reasons for the remaining 9 cancelled meetings, which included 7 consecutive cancelled regular meetings for the months of October 2003 through April 2004. It is important that the City document in its records reasons for meeting cancellations and reasons for Commissioners' absences. For example, if four consecutive meetings were cancelled due to absences of a Commissioner that had not been excused by resolutions of the City Commission, then that Commissioner's seat would be considered vacated pursuant to Section 5 of the City Charter.

Recommendation: The City Commission should enact an ordinance providing for regular meetings and should ensure that the meetings are held at least once a month as required by Section 14 of the City Charter. The City should also ensure that the reasons for meeting cancellations and Commissioner's absences are documented in its records.

Mayor's Response and Auditor Clarification

The Mayor, in response to this finding, indicated that the City Commission had adopted a resolution establishing a schedule of Commission meetings, and that such resolution has not been readopted annually because it continues in place indefinitely. However, the

Mayor did not provide us a copy of such resolution, nor were we provided a copy of such resolution during the course of our audit. Further, as indicated in the finding, Section 14 of the City Charter requires that regular City Commission meetings be fixed by ordinance. Ordinances, unlike resolutions, require the City to comply with the provisions of Section 166.041(3), Florida Statutes.

Finding No. 20: Statements of Financial Interests

Pursuant to Section 112.3145(2), Florida Statutes, each City Commissioner is required to annually file a statement of financial interests with the supervisor of elections of the county in which the City Commissioner permanently resides. The statement includes disclosure of certain financial information such as sources of income other than public salary, location and description of real property owned, and liabilities exceeding net worth. Section 112.3145(6), Florida Statutes, requires that by May 1 of each year, the Commission on Ethics (Commission) prepare a current list of the names and addresses of, and the offices or positions held by, persons required to file the statement of financial interests. To assist the Commission in compiling the list, units of government must provide to the Commission the necessary information.

Contrary to Section 112.3145(2), Florida Statutes, two of the City Commissioners have failed to annually file statements of financial interests (only the Mayor has done so). Additionally, the City has not provided the Commission with updated information as to individuals serving on the City Commission for the past two years, which has inhibited the Commission's efforts to compile an accurate and up to date list of individuals required to file the statement of financial interests pursuant to Section 112.3145(6), Florida Statutes.

Public officers are agents of the people and hold their positions for the benefit of the public. They are bound to perform efficiently and faithfully their duties under Federal, State, and local laws. Compliance with the requirements of Section 112.3145, Florida Statutes, and cooperation with other governmental entities, is necessary to demonstrate that public officers are acting in the public's best interest.

Recommendation: The City should notify the Commission as to the names and addresses of the current members of the City Commission. Further, City Commissioners that have failed to submit statements of financial interests should immediately file the required statements for the years since they took office and should ensure that annual statements are filed thereafter as required by law.

SCOPE AND OBJECTIVES

The Auditor General is authorized by State law to perform independent audits of governmental entities in Florida. Pursuant to Section 11.45, Florida Statutes, the Legislative Auditing Committee, at its April 12, 2004, meeting, directed us to conduct an audit of the City of Weeki Wachee. The scope of this audit included transactions during the period October 1, 2002, through April 30, 2004, and selected transactions taken prior and subsequent thereto, to determine whether such transactions were executed, both in manner and substance, in accordance with governing provisions of laws, ordinances, and other guidelines.

On July 31, 2003, the City acquired the Weeki Wachee Springs, LLC (LLC), a Florida limited liability company that owns and operates the Weeki Wachee Springs tourist attraction and recreational park. Because the City has 100 percent ownership (and control) of the LLC, the LLC's financial transactions, in accordance with generally accepted accounting principles, are required to be blended with those of the City for financial reporting purposes. Further, as discussed in finding No. 1, the LLC's operations impact the City resources. As such, the accounts, records, and transactions of the LLC were included in the scope of our audit. The LLC remains a separate legal entity, and the City maintains separate records for the City and the LLC. Since the transactions and records are maintained separately, we evaluated actions and transactions of each entity as though they were separate, but have directed our findings and recommendations to the City Commission since it has control over the operations of both the City and the LLC.

Our audit objectives for the scope of this audit were to:

- Document our understanding of the City's management controls relevant to the areas 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.
- Evaluate management's performance in administering its assigned responsibilities in accordance with applicable laws, ordinances, and other guidelines.
- Determine the extent to which the City's management controls promoted and encouraged the achievement of management's objectives in the categories of compliance with applicable laws, ordinances, and other guidelines; the economic and efficient operation of the City; the reliability of financial records and reports; and the safeguarding of assets.

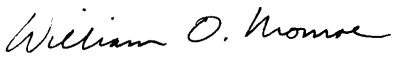
METHODOLOGY

The methodology used to develop the findings in this report included the examination of pertinent City records in connection with the application of procedures required by generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit of the City of Weeki Wachee, Florida, for the period October 1, 2002, through April 30, 2004, and selected actions taken prior and subsequent thereto.

Respectfully submitted,



William O. Monroe, CPA
Auditor General

AUDITEE RESPONSE

The Mayor's response to our findings and recommendations is included in this report as Exhibit B.

EXHIBIT – A
BACKGROUND

Authority

The City was established as Weeki Wachee by Chapter 65-2378, Laws of Florida. The City is located in Hernando County, Florida. As provided in Article VIII, Section 2.(b) of the State Constitution, and Section 166.021(1), Florida Statutes, the City is empowered to conduct municipal government, perform municipal functions, and render municipal services.

In 1973, the Florida Legislature enacted the "Municipal Home Rule Powers Act" (Chapter 73-129, Laws of Florida). This Act established Section 166.021, Florida Statutes, which extended to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the Constitution of the State of Florida, general or special law, or county charter, and removed any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those expressly prohibited. The "Municipal Home Rule Powers Act" also provided that all then existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality, except as otherwise provided in Section 166.021(4), Florida Statutes, were to become ordinances of the municipality on the effective date of the Act (October 1, 1973). Procedures for amending the City Charter and establishing new ordinances are set forth in Sections 166.031 and 166.041, Florida Statutes, respectively, and Sections 17 through 23 of Chapter 65-2378, Laws of Florida, as amended by the City.

The City Charter, as amended by various ordinances, establishes the general powers and duties of the City Commission, including the Mayor; the duties of the City Clerk; and administrative requirements, procedures, and guidelines for various City activities and functions.

Organizational Structure

As provided by Article VIII, Section 2.(b) of the State Constitution, the City is governed by an elective legislative body. Section 4 of Chapter 65-2378, Laws of Florida, as amended by the City, stipulates that the City's governing body shall be composed of three commissioners elected at large for a term of four years. Section 7 of Chapter 65-2378, Laws of Florida, as amended by the City, provides that the Mayor shall be elected from among the City Commissioners. The Mayor shall preside at all City Commission meetings and, when directed to do so by the City Commission, execute all instruments to which the City is a party unless otherwise provided by the City Charter or by ordinance. The Mayor shall be the head of the City government for all ceremonial purposes.

The City Commission serving during the period October 1, 2002, through April 30, 2004, were:

Robyn Anderson, City Commission Member, Mayor
Julie Rivers, City Commission Member
Angela Weiss, City Commission Member

EXHIBIT – A (CONTINUED)
BACKGROUND

Related Audits

Our audit did not extend to an examination of the City's financial statements. The City's financial statements for the fiscal year ended September 30, 2003, are required to be audited by a certified public accounting firm, and the audit report is required to be filed as a public record with the City.

Exhibit B, Part 1