REPORT NO. 2009-026
OCTOBER 2008

CITY OF CAPE CORAL, FLORIDA

Follow-up on Operational Audit

Report No. 2006-182

STATE OF FLORIDA
AUDITOR GENERAL
DAVID W. MARTIN, CPA

MAYOR, COUNCIL MEMBERS, AND CITY MANAGER

City of Cape Coral Mayor, Council Members, and City Manager who served during the period June 2006 through March 2008 are listed below:

Eric Feichthaler, Mayor

Council Members	District No.
James Jeffers to 8-31-06 (1) Thomas Hair from 9-25-06 to 11-19-07 James Burch from 11-19 -07	1
Richard L. Stevens to 11-19-07 Peter Brandt from 11-19-07	2
Alan J. Boyd, Jr., to 11-19-07 William Deile from 11-19-07	3
Delores Bertolini	4
Alex LePera to 11-19-07 Eric D. Grill from 11-19-07	5
Timothy Day	6
Mickey Rosado to 1-30-07 (2) Chris Berardi from 2-20-07 to 11-19-07 Dr. Derrick L. Donnell from 11-19-07	7

Terrance Stewart, City Manager

Notes:

(1) Position was vacant from 9-1-06 to 9-24-06
(2) Position was vacant from 1-31-07 to 2-19-07

The project team leader was Debbie S. Jabaley, CPA, and the project 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).

CITY OF CAPE CORAL, FLORIDA

Follow-up on Operational Audit Report No. 2006-182

SUMMARY

This report provides the results of our follow-up procedures for each of the findings included in our report No. 2006-182 and the City Manager's response thereto. Our follow-up procedures to determine the City of Cape Coral's (City) progress in addressing the 24 findings and recommendations contained in our report No. 2006-182 disclosed that, as of the completion of our follow-up procedures in March 2008, the City's actions had adequately corrected 12 findings, partially corrected 7 findings, had taken no corrective action regarding 4 findings, and had no occasion to take corrective action on 1 finding.

BACKGROUND

The Auditor General is authorized by State law to perform audits of governmental entities in Florida. As directed by the Legislative Auditing Committee, we conducted an operational audit of the City of Cape Coral, Florida, for the period October 1, 2000, through March 31, 2005, and selected actions taken prior and subsequent thereto. Pursuant to Section 11.45(2)(l), Florida Statutes, the Auditor General, no later than 18 months after the release of report No. 2006-182, must perform such appropriate follow-up procedures as deemed necessary to determine the City of Cape Coral's progress in addressing the findings and recommendations contained within that report.

STATUS OF REPORT NO. 2006-182 FINDINGS

Finding No. 1: General Accounting Records

Previously reported

The City had not maintained its accounting records on a current basis, or periodically reviewed them for completeness and accuracy.

We recommended that the City ensure that its accounting records are maintained on a current basis and are periodically reviewed for completeness and accuracy.

Results of follow-up procedures

The City's actions have adequately corrected this finding. As of February 20, 2008, the City had not closed the 2006-07 fiscal year due to possible adjustments from its financial statement auditors and, therefore, had not produced trial balances for the 2007-08 fiscal year. However, as a compensating control, City accountants reviewed account balances recorded in the accounting system monthly to ensure accuracy and completeness of the information while awaiting for the trial balances to be produced. On February 29, 2008, the City provided us with trial balances for each month from the beginning of the 2007-08 fiscal year through January 2008. In reviewing the trial balances, we found that the record keeping deficiencies discussed in our report No. 2006-182 had been corrected.

Finding No. 2: Written Policies and Procedures

Previously reported

The City had not established written policies and procedures necessary to ensure the efficient and consistent conduct of some accounting and business-related functions.

We recommended that the City adopt comprehensive written procedures that are consistent with applicable laws, ordinances, and other guidelines. We also recommended that in doing so, the City ensure that the written procedures address the instances of noncompliance and control deficiencies discussed in report No. 2006-182.

Results of follow-up procedures

The City's actions have adequately corrected this finding. In response to our request for all policies adopted subsequent to May 2006 (release date of our report No. 2006-182), we were provided copies of minutes whereby the City Council adopted revised financial management policies for its operating budget and a City debt management policy. Additionally, the City provided us with policies and procedures relating to bank reconciliations, stale-dated checks, tracking contributions in aid of construction fees, billing of fees and services to customers, and allocation of certain costs.

Finding No. 3: Separation of Duties and Safeguarding of Checks

Previously reported

The City had not provided for an adequate separation of duties in certain areas of operation, and had not provided for the proper safeguarding of blank checks.

We recommended that the City reassign the duties relating to returned checks to an employee that does not have access to cash. Additionally, we recommended that the City consider separate close-out procedures for instances in which more than one employee uses the same terminal and cash drawer. Furthermore, we recommended that the City establish procedures to ensure that blank checks are properly safeguarded.

Results of follow-up procedures

The City's actions have adequately corrected this finding. The City established compensating controls for the lack of separation of duties relating to returned checks. While the Cashier Supervisor continued to process returned checks, the Accounting Department initially received and tracked all returned checks, and the Customer Billing Services Department reversed the entries related to returned checks in the accounting system. Also, the Cashier Supervisor and cashiers had separate terminals and cash drawers. Additionally, the City had established adequate procedures and controls over blank checks.

Finding No. 4: Budget Preparation

Previously reported

The City did not consider all available net assets from prior fiscal years in adopting its 2003-04 or 2004-05 fiscal year budgets for the Water and Sewer funds and Stormwater funds, reported separately or combined, contrary to Section 166.241(2), Florida Statutes.

We recommended that the City consider all available net assets from prior fiscal years in the preparation of its budgets as required by Section 166.241(2), Florida Statutes.

Results of follow-up procedures

The City has taken no corrective action on this finding. For the 2006-07 fiscal year budgets for the Water and Sewer and Stormwater funds, the City considered only $16,058,601 of $82,748,652 ending available net assets from the 2005-06 fiscal year.

In his response, the City Manager indicated that the City does not concur with our conclusion that the City has not corrected this finding because the City believes that the initial finding was incorrect. He also

provided excerpts from Chapter 96-324, Laws of Florida, and indicated that the City relies on the phrase that municipalities "may consider carry-over funds when making appropriations" included in the title portion of the law as authority to carry forward only a portion of prior year amounts available. However, the section of law that revised the language in Section 166.241, Florida Statutes, specifically provides that "the amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total appropriations for expenditures and reserves."

Finding No. 5: Budget Overexpenditures

Previously reported

The City reported budget overexpenditures totaling approximately $39 million in 7 of the 27 funds reported as "Water and Sewer" and "Stormwater Utility," contrary to Section 166.241(2), Florida Statutes. Furthermore, budget-to-actual comparisons were provided to the City Council only through the third quarter of the 2003-04 fiscal year.

We recommended that the City ensure that future expenditures not exceed budgetary authority. Additionally, we recommended that budget-to-actual comparisons for all funds budgeted be prepared and submitted to City Council on a frequent basis.

Results of follow-up procedures

The City's actions have partially corrected this finding. The City overexpended budgeted amounts in 4 of its 38 Water and Sewer funds by a total of $89,098,022 and one of its three Stormwater funds by $3,562 for the 2006-07 fiscal year. According to City personnel, the majority of the overexpenditures ($81,586,128) related to unspent encumbrances from the 2005-06 fiscal year that were not re-budgeted in the 2006-07 fiscal year. However, unspent appropriations from prior fiscal years should have been available, and included in the 2006-07 fiscal year budget, to fund the 2006-07 fiscal year expenditures.

Our review disclosed that the City prepared and submitted quarterly budget-to-actual comparisons to the City Council during the 2005-06 and 2006-07 fiscal years.

In his response, the City Manager indicated that the City does not concur with our conclusion that the City only partially corrected this finding. He further stated that the funds in question were capital projects funds and that capital budgets are generally adopted on a life-of-the-project basis. He also indicated that the City's charter states that an appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. However, the 2005-06 fiscal year adopted budgets for these enterprise funds do not indicate that the appropriated expenditures were for capital projects nor do they indicate that the appropriations were intended for multiple years.

Finding No. 6: Bank Reconciliations

Previously reported

The City did not prepare timely and accurate bank reconciliations for the operating account for the two months tested, and supervisory personnel did not adequately review these reconciliations.

We recommended that the City enhance controls to provide for timely and accurate bank reconciliations, timely recording of cash transfers, and thorough review of bank reconciliations by supervisory personnel. Additionally, we recommended that the City ensure that all differences noted on bank reconciliations are appropriately and timely resolved and all journal entries relating thereto are properly prepared, reviewed, and approved.

Results of follow-up procedures

The City's actions have partially corrected this finding. The City's bank reconciliation policy and procedures, implemented in June 2006, stated that bank reconciliations should be completed and reviewed no later than the 15th

calendar day following the month's end. Our review of 38 bank reconciliations for the months of December 2006 and July through December 2007, representing seven bank accounts, disclosed that eight reconciliations had not been dated, so we could not determine when the reconciliations were prepared; and ten reconciliations had been reviewed after the 15th of the following month, ranging from the 18th to the 30th of the following month. Also, our review disclosed that adjustments were timely recorded to the accounting records. Additionally, we noted that two authorized signers on the investment accounts also reviewed the short-term investments reconciliations, resulting in incompatible duties.

In his response, the City Manager indicated that the City does not agree that having two authorized signers on the investment accounts reviewing the short-term investment reconciliations results in incompatible duties. However, the point of our finding is that to achieve a proper segregation of duties, reconciliations should be prepared and reviewed by persons independent of the process.

Finding No. 7: Unclaimed Property

Previously reported

The City failed to timely report and remit unclaimed property to the Florida Department of Financial Services (FDFS), contrary to Chapter 717, Florida Statutes. For amounts totaling $27,480 that were required to be remitted by May 1, 2005, the City sent letters to the payees and indicated that it was the City's intent to void the checks and reissue them to the payees; however, we were unaware of any statutory authority permitting the City to reissue the checks once they had been unpresented for more than one year.

We recommended that the City take appropriate action to report and deliver the $27,480 to the FDFS. Additionally, we recommended that the City enhance controls to ensure that stale-dated checks are timely reported and delivered to the FDFS in future years.

Results of follow-up procedures

The City's actions have adequately corrected this finding. Our review of the City's 2006 and 2007 unclaimed property reports to FDFS disclosed that the City appropriately reported and remitted all amounts due for the current period. Additionally, the unreported amounts totaling $27,480 noted in our report No. 2006-182 were appropriately resolved.

Finding No. 8: Debt Refinancing

Previously reported

The City did not prepare a financial analysis, including a calculation of the economic gain or loss, prior to issuing refunding debt totaling $53 million. In addition, since the purpose of refunding bonds was to change the security for the debt from water and sewer revenues to special assessments, it was not apparent why the City did not pledge special assessments initially.

We recommended that the City utilize a cost-to-benefit analysis, including calculation of economic gain or loss, prior to issuing any future refunding bonds and consider initially pledging revenues that will ultimately be used to pay bonded debt.

Results of follow-up procedures

The City's actions have adequately corrected this finding. The City had pledged revenues, on four new bond issues, that will ultimately be used to repay the new bonded debt. However, since the City had not issued any

refunding debt related to Water and Sewer and Stormwater funds that would require a cost-benefit analysis or calculation of economic gain or loss, there was no opportunity for the City to address part of the finding.

Finding No. 9: Refunding of Special Assessments

Previously reported

The City did not timely refund special assessments in excess of project costs for four completed utility expansion areas.

We recommended that the City timely issue refunds for any future assessments that exceed the final actual cost to ensure that assessments do not exceed the benefits received by the property owners.

Results of follow-up procedures

The City's actions have adequately corrected this finding. The City completed the Southeast 1 utility expansion project on November 1, 2006, and refunded assessments in excess of costs to property owners on December 12, 2006.

Finding No. 10: Determination of Contributions in Aid of Construction (CIAC) Fees

Previously reported

The City did not charge contributions in aid of construction (CIAC) fees based on the actual cost of the utility expansion to the particular CIAC area; therefore, these fees may be subject to challenge by property owners as not being fairly apportioned.

We recommended that the City revise its methodology utilized for determination of CIAC fees to ensure that property owners in CIAC areas are paying only their proportionate share of the actual costs to extend utility services to their properties, including a determination of the costs to fund the unused portion of the system.

Results of follow-up procedures

The City has taken no corrective action on this finding. Although the City updated the CIAC fees for water, wastewater, and irrigation based on square footage, the City had not revised its methodology for determining CIAC fees.

In his response, the City Manager indicated that the City does not concur with our conclusion that the City has not corrected this finding and has asserted, as he did in response to report No. 2006-182, that CIAC fees are service connection fees and are not required to be based upon actual cost of the utility extension to the area, citing the City's broad home rule powers. Assuming that CIAC fees are service connection fees, the validity of the fee must be determined using standards applicable to impact fees. Similar to the special assessment fairly apportioned test, to be valid, impact fees must exhibit a reasonable connection between the expenditure of the fees collected and the benefits accruing to the new development. Under either the special assessment or impact fee test, the City may not collect more fees than it expends for the benefit of the persons subject to the CIAC fee.

Finding No. 11: Collection of CIAC Fees

Previously reported

The City did not have adequate controls in place to ensure that CIAC fees are paid or financed when the development permit is issued.

We recommended that the City implement system controls to prevent the issuance of permits without either collection of the required CIAC fees or execution of a financing agreement. Additionally, we recommended that the City reconcile permits issued within CIAC areas to CIAC fees collected or receivable; collect CIAC fees from property

owners for which permits have been issued, but fees have not been paid; and expedite efforts to update its records for split and combined parcels. Finally, we recommended that the City consider the use of unique identifying codes for specific CIAC areas to assist in the reconciliation of permits issued.

Results of follow-up procedures

The City's actions have partially corrected this finding. Citing limitations in software, City staff indicated that the City did not implement system controls that would prevent issuance of a permit without collection of, or execution of a financing agreement for, CIAC fees. Although the City had not prepared reconciliations for all CIAC areas of CIAC fees paid (or financing agreement executed) to permits issued within CIAC areas, the City made progress in completing 17 such reconciliations, as compared to two, as of June 7, 2005. We also noted that the City placed a lien on certain properties for nonpayment of CIAC fees. The City also updated its records on split and combined parcels, and implemented the use of unique identifying codes in its computer system for CIAC areas.

Our test of nine development permits issued for parcels in CIAC areas disclosed that applicable CIAC fees had not been paid, or a financing agreement executed, for one parcel, for which a development permit was issued on October 4, 2007. Subsequent to our inquiry, the City provided us with a copy of a letter, dated the following day (February 22, 2008), requesting payment of $20,908 for wastewater CIAC fees.

Finding No. 12: North Loop CIAC Project

Previously reported

The City Council approved, by vote, a change in CIAC fees originally established by ordinance, contrary to Section 166.041, Florida Statutes. Further, City staff's actions regarding CIAC and capital expansion fees charged to property owners in the North Loop CIAC area may have been contrary to the City Council's intentions.

We recommended that, should the City Council wish to authorize a change in the CIAC rates in the future, such change should be in the form of an ordinance, and City staff should ensure that City Council actions are implemented as intended. Also, we recommended that the City collect the proper capital expansion fee from any property owners that did not pay the correct fee.

Results of follow-up procedures

The City's actions have adequately corrected this finding. The City adopted Ordinance 179-06 on January 8, 2007, and Ordinance 5-07 on February 5, 2007, effectively changing its CIAC and capital expansion fees. Our test of CIAC and capital expansion fees charged and collected on five properties disclosed no exceptions. Regarding the collection of the additional $17,805 of capital expansion fees noted in our report No. 2006-182, Section 95.11, Florida Statutes, precludes the City from collecting those fees as the statute of limitations has expired.

Finding No. 13: Use of Capital Expansion and CIAC Fees

Previously reported

The City did not always expend capital expansion fees and CIAC fees in accordance with the City's Code of Ordinances.

We recommended that the City review all expenditures of capital expansion and CIAC fees for compliance with the City's Code of Ordinances. Also, we recommended that the moneys inappropriately expended as noted in the finding, along with any others identified by City personnel, be restored to the respective fund(s). Further, we recommended that the City establish controls to ensure that future expenditures of these restricted funds are in accordance with the City's Code of Ordinances.

Results of follow-up procedures

The City has taken no corrective action on this finding. Our expenditure tests disclosed that the City had not spent funds properly for two of ten expenditures tested. The City improperly expended a total of $20,991 from water capital expansion fees for an irrigation project, contrary to Section 2-24.4 of the City's Code of Ordinances, which requires that capital expansion fees collected for the water system can only be spent on expanding the water system. Additionally, the City had not restored the inappropriately expended amounts to the respective funds, as noted in our report No. 2006-182.

In his response to this finding in report No. 2006-182, the City Manager indicated the City's disagreement with our conclusions, in particular the use of water capital expansion fees for funding irrigation improvements prior to the enactment of Ordinance No. 137-04, which established irrigation capital expansion fees. The City Manager asserts that, since Ordinance No. 137-04 was not effective until January 1, 2005, expenditure of water capital expansion fees for the irrigation project was authorized under the previous version of the City's Code. He further states that the $20,991 discussed in our finding above was a carryover of projects previously approved under the previously adopted ordinance. However, Section 2-24.4 A.1. of the City's Code of Ordinances in effect prior and subsequent to January 1, 2005, states, "The monies in the water fee funds shall be used solely for the cost of expanding such system" (i.e., the water system). As to the amounts we determined in report No. 2006-182 to be inappropriately expended, neither the City Manager's position nor our position has changed.

Finding No. 14: Collection of User Fees

Previously reported

The City did not always charge utility users appropriate fees or timely bill users for services rendered.

We recommended that the City Council amend Section 19-19A to require the Financial Services Department to credit or backbill customers, in full, when customers have been overcharged or undercharged, or that the Financial Services Department revise its policy to that effect. Also, we recommended that the City develop procedures, such as reconciliations, to detect instances in which a customer is receiving services but is not billed for such services. Additionally, we recommended that the City ensure that changes to rates or policies directed by City Council are promptly implemented.

Results of follow-up procedures

The City's actions have adequately corrected this finding. Although the City did not amend its ordinance to provide for billing (or crediting) customers that are under (or over) charged, the City provided documentation in response to report No. 2006-182 that City Council approved the backbilling process used by City staff. The City had developed written procedures to detect instances of customers receiving utility services, but not being billed for those services. Our test of eight water and sewer billings related to new connections disclosed no exceptions, and our test of five utility billings disclosed that the City properly calculated billings and appropriately implemented the rate changes adopted by City Council.

Finding No. 15: Allocation of Costs

Previously reported

The City did not always allocate costs for shared administrative expenses from other departments to the Water and Sewer fund and Stormwater fund in a systematic and rational manner. In addition, some costs directly charged from other departments were not supported by documentation to evidence the basis for the direct charge. Specifically, we questioned the methodology used for allocating costs of Financial Services, retiree health care, cashier's office, a construction costs/feasibility study, City Auditor, and City Attorney.

We recommended that the City evaluate the allocation methods used for each type of administrative cost to ensure that costs are allocated in a systematic and rational manner. Additionally, we recommended that, for any costs determined to be overallocated, the City restore such funds to the Water and Sewer fund or the Stormwater fund.

Results of follow-up procedures

The City's actions have partially corrected this finding. We noted that the City changed its cost allocation methodology for allocating the costs of retiree health care premiums and the City Auditor and we agree with the revised bases used for allocating these costs. Although the City Manager, in his response to our report No. 2006-182, agreed that the most appropriate basis of allocation for the City Attorney would be actual hours expended, we noted that the City continued to use the number of full-time employees. Our review of six additional areas of cost allocations of indirect costs to the Water and Sewer fund and the Stormwater fund for the 2006-07 fiscal year disclosed that the City used a systematic and rational method for the allocations. As recommended in our report No. 2006-182, the City was restoring the money, representing overallocated retiree health insurance and the 1999 feasibility study costs, back to the Water and Sewer and Stormwater funds over a six-year period (through the 2010-11 fiscal year) by adjusting the annual cost allocations.

In his response, the City Manager indicated that the City does not concur with our conclusion that the City only partially corrected this finding. He stated that since actual hours expended for the City Attorney's office are not recorded, another reasonable basis was used. Although he indicated that staff has evaluated the cost of maintaining the hours on a time and billing basis and has determined that the cost exceeds the benefit obtained, attorneys typically bill by the hour and it is not clear why the City Auditor's time could be efficiently tracked in this manner but not the City Attorney's time.

Finding No. 16: Unauthorized Expenditures

Previously reported

City records did not clearly document the public purpose for expenditures totaling $131,859.

We recommended that the City ensure and document in its public records that expenditures serve an authorized public purpose, are reasonable, and necessarily benefit the City.

Results of follow-up procedures

The City has taken no corrective action on this finding. Our test of expenditures disclosed that for six of ten expenditures, totaling $11,000, the City had not documented in its public records the public purpose served, which included a helicopter rental and purchases of four recliner rockers, uniforms, and food.

Finding No. 17: Procurement of Contract for Bond Counsel

Previously reported

The City did not select its bond counsel through a competitive process.

We recommended that, upon completion of the current bond counsel contract, the City consider contracting with bond counsel through a competitive process.

Results of follow-up procedures

The City had no occasion to take corrective action on this finding. The City continued to use the same bond counsel as noted in our report No. 2006-182, and the bond counsel contract discussed in that report had an expiration date of January 10, 2008; however, the contract also provided for renewals, which were exercised. The bond counsel contract, including renewals, will expire January 10, 2010.

Finding No. 18: Written Agreements

Previously reported

The City did not have written agreements with several bond professionals and did not execute four contracts with the signatures required under Section 2-148 of the City's Code of Ordinances. Additionally, the City's policies and procedures manual listed required signatures on contracts that were contrary to Section 2-148 of the City's Code of Ordinances.

We recommended that, to provide adequate control of bond issuance costs, the City should require contracts with all bond professionals. Also, we recommended that all contracts be signed in accordance with the established ordinance and the City's policies and procedures manual be updated to comply with established ordinances.

Results of follow-up procedures

The City's actions have partially corrected this finding. Our review of expenditures paid to bond professionals other than bond counsel since May 2006 disclosed that the City had not obtained contracts for 5 of 11 bond professionals used, who were paid a total of $111,850. Also, the Mayor and City Clerk had not signed four of the six contracts, contrary to the City Code of Ordinances in effect prior to July 23, 2007. The Ordinance was amended July 23, 2007, to assign other City officials the responsibility of signing contracts. The City updated its policies and procedures manual to comply with established ordinances.

In his response, the City Manager indicated that the City does not concur with our conclusion that the City only partially corrected this finding and noted that the fees for professional bond services are authorized by the City Council in the Bond Resolution. He further indicated that the Bond Resolution authorizes the costs to be paid from bond proceeds and delegates to him the authority to approve all terms and provisions of the transaction within certain parameters. The point of our finding is not whether the costs for bond professionals were authorized by City Council; rather, that contractual arrangements should be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services. Such a written agreement protects the interests of the City, identifies the responsibilities of both parties, defines the services to be performed, and provides a basis for payment.

Finding No. 19: Contract Monitoring

Previously reported

The City did not properly monitor contracts for services to ensure that contractors performed and were paid in accordance with terms of the contract. Additionally, the City's contracts did not always contain firm due dates for deliverables and the City made progress payments to contractors without receipt of contract deliverables.

We recommended that the City develop contract monitoring procedures to ensure that contractors performed in accordance with the terms of the contract. We also recommended that the City's contracts establish definite due dates for deliverables. Additionally, we recommended that, unless another method for initiating payments is established in a contract, payments not be made to contractors that have not provided the deliverables by the date specified within the contract.

Results of follow-up procedures

The City's actions have partially corrected this finding. Our test of contracts disclosed that one of three contracts included an estimated, rather than a specific, due date. Also, the City made progress payments totaling $37,665 on a $46,710 contract for an irrigation leak detection study; however, the contract did not contain a provision for progress payments, and the payments were not based on receipt of deliverables.

Subsequent to our review, the City provided us with written contract monitoring procedures.

Finding No. 20: Contracts for Utility Expansion

Previously reported

The City did not fully comply with provisions of Sections 287.055 and 255.05, Florida Statutes, in procurement of two contracts for utility expansion projects. Additionally, invoices submitted for payment by the contractors were not always adequately supported. Finally, the City's consultant hired to audit selected work authorizations relating to its utility expansion program included many findings and made several recommendations in its issued report.

We recommended that the City take steps to ensure compliance with Sections 287.055 and 255.05, Florida Statutes. Also, we recommended that the City verify all invoices submitted, and to be submitted, for payment by requesting adequate supporting documentation and, for any amounts overpaid, request a refund from the contractor. Finally, we recommended that the City consider all recommendations suggested by the contracted consultant.

Results of follow-up procedures

The City's actions have adequately corrected this finding. Our review disclosed that the City had not entered into any new utility expansion contracts subsequent to the release of our report No. 2006-182; therefore, the City had no opportunity to address the portion of the finding relating to ensuring that any new utility expansion contract complied with Sections 287.055 and 255.05, Florida Statutes. Additionally, our test of one payment, totaling $2.7 million, to a utility construction contractor disclosed that the contractor provided time sheets to properly support labor hours for which the contractor invoiced the City. Also, we determined that the City had agreed with and implemented 2 of the contracted consultant's 24 recommendations relating to its utility expansion program: adding contract language regarding the right to audit under certain circumstances, and obtaining a truth-in-negotiation certificate from the firm awarded the contract.

Finding No. 21: Unaccounted for Water

Previously reported

Although the City had taken some actions to reduce water loss, unaccounted for water remained in excess of 10 percent (a guideline set by the South Florida Water Management District). Additionally, preliminary data from a water audit obtained by the City indicated several factors contributed to the City's unaccounted for water, including excessive service leaks, inaccurate meters, limited meter replacement, and inconsistencies in the meter size.

We recommended that, while the City was taking some actions to reduce water loss, additional steps should be taken, including replacing rather than repairing dysfunctional meters, accelerating replacement of meters identified as inaccurate, and ensuring that meter registers are standardized to increase accountability and avoid under-billing for water usage. We also recommended that the City adopt a formal leak detection program.

Results of follow-up procedures

The City's actions have adequately corrected this finding. Our review of monthly unaccounted for water reports disclosed that the average percentage of unaccounted for water was 15.94 percent in 2005, 11.62 percent in 2006, and 7.48 percent in 2007. Accordingly, the City's average unaccounted for water percentages have improved in the last two years. The City awarded contracts in 2007 for meter testing, meter replacement, and installation services, with one contractor replacing approximately 1,735 manual-read meters. Although the City had not adopted a formal leak detection program, the City performed and documented meter testing and contracted for evaluation of selected water lines throughout the City to identify potential leaks.

Finding No. 22: System Access

Previously reported

Some of the City's staff may have had inappropriate access to information technology system (ITS) resources. We also noted another deficiency in controls over the City's information systems.

We recommended that the City review the duties of its ITS staff and remove, as appropriate, access capabilities that are unnecessary for the performance of assigned responsibilities. Also, we recommended that system administration functions that provide a higher level of authority for system users be restricted to a limited number of individuals who actually need the function to perform their jobs.

Results of follow-up procedures

The City's actions have adequately corrected this finding. Subsequent to our inquiry during our current review, the City made the appropriate changes in its information technology system access capabilities.

Additionally, in our report No. 2006-182, we noted that our testing revealed a deficiency in controls over the City's information systems, but we did not disclose the specific details in the report to avoid any possibility of compromising City information. Our current review disclosed that this deficiency had been corrected.

Finding No. 23: Cape Coral Charter School

Previously reported

The City had not prepared and executed a lease agreement for its charter school, and the frequency and timing of billings to the charter school for services provided by the City were not addressed in Ordinance 41-04. Specifically, we noted that the first billing to the school for the 2005-06 fiscal year was not accomplished until December 2005 and billings for certain costs had not been accomplished as of February 1, 2006.

We recommended that the City expedite the preparation and execution of the lease agreement. Additionally, we recommended that the City Council revise Ordinance 41-04 to address the frequency and timing of billings to the charter school for services provided by the City.

Results of follow-up procedures

The City's actions have partially corrected this finding. The City executed lease agreements for its charter school and a sublease agreement for audiovisual equipment. In July 2006, the City Council approved a two-year deferral of lease payments, excluding insurance. Additionally, although the City provided billings to the charter school for the 2006-07 fiscal year and the 2007-08 fiscal year through March 2008, the City had not revised Ordinance 41-04 to address the frequency and timing of billings to the charter school.

In his response, the City Manager indicated that the City does not concur with our conclusion that the City only partially corrected this finding and stated that the current ordinance provides that billings shall occur and that the internal controls established for the billings should be a management function. However, our recommendation that the City Council provide direction to management through amendment of the ordinance was prompted by management's decision, as disclosed in report No. 2006-182, to arbitrarily delay billings to the school without City Council approval.

Finding No. 24: Sunshine Law

Previously reported

The City conducted discussions regarding the calculation of the charter school lease payments through a staff liaison rather than in a publicly noticed meeting.

We recommended that the City exercise caution in meetings between staff and Council members to ensure that violations of the Sunshine Law do not occur by using staff as liaisons among Council members to avoid full and open public discussions.

Results of follow-up procedures

The City's actions have adequately corrected this finding. We noted no violations of the Sunshine Law during the follow-up period through March 2008.

SCOPE AND OBJECTIVES

The scope of this project included selected actions and transactions taken subsequent to May 2006 to determine the extent to which the City has corrected, or is in the process of correcting, deficiencies disclosed in our report No. 2006-182.

METHODOLOGY

The methodology used to develop the findings in this report included the examination of pertinent City records, inquiry of City personnel, and observation of procedures in practice. This follow-up review was conducted in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the follow-up review 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.

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 follow-up procedures regarding findings and recommendations included in our report No. 2006-182, operational audit of the City of Cape Coral, Florida, for the period October 1, 2000, through March 31, 2005, and selected actions taken prior and subsequent thereto.

David W. Martin, CPA
Auditor General

MANAGEMENT'S RESPONSE

Management's response to our findings is included as Exhibit A.

EXHIBIT A
MANAGEMENT'S RESPONSE

City of Cape Coral

October 9, 2008

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

Dear Mr. Martin,

We are in receipt of the list of preliminary and tentative audit findings for your follow-up procedures for each of the findings included in your report No. 2006-182 and the City Manager's response thereto.

Pursuant to Section 11.45(4)(d), Florida Statutes, the attached written statement regarding the preliminary and tentative findings and any actual or proposed corrective actions shall serve as the City of Cape Coral's response required within thirty (30) days of receipt thereof.

If there are any questions related to the responses or request for additional information, please contact Mark C. Mason, CPA, Director of Financial Services at (239) 574-0491 or by e-mail at mmason@capecoral.net.

Sincerely,

Terry Stewart, MPA
City Manager

TM/mcm (CM1008-444)
Attachment

c: Mayor Feichthaler and City Council

Following are detailed responses to each finding and recommendation included in the PRELIMINARY AND TENTATIVE FINDINGS for the City of Cape Coral, Florida dated September 9, 2008. The preliminary and tentative findings have been restated exactly as presented for clarity.

Finding # 4 - Budget Preparation

Previously reported

The City did not consider all available net assets from prior fiscal years in adopting its 2003-04 or 2004-05 fiscal year budgets for the Water and Sewer funds and Stormwater funds, reported separately or combined, contrary to Section 166.241(2), Florida Statutes.

We recommended that the City consider all available net assets from prior fiscal years in the preparation of its budgets as required by Section 166.241(2), Florida Statutes.

Results of follow-up procedures

The City's actions have not corrected this finding. For the 2006-07 fiscal year budgets for the Water and Sewer and Stormwater funds, the City considered only $16,058,601 of $82,748,652 ending available net assets from the 2005-06 fiscal year.

Management's Response:

We do not concur with the Auditor General's observation that the City has not corrected this finding due to the primary reason that the City believes that this was not a finding.

We do not agree with the statement that the City's FY 2006-07 operating budgets were not prepared in compliance with Section 1664.241(2), Florida Statutes.

See previous Management's Response dated May 2006 regarding the Auditor General's incorrect interpretation of Florida Statute.

In addition, following is an excerpt from Chapter 96-324 (S.B. 524) stating the amendment to s. 166.241, F.S. provides that municipalities **may** (emphasis added) consider carry-over funds when making appropriations. Since this is in the heading of the change to the statute, it clearly indicates legislative intent that each municipality **may** (emphasis added) consider (not required) to carry over funds when making appropriations.

FL LEGIS 96-324
1996 Fla. Sess. Law Serv. Ch. 96-324 (S.B. 524) (WEST)

FLORIDA 1996 SESSION LAW SERVICE
Fourteenth Legislature, Second Regular Session
Copr. (C) West 1996. All rights reserved.
Additions are indicated by <<+ Text +>>; Deletions by
<<- Text ->>. Changes in tables are made but not highlighted.
Chapter 96-324
S.B. No. 524
LOCAL GOVERNMENT--FINANCIAL AFFAIRS

Ch. 96-324
An act relating to financial affairs of local governments; amending s. 11.45, F.S.; revising definitions; requiring audit reports of additional entities; requiring the Auditor General to notify the Governor and Legislative Auditing Committee when a local governmental entity is in a state of financial emergency; providing goals and objectives for the local government financial reporting system; amending s. 112.63, F.S.; providing that the requirements of this section are supplemental to other specified requirements; amending s. 129.01, F.S.; clarifying county revenues derived from a special district for budget purposes; amending s. 129.02, F.S.; clarifying which special districts are included with the county capital-improvements budget; amending s. 129.06, F.S.; clarifying which special districts are included in the county budget process; amending requirements for accounting procedures; amending s. 166.241, F.S., providing that municipalities may consider carry-over funds when making appropriations; amending ss.

<< FL ST s 166.241 >>

166.241. Fiscal years, financial reports, appropriations, and <<+ budgets+>> <<-audits->>
(3) The governing body of each municipality shall <<+adopt a budget+>> <<-make appropriations for->> each fiscal year <<-which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources->>. <<+The budget must be adopted by ordinance unless otherwise specified in the respective municipality's charter. The amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total appropriations for expenditures and reserves. The budget must regulate expenditures of the municipality, and+>> it is unlawful for any officer of a municipal government to <<+expend or contract for expenditures in any fiscal year+>> <<-draw money from the treasury->> except in pursuance of <<+budgeted appropriations+>> <<- appropriation made by law->>.

- 1 -

Based upon the finding the Auditor General's office has opined that the City did not consider these funds or carryover these funds. As previously stated, if the Auditor General's office has clear substantive documentation supporting their position other than "we believe the law is clear and no further documentation of legislative intent is necessary" or that "the City should consider seeking an opinion from the Attorney General on this matter", it should be provided. Since there is a disagreement regarding the intent of the law, it is obviously not clear as to the legislative intent. Again, the City did in fact consider carryovers as provided by law and did not appropriate them for the next budget year.

In fiscal year 2008, City Management recommended and the City Council approved bringing forward all cash into the fiscal year 2008 budget for operating funds only. Since net assets and fund balances consist of spendable and non-spendable resources, the opinion by the Auditor General that net assets and fund balances be brought forward is not only untenable but clearly incorrect. Bringing cash forward is much more appropriate in terms of appropriate budget technique since a budget is simply an estimate of revenues and expenditures.

Finding No. 5: Budget Overexpenditures

Previously reported

The City reported budget overexpenditures totaling approximately $39 million in 7 of the 27 funds reported as "Water and Sewer" and "Stormwater Utility," contrary to Section 166.241(2), Florida Statutes. Furthermore, budget-to-actual comparisons were provided to the City Council only through the third quarter of the 2003-04 fiscal year.

We recommended that the City ensure that future expenditures not exceed budgetary authority. Additionally, we recommended that budget-to-actual comparisons for all funds budgeted be prepared and submitted to City Council on a frequent basis.

Results of follow-up procedures

The City's actions have partially corrected this finding. The City overexpended budgeted amounts in 4 of its 38 Water and Sewer funds by a total of $89,098,022 and one of its three Stormwater funds by $3,562 for the 2006-07 fiscal year. According to City personnel, the majority of the overexpenditures ($81,586,128) related to unspent encumbrances from the 2005-06 fiscal year that were not re-budgeted in the 2006-07 fiscal year. However, unspent appropriations from prior fiscal years should have been available, and included in the 2006-07 fiscal year budget, to fund the 2006-07 fiscal year expenditures.

Our review disclosed that the City prepared and submitted quarterly budget-to-actual comparisons to the City Council during the 2005-06 and 2006-07 fiscal years

Management's Response:

We do not concur with the Auditor General's observation that the City only partially correcteded this finding.

The Auditor General's staff has opined that in FY 2006-07, four of its 38 funds reported as "Water and Sewer" and one of its three Stormwater funds "Stormwater Utility", established at the fund level by City Council were over-expended and that according to City personnel, the majority of the overexpenditures ($81,586,128) related to unspent encumbrances from the 2005-06 fiscal year that were not re-budgeted in the 2006-07 fiscal year. However, unspent appropriations from prior fiscal years should have been available, and included in the 2006-07 fiscal year budget, to fund the 2006-07 fiscal year expenditures.

As noted in the previous report dated May 2006, the funds in question were capital projects funds. As such, in many capital projects of this type, capital construction normally takes place over a period exceeding one fiscal year. Accordingly, capital budgets are generally adopted on a life-of-the-project basis and capital projects commonly do not have annual appropriated budgets but instead operate using life-of-the-project basis budgets. Clearly, the total appropriations authorized by City Council were not over-expended when applying a best practice of budgeting using life-of-the-project basis since the appropriations roll from year to year until the project is completed. In other words, once budgeted, they are not required to be re-budgeted annually. The City's own Charter recognizes this method of budgeting as follows:

> **Article VII Financial Procedures Section 7.10. Lapse of appropriations.**
> Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for

> which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three (3) years pass without any disbursement from or encumbrance of the appropriation.

As noted in this section of the City Charter, an appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned;… This in no way conflicts with the annual budget requirement of the Florida Statute as opined by the Auditor General's office since the City's Charter clearly indicates a multi-year budget approach to capital expenditures which is allowable and an accepted business practice.

Finding No. 6: Bank Reconciliation

Previously reported

The City did not prepare timely and accurate bank reconciliations for the operating account for the two months tested, and supervisory personnel did not adequately review these reconciliations.

We recommended that the City enhance controls to provide for timely and accurate bank reconciliations, timely recording of cash transfers, and thorough review of bank reconciliations by supervisory personnel. Additionally, we recommended that the City ensure that all differences noted on bank reconciliations are appropriately and timely resolved and all journal entries relating thereto are properly prepared, reviewed, and approved.

Results of follow-up procedures

The City's actions have partially corrected this finding. The City's bank reconciliation policy and procedures, implemented in Jun 2006 (although the policy was not adopted by the City Council as discussed in finding No. 2), stated that bank reconciliations should be completed and reviewed no later than the 15th calendar day following the month's end. Our review of 38 bank reconciliations for the months of December 2006 and July through December 2007, representing seven bank accounts, disclosed that eight reconciliations had not been dates, so we could not determine when the reconciliations were prepared; and ten reconciliations had been reviewed after the 15th of the following month, ranging from the 18th to the 30th of the following month. Also, our review disclosed that adjustments were timely recorded to the accounting records. Additionally, we noted that two authorized signers on the investment accounts also reviewed the short-term investment reconciliations, resulting in incompatible duties.

Management's Response:

We acknowledge that the Accounting Division was too aggressive in setting the policy to state that bank reconciliations should be completed and reviewed no later than the 15th calendar day following the month's end. There are instances when non-routine or special projects arise that do not allow for the bank reconciliations to be completed, reviewed, and approved within 15 days. We have revised our policies and procedures manual to state "completed bank reconciliations, including supervisory review and approval should occur no later than the calendar month end of the following month." The bank accounts have been properly reconciled from bank balance to general ledger balance with proper supporting documentation for reconciling items no later than 30 days following the month's end.

We do not agree that two authorized signers on the investment accounts reviewing the short-term investment reconciliations results in incompatible duties since there are mitigating controls in place. The short-term investment reconciliation process is part of the cash and treasury management function. The accounting assistant responsible for performing the reconciliations does not have access to cash. The accounting assistant who performs the reconciliations is reporting directly to the debt/treasury manager. This allows for a 2-level review and approval process of the reconciliations by 1) the debt/treasury manager and 2) the deputy financial services director. In addition, the deputy financial services director is reporting to the financial services director that reconciliations are being accomplished within a designated time frame.

In addition, the City has an outside investment advisor. The financial services director, deputy financial services director, and debt/treasury manager are authorized to make investment decisions. The investment advisor sends e-mails to the decision makers regarding the activity that has occurred as a result of the investment decisions. Trade tickets are also e-mailed to the decision makers. The investment advisor prepares a monthly asset allocation report and e-mails it to decision makers. The investment advisor also prepares a quarterly investment report that is given to the investment committee and city council. The investment committee meets quarterly with the investment advisor and reviews all activity and performance of the funds.

Finding No. 10: Determination of Contributions in Aid of Construction (CIAC) Fees

Previously reported

The City did not charge contributions in aid of construction (CIAC) fees based on the actual cost of the utility expansion to the particular CIAC area; therefore, these fees may be subject to challenge by property owners as not being fairly apportioned.

We recommended that the City revise its methodology utilized for determination of CIAC fees to ensure that property owners in CIAC areas are paying only their proportionate share of the actual costs to extend utility services to their properties, including a determination of the costs to fund the unused portion of the system.

Results of follow-up procedures

The City's actions have not corrected this finding. Although the City updated the CIAC fees for water, wastewater, and irrigation based on square footage, the City had not revised its methodology for determining CIAC fees.

Management's Response:

We do not concur with the Auditor General's observation that the City has not corrected this finding.

The Auditor General's office has opined that for property subject to CIAC fees, the City should charge each property a proportionate share of the actual costs of construction of the facilities, similar to the manner in which the City calculates utility special assessments. However, the Auditor General's office has provided no documentation to support this opinion. As we have stated numerous times to the Auditor General's staff, the City's Contribution In Aid of Construction Fees are not special assessments as defined by Florida Statute or the City's home rule ordinance. They are actually service connection fees or charges and, as such, are not governed by any of the case law concerning special assessments. There is no legal requirement that the amount of service connection fees be based upon actual cost of the utility extension to that area.

In CIAC areas, the property owner derives a benefit not enjoyed by property owners in utility special assessment areas. In CIAC areas, the property owner does not have to pay anything until he or she is ready to develop the property. In assessment areas, the assessment is imposed and is due and payable on all properties, whether they are developed or not.

The City, under its broad home rule powers, has determined that the imposition of CIAC fees in an amount that approximates the cost of current construction is a reasonable charge for those properties connecting to the existing system.

Finding No. 11 Collection of CIAC Fees

Previously reported

The City did not have adequate controls in place to ensure that CIAC fees are paid or financed when the development permit is issued.

We recommended that the City implement system controls to prevent the issuance of permits without either collection of the required CIAC fees or execution of a financing agreement. Additionally, we recommended that the City reconcile permits issued within CIAC areas to CIAC fees collected or receivable; collect CIAC fees from property owners for which permits have been issued, but fees have not been paid; and expedite efforts to update its records for split and combined parcels. Finally, we recommended that the City consider the use of unique identifying codes for specific CIAC areas to assist in the reconciliation of permits issued.

Results of follow-up procedures

The City's actions have partially corrected this finding. Citing limitations in software, City staff indicated that the City did not implement system controls that would prevent issuance of a permit without collection of, or execution of a financing agreement for, CIAC fees. Although the City had not prepared reconciliations for all CIAC areas of CIAC fees paid (or financing agreement executed) to permits issued within CIAC areas, the City made progress in completing 17 such reconciliations, as compared to two, as of June 7, 2005. We also noted that the City placed a lien on certain properties for nonpayment of CIAC fees. The City also updated its records on split and combined parcels, and implemented the use of unique identifying codes in its computer system for CIAC areas.

Our test of nine development permits issued for parcels in CIAC areas disclosed that applicable CIAC fees had not been paid, or a financing agreement executed, for one parcel, for which a development permit was issued on October 4, 2007. Subsequent to our inquiry, the City provided us with a copy of a letter, dated the following day (February 22, 2008), requesting payment of $20,908 for wastewater CIAC fees.

Management's Response:

We acknowledge and concur with the Auditor General's observation that the City has partially corrected this finding and that it is due primarily to software limitations that will be corrected in the future.

Finding No. 13 Use of Capital Expansion and CIAC Fees

Previously reported

The City did not always expend capital expansion fees and CIAC fees in accordance with the City's Code of Ordinances.

We recommended that the City review all expenditures of capital expansion and CIAC fees for compliance with the City's Code of Ordinances. Also, we recommended that the moneys inappropriately expended as noted in the finding, along with any others identified by City personnel, be restored to the respective fund(s). Further, we recommended that the City establish controls to ensure that future expenditures of these restricted funds are in accordance with the City's Code of Ordinances.

Results of follow-up procedures

The City's actions have not corrected this finding. Our expenditure tests disclosed that the City had not spent funds properly for two of ten expenditures tested. The City improperly expended a total of $20,991 from water capital expansion fees for an irrigation project, contrary to Section 2-24.4 of the City's Code of Ordinances, which requires that capital expansion fees collected for the water system can only be spent on expanding the water system. Additionally, the City had not restored the inappropriately expended amounts to the respective funds, as noted in our report No. 2006-182.

Management's Response:

We do not concur with the Auditor General's observation that the City has not corrected this finding. The Auditor General's office has opined that the City did not follow its ordinance. It is the opinion of the City that the ordinance was followed correctly.

As previously stated in the May 2006 report, during the period Fiscal Years 2002 through 2005, the City did not impose a separate irrigation capital expansion fee for the funding of the various improvements to the City's irrigation program. Rather, the costs of the irrigation improvements were allocated as a component of either the City's water or sewer system depending upon whether the inclusion of those costs within the respective system was appropriate. In particular, the cost of the Gator Slough irrigation expansion project was specifically considered in the calculation of the water capital expansion fees in effect during the period in question (See attached calculation of impact fees labeled Finding 13-2). The ordinances in effect at that time also authorized that water and wastewater capacity expansion fees could be utilized to fund the cost of irrigation capital expansion, to the extent that they are related to the water and sewer improvement program Section 2-24.4 Ordinance 71-97 (ordinance existing during the period in question). See language following for the specific sections as provided previously.

Sec. 2-23. Use of proceeds.

(a) The proceeds accumulated by reason of the establishment of a utility capital expansion fee can be used only for the capital expansion of utility facilities. Said proceeds may not be used for improving, updating, or bringing the present system into compliance with any change in laws, but may be used for valid purposes along with other types of revenues or matching funds.

Sec. 2-24.1. Purpose.

(a) This section is intended to address the need for additional capital funds to support the orderly expansion of the city's water system, wastewater system, and dual water irrigation/fire protection system to meet the burdens imposed by new users. It provides for the funding of such capital needs by imposing fees upon new users of the city's utilities systems that are reasonably commensurate with the burdens currently imposed or reasonably anticipated to be imposed on those systems. (Ord. 71-97, 9-29-97)

Sec. 2-24.4. Separate capital expansion fee trust funds for water and sewer fees and use of fees collected.

3. Trust funds may also be used to retire revenue bonds issued for the above-stated capital improvements to the water, sewer and the dual water irrigation/fire protection systems. (Ord. 48-85, §1, 6/17/85; Ord. 71-97, 9/29/97)

On November 8, 2004, the City adopted Ordinance 137-04, which imposed a separate irrigation capital expansion fee for the funding of the irrigation program and incorporated the language of Section 2-24.4, which is asserted to have been violated in the Preliminary and Tentative Findings. That ordinance and those changes did not become effective until January 1, 2005. Therefore, the expenditure of the proceeds toward the Gator Slough was under the previous version of the ordinance and authorized by it. Following the ordinance amendment's effective date, capital expansion fees for the funding of irrigation improvements have been maintained in a separate trust fund and used only for irrigation purposes in accordance with Section 2-24.4 of the City's Code of Ordinances. The $20,991 noted in the results above are a carryover of projects previously approved and funding was received under the previously adopted ordinance.

The previous expenditures noted above relate to the addition of a secondary clarifier for the Everest Wasterwater Treatment plant. As noted in the original report, it remains unclear how the Auditor General's staff has determined that adding a secondary clarifier to a utility plant does not qualify as an expansion of the system. The previous report asserted that the expenditures did not qualify even though the Utility Manager stated that they did. In addition, the Auditor General's staff had made erroneous assumptions with regard to the secondary clarifier. The secondary clarifier did in fact cost $1.782 million as provided by the cost summary and associated general ledger backup provided as an attachment to that report.

Also, with respect to the $31,287 previously reported, this represented a 59% share of the cost of the total design associated with the interconnect repair and replacement that was attributable to future growth of the plant and was determined to be such by qualified engineers associated with the project. Without taking into account the future expansion of the plant, the interconnect would have had to be reconstructed a second time to add the necessary capacity for the plant expansion that will be taking place over the next three years. Documentation was attached to the previous report supporting the breakdown between the plant rehabilitation and plant improvements that was attached to the agenda item approved by the City Council.

Finding No. 15: Allocation of Costs

Previously reported

The City did not always allocate costs for shared administrative expenses from other departments to the Water and Sewer fund and Stormwater fund in a systematic and rational manner. In addition, some costs directly charged from other departments were not supported by documentation to evidence the basis for the direct charge. Specifically, we questioned the methodology used for allocating costs of Financial Services, retiree health care, cashier's office, a construction costs/feasibility study, City Auditor, and City Attorney.

We recommended that the City evaluate the allocation methods used for each type of administrative cost to ensure that costs are allocated in a systematic and rational manner. Additionally, we recommended that, for any costs determined to be overallocated, the City restore such funds to the Water and Sewer fund or the Stormwater fund.

Results of follow-up procedures

The City's actions have partially corrected this finding. We noted that the City changed its cost allocation methodology for allocating the costs of retiree health care premiums and the City Auditor and we agree with the revised bases used for allocating these costs. Although the City Manager, in his response to our report No. 2006-182, agreed that the most appropriate basis of allocation for the City Attorney would be actual hours expended, we noted that the City continued to use the number of full-time employees. Our review of six additional areas of cost allocations of indirect costs to the Water and Sewer fund and the Stormwater fund for the 2006-07 fiscal year disclosed that the City used a systematic and rational method for the allocations. As recommended in our report No. 2006-182, the City was restoring the money, representing overallocated retiree health insurance and the 1999 feasibility study costs, back to the Water and Sewer and Stormwater funds over a six-year period (through the 2010-11 fiscal year) by adjusting the annual cost allocations.

Management's Response:

We do not concur with the Auditor General's observation that the City only partially corrected this finding.

As noted above, Financial Services did agree that the most appropriate basis of allocation of the costs associated with the services provided by the City Attorney's as well as the City Auditor's office would be actual hours expended. As noted in the comments above by the Auditor General's office, they did accept the changes for the City Auditor's office. As previously stated, this data is not recorded by the City Attorney's office and as such, another reasonable basis is used. When evaluating the actual hours expended, one must evaluate to what extent that the hours should be segregated. For example, it is certainly reasonable to assume that if either of the offices spent time specific to the funds in question, then that time could be charged directly or the hours could be accumulated for chargeback. However, let's assume that the City Attorney's office works on an ordinance that covers all funds/departments of the City such as the procurement ordinance. If the office maintained a record of hours, how then would it be divided among all departments and/or funds? The reality here is making a determination of cost vs. benefit and to what extent should the record keeping go to ensure full and justifiably exact chargebacks for services performed. Thus the use of a reasonable basis associated with the City Attorney's office as to the number of full time employees. Staff has evaluated the cost of maintaining the hours on a time and billing basis and has determined that the cost exceeds the benefit obtained.

Finding No. 16: Unauthorized Expenditures

Previously reported

City records did not clearly document the public purpose for expenditures totaling $131,859.

We recommended that the City ensure and document in its public records that expenditures serve an authorized public purpose, are reasonable, and necessarily benefit the City.

Results of follow-up procedures

The City's actions have not corrected this finding. Our test of expenditures disclosed that for six of ten expenditures, totaling $11,000, the City had not documented in its public records the public purpose served, which included a helicopter rental and purchases of four recliner rockers, uniforms, and food.

Management's Response:

Although we do not concur that the City has not corrected this finding, staff does recognize that additional information should be included on the invoices to further understand the purpose of the expenditures.

Finding No. 18: Written Agreements

Previously reported

The City did not have written agreements with several bond professionals and did not execute four contracts with the signatures required under Section 2-148 of the City's Code of Ordinances. Additionally, the City's policies and procedures manual listed required signatures on contracts that were contrary to Section 2-148 of the City's Code of Ordinances.

We recommended that, to provide adequate control of bond issuance costs, the City should require contracts with all bond professionals. Also, we recommended that all contracts be signed in accordance with the established ordinance and the City's policies and procedures manual be updated to comply with established ordinances.

Results of follow-up procedures

The City's actions have partially corrected this finding. Our review of expenditures paid to bond professionals other than bond counsel since May 2006 disclosed that the City had not obtained contracts for 5 of 11 bond professionals used, who were paid a total of $111,850. Also, the Mayor and City Clerk had not signed four of the six contracts, contrary to the City Code of Ordinances in effect prior to July 23, 2007. The Ordinance was amended July 23, 2007, to assign other City officials the responsibility of signing contracts. The City updated its policies and procedures manual to comply with established ordinances.

Management's Response:

We do not concur with the Auditor General's observation that the City only partially corrected this finding.

As stated previously in the City's response in May 2006, we do not agree with the content or the finding, as these fees for services are authorized by City Council in the Bond Resolution, which is adopted prior to each transaction.

The Bond Resolution authorizes the costs to be paid from bond proceeds and delegates to the City Manager the authority to approve all of the terms and provisions of the transaction within certain parameters.

Finding No. 19: Contract Monitoring

Previously reported

The City did not properly monitor contracts for services to ensure that contractors performed and were paid in accordance with terms of the contract. Additionally, the City's contracts did not always contain firm due dates for deliverables and the City made progress payments to contractors without receipt of contract deliverables.

We recommended that the City develop contract monitoring procedures to ensure that contractors performed in accordance with the terms of the contract. We also recommended that the City's contracts establish definite due dates for deliverables. Additionally, we recommended that, unless another method for initiating payments is established in a contract, payments not be made to contractors that have not provided the deliverables by the date specified within the contract.

Results of follow-up procedures

The City's actions have partially corrected this finding. Our test of contracts disclosed that one of three contracts included an estimated, rather than a specific, due date. Also, the City made progress payments totaling $37,665 on a $46,710 contract for an irrigation leak detection study; however, the contract did not contain a provision for progress payments, and the payments were not based on receipt of deliverables.

Subsequent to our review, the City provided us with written contract monitoring procedures.

Management's Response:

We do not concur with the Auditor General's observation that the City only partially corrected this finding.

Contracts are monitored by each project manager. Training has been provided to contract managers managing contracts as well as being provided contract monitoring procedures.

In addition, the Auditor General's office has opined that a lump sum contract apparently means that the payment is made once or in a lump sum at the completion of work. In fact, the definition of a lump sum contract is a written agreement under which a principal (customer or owner) agrees to pay a contractor a specified amount, for completing a scope of work (involving a variety of unspecified items of work) without requiring a cost breakdown. This generally means that the cost of the contract will not exceed the amount of the lump sum and that progress payments are generally made at the discretion of the project manager. This is normal practice.

Staff will review the lump sum contracts that the City has and will determine if language should be included to provide for progress payments.

Finding No. 23: Cape Coral Charter School

Previously reported

The City had not prepared and executed a lease agreement for its charter school, and the frequency and timing of billings to the charter school for services provided by the City were not addressed in Ordinance 41-04. Specifically, we noted that the first billing to the school for the 2005-06 fiscal year was not accomplished until December 2005 and billings for certain costs had not been accomplished as of February 1, 2006.

We recommended that the City expedite the preparation and execution of the lease agreement. Additionally, we recommended that the City Council revise Ordinance 41-04 to address the frequency and timing of billings to the charter school for services provided by the City.

Results of follow-up procedures

The City's actions have partially corrected this finding. The City executed lease agreements for its charter school and a sublease agreement for audiovisual equipment. In July 2006, the City Council approved a two-year deferral of lease payments, excluding insurance. Additionally, although the City provided billings to the charter school for the 2006-07 fiscal year and the 2007-08 fiscal year through March 2008, the City had not revised Ordinance 41-04 to address the frequency and timing of billings to the charter school.

Management's Response:

We do not concur with the Auditor General's observation that the City only partially corrected this finding.

With respect to the audit recommendation that the City Council should revise Ordinance 41-04, which established Chapter 26 of the City Code of Ordinances, to address the frequency and timing of billings to the school for services provided by the City, that recommendation would appear to be impractical. Section 26-1 of the City Code of Ordinances specifically provides that the purpose of Chapter 26 of the City Code of Ordinances is "to effectuate and to implement the charter school contract that has been entered into between the City of Cape Coral and the Lee County School District, as same may hereafter be amended." Although Section 26-17 provides that the City has the right to require the Charter School Authority to use City departments and personnel for services and that the City shall charge a fee or fees for such services that is equal to the cost of providing the service(s), it would be impractical to expect the City to ordain the frequency of the billing for each service or services, as may be rendered from time to time. Different services may require different billing schedules. The services offered by the City may change from time to time. To require the adoption of local legislation in the form of a City ordinance each time a new service is added, a service is altered, or the billing schedule is proposed for alteration would promote inefficiency due to the time involved in holding the required public hearing and first reading (introduction). Such a requirement would run contrary to the flexibility that Section 26-17 would otherwise offer in that it is clearly not intended to be an all-inclusive, static list of the service(s) to be provided.

In addition, the ordinance provides that billings shall occur and that the internal controls established for the monthly billings should be a management function. As such, staff does not agree that the procedural elements of billing should be included in an ordinance.