

**ECONOMIC DEVELOPMENT ACTIVITIES  
ADMINISTERED BY THE  
HARDEE COUNTY INDUSTRIAL DEVELOPMENT  
AUTHORITY,  
HARDEE COUNTY ECONOMIC DEVELOPMENT  
AUTHORITY, AND  
HARDEE COUNTY BOARD OF COUNTY  
COMMISSIONERS, AND  
OTHER ADMINISTRATIVE MATTERS**

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**Operational Audit**



## BOARD MEMBERS

The Board members who served during the period October 2010 through June 2012 are listed below:

### Hardee County Board of County Commissioners

#### District

#### No.

1. Minor L. Bryant, Chairman from 10-6-11;  
Vice Chairman to 10-5-11
2. Clifton N. Timmerman, to 11-3-10  
Andrea Sue Birge, from 11-4-10;  
Vice Chairman from 10-6-11
3. Terry Atchley, to 9-27-11; Chairman to 9-27-11  
(seat was vacant from 9-28-11 to 11-28-11)  
Frederick (Rick) M. Knight, from 11-29-11
4. Robert R. Smith, Jr., to 11-3-10  
Grady Johnson, from 11-4-10
5. Dale A. Johnson

### Hardee County Industrial Development Authority

Rick Justice, Vice Chairman to 10-10-11;  
Chairman from 10-11-11  
Lory Durrance, Vice Chairman from 10-11-11  
Marcus Shackelford, Chairman from 10-1-10 to 9-13-11;  
seat vacant from 9-14-11 to 6-30-12  
Joe Albritton  
Vanessa Hernandez  
Mike Manley, to 11-8-11;  
seat vacant from 11-9-11 to 6-30-12  
Michael Prescott, from 10-6-10  
Paul Samuels, to 12-8-10;  
seat vacant from 12-9-10 to 6-30-12  
James V. See, Jr.

### Hardee County Economic Development Authority

David Royal, Vice Chair to 2-20-12;  
Chair, from 2-21-12

William R. Lambert, to 5-2-12; Chair to 2-20-12

Andrea Sue Birge, from 10-6-11;  
Vice Chair from 2-21-12

Terry Atchley, from 11-16-10 to 10-5-11

William C. Beattie

Deren Bryan, from 12-16-10 to 2-9-12

Casey P. Dickson, from 2-10-12

Vanessa Hernandez, to 12-15-10

Roger Hood

Perry Knight

Bridget Merrill, to 9-30-11; seat vacant  
From 10-1-11 to 6-30-12

Kenny Miller, from 1-1-12

Stanley L. Pelham, from 5-3-12

Paul Samuels, to 12-31-11

Robert R. Smith, Jr., to 11-15-10

Florida Farm Bureau

Commission Appointment At Large

Commission Appointment At Large

Chamber of Commerce

Commission Appointment – Seat 8

Chamber of Commerce

Chamber of Commerce

Chamber of Commerce

Heartland Workforce

Commission Appointment – Seat 9

Enterprise Florida

Florida Phosphate Council

Commission Appointment At Large

Florida Phosphate Council

Commission Appointment At Large

The audit team leader was Eric Davis, CPA, and the audit was supervised by James E. Raulerson, CPA. Please address inquiries regarding this report to Marilyn D. Rosetti, CPA, Audit Manager, by e-mail at [marilynrosetti@aud.state.fl.us](mailto:marilynrosetti@aud.state.fl.us) or by telephone at (850) 487-9031.

This report and other reports prepared by the Auditor General can be obtained on our Web site [www.myflorida.com/audgen](http://www.myflorida.com/audgen); by telephone (850) 487-9175; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

**ECONOMIC DEVELOPMENT ACTIVITIES ADMINISTERED BY THE  
HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, HARDEE  
COUNTY ECONOMIC DEVELOPMENT AUTHORITY, AND HARDEE  
COUNTY BOARD OF COUNTY COMMISSIONERS AND OTHER  
ADMINISTRATIVE MATTERS**

**SUMMARY**

Our operational audit of the economic development activities administered by the Hardee County Industrial Development Authority, Hardee County Economic Development Authority, and the Hardee County Board of County Commissioners and other administrative matters disclosed the following:

**HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (IDA)**

**USE OF ECONOMIC DEVELOPMENT FUNDS**

**Finding No. 1:** The purposes for which a technology grant of \$2,657,813 was awarded by the IDA do not appear to be consistent with the definition of a “project” as defined in the Florida Industrial Development Act, and the grantee had not been sufficiently determined to be financially responsible and fully capable of fulfilling its obligations under the grant. Also, the IDA did not include in the grant agreement a timeline for the grantee to relocate to Hardee County to ensure that the project provided economic gains to the County.

**Finding No. 2:** The grant agreement used by the IDA for the technology grant did not contain sufficient project descriptions of deliverables, including measurable outcomes to be accomplished within established time frames, which would demonstrate grantee performance and provide a basis for funding.

**Finding No. 3:** The IDA did not demonstrate of record that it adequately monitored the technology grant by failing to establish required detailed reports to be submitted by the grantee or to provide written reports and recommendations to the IDA Board, contrary to the grant agreement.

**Finding No. 4:** The IDA did not perform an analysis prior to entering into an agreement with a utility company for providing emergency electrical power. Further, the IDA did not take steps to ensure that the agreement was in the IDA’s best interest.

**FINANCIAL REPORTING AND ADMINISTRATION**

**Finding No. 5:** Prior to December 2011, the IDA had not filed required annual financial reports or provided for annual financial audits, contrary to law.

**Finding No. 6:** The IDA had not taken full corrective actions in response to financial reporting and internal control findings reported by its independent auditor as material weaknesses and other deficiencies.

**Finding No. 7:** The IDA had not timely removed its former treasurer from the list of authorized signers on its bank accounts and two bank accounts required only one signature to initiate transactions.

**Finding No. 8:** The IDA did not have a written agreement with the Economic Development Council (EDC) regarding a staff arrangement whereby the EDC provided staff to the IDA to perform financial, accounting, and administrative functions.

**CONSTRUCTION ADMINISTRATION**

**Finding No. 9:** The IDA did not comply with Section 287.055, Florida Statutes, in selecting a construction management entity to oversee the construction of a speculative building and we noted several issues of concern with the IDA’s administration of the project. Such concerns included inadequate review of subcontractor bid awards and charges, failure to establish completion dates and provisions for liquidating damages, the lack of timely evidence of a payment and performance bond, failure to take advantage of sales tax savings for direct material purchases, and inadequate support for general condition charges.

**Finding No. 10:** The IDA did not adequately monitor performance of a company under contract for the construction, maintenance, and ownership of a broadband infrastructure network. The IDA did not, for example, determine the company's compliance with a matching investment requirement, verify the company's compliance with insurance requirements, or obtain required annual compliance certificates from the company.

#### HARDEE COUNTY ECONOMIC DEVELOPMENT AUTHORITY (EDA)

##### GRANT ADMINISTRATION

**Finding No. 11:** The EDA did not ensure that grant reimbursement requests for two grants were adequately supported in accordance with the grant agreements and only included expenditures related to the applicable project.

#### HARDEE COUNTY BOARD OF COUNTY COMMISSIONERS (BCC)

##### FINANCIAL REPORTING

**Finding No. 12:** The BCC's financial statements did not include the IDA as a component unit, contrary to governmental accounting and financial reporting standards.

### BACKGROUND

**Hardee County Industrial Development Authority (IDA)** As authorized by Section 159.45(1), Florida Statutes, and the Hardee County Board of County Commission (BCC) Resolution Nos. 84-10, dated February 9, 1984, and 96-31, dated September 5, 1996, as amended, the BCC established the IDA, a special district, as a body corporate. The Florida Department of Economic Opportunity (DEO) classified the IDA as a dependent special district. The IDA's governing board consists of no less than nine, not to exceed thirteen, Hardee County residents appointed by the BCC. The IDA is authorized pursuant to Section 159.45, Florida Statutes, as a public instrumentality for the purposes of industrial development, to finance and refinance projects for the public purposes described in the Florida Industrial Development Financing Act (Sections 159.25 through 159.431, Florida Statutes) and Sections 159.44 through 159.53, Florida Statutes, to foster economic development in Hardee County.

The IDA was authorized to study the advantages, facilities, resources, products, attractions, and conditions relative to the encouragement of economic development in Hardee County, and to use such means and media as the IDA deems advisable to publicize and to make known such facts and material to such persons, firms, corporations, agencies, and institutions which, in the discretion of the IDA, would reasonably result in encouraging desirable economic development in Hardee County. In carrying out this purpose, the IDA was encouraged to cooperate and work with industrial development agencies, chambers of commerce, and other local, State, and Federal agencies having responsibilities in the field of industrial development.

The IDA did not employ staff to perform its financial, accounting, and administrative functions. These activities were performed by the Economic Development Council (EDC), which consisted of the Economic Development Director, Economic Development Coordinator, and Office Manager (hereinafter referred to using these titles or as "IDA staff").

**Hardee County Economic Development Authority (EDA)** In accordance with Section 211.3103, Florida Statutes, the Legislature enacted, and subsequently amended, Chapter 2004-394, Laws of Florida, creating the EDA, a special district, as a body corporate, to receive the BCC's portion of the phosphate severance taxes allocated for use in counties designated as rural area of critical economic concern pursuant to Section 288.0656, Florida Statutes. The DEO classified the EDA as an independent special district. The EDA's purpose is to solicit, rank, and fund projects that provide economic development opportunities or infrastructure within the geographic boundaries of Hardee

County, and to otherwise maximize the use of Federal, local, and private resources as provided by Section 211.3103(6), Florida Statutes, and for its administrative and other costs as further provided in law. The EDA is authorized to appropriate funds received from the phosphate severance tax for administrative costs, including payroll costs and other expenses, as provided by law, and for economic development and infrastructure projects in Hardee County. The EDA is also authorized to establish procedures for the solicitation and awarding of grants.

The law provides for the BCC to appoint office staff to assist the EDA in conducting its business, and for the Hardee County Clerk of the Circuit Court to receive all funds on behalf of the EDA, and deposit them in a restricted, interest-bearing account for the sole use of the EDA. Expenditure of funds is to be upon receipt of a voucher signed by the EDA chair and at least one other EDA member.

The EDA’s governing board consists of nine members, as follows: President of the Hardee County Farm Bureau or designee; the Director of the Agency for Workforce Innovation, or its successor agency,<sup>1</sup> or designee; Chairman of Enterprise Florida, or its successor agency, or designee; Chairman of the Florida Phosphate Council or designee; President of the Hardee County Chamber of Commerce or designee; and four members appointed by the BCC.

**Board of County Commissioners** Pursuant to Section 125.045, Florida Statutes, the BCC may expend public funds to attract and retain business enterprises. The use of public funds for such economic development goals constitutes a public purpose. Additionally, the BCC may spend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

Each county is required to annually report to the State Office of Economic and Demographic Research economic development incentives in excess of \$25,000 given to any business. Economic development incentives include:

- Direct financial incentives of monetary assistance provided to a business from the county or through an organization authorized by the county.
- Indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.
- Fee-based or tax-based incentives.
- Below-market rate leases or deeds for real property.

**FINDINGS AND RECOMMENDATIONS**

**HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (IDA)**

**Use of Economic Development Funds**

On August 14, 2008, the Hardee County Board of County Commissioners (BCC) entered into a development agreement with a corporation (developer) for the mining and reclamation of certain properties described as South Fort Meade Mine. The development agreement provided for the implementation of the economic development element of the BCC’s comprehensive plan, and included certain terms and conditions for providing funding of economic development projects in Hardee County.

<sup>1</sup> Effective October 1, 2011, the Agency for Workforce Innovation was merged with other State offices and functions to create the Department of Economic Opportunity.

Pursuant to Exhibit B of the development agreement (Exhibit B), the developer agreed to provide an annual matching economic mitigation/stimulation payment (matching payment) in an amount no less than the amount assessed on the severance of phosphate rock, and returned to the BCC or the EDA, at the 2008 tax rate and formula. Exhibit B contained certain restrictions on the calculation of the matching payment and required that it be paid to the IDA at various amounts over a 10-year period. Total minimum payments for the 10-year period if all conditions were met, would be \$42 million remitted to the IDA, of which \$5 million would be transferred to the BCC's General Fund.

Exhibit B recommended the following priorities for the IDA's use of the funds:

- Administration, accounting, and auditing of funds not to exceed \$100,000;
- Development projects on reclaimed land in conjunction with the developer's proposed development initiatives not to conflict with the objectives set forth in the agreement;
- County or municipal infrastructure projects with economic development objectives not to conflict with the objectives set forth in the agreement; and
- Other projects as determined by the IDA, including transfers to the EDA.

Exhibit B did not list specific goals and accomplishments, but did provide that the moneys received pursuant to the agreement were to be used based upon the overriding philosophy that embodied the following:

- Infrastructure such as roads, water and wastewater, landfill, telecommunications, and other items traditionally provided by public utilities or government agencies necessary for economic development;
- Tourism and visitor development, focusing on the Peace River and its tributaries and on other such opportunities on un-mined and reclaimed lands such as existing and future Hardee County parks, as well as advertising and promotion of Hardee County and its tourism and economic development efforts;
- Alternative water supply options such as reservoirs, aquifer storage and recovery technology, seasonal enhancement of minimum flows or other technology; and
- Investigation and creation of an economic development catalyst project such as an airport, commerce or industrial park, alternative energy research center or health care complex, etc. Schools, jails, public buildings, and libraries are not considered to be intended uses of these funds.

As of July 31, 2012, the IDA had received \$10 million from the developer pursuant to the development agreement, of which \$1 million had been paid to the BCC under the terms of the agreement. Of the \$9 million retained by the IDA, \$4,091,015 was disbursed for grants, the purchase of a building for a Technology Center, partial construction of speculative buildings (i.e., facilities to house prospective tenants at the Hardee County Commerce Park), other forms of economic stimulus, and professional fees, as shown in Table 1.

Table 1

Purpose	Expenditures as of July 31, 2012
Grants:	
Technology Grant	\$ 2,433,366
Other Grant	26,409
Speculative Buildings:	
Technology Center	1,191,147
Commerce Park	289,473
Other Economic Stimulus:	
Tourism Development	67,119
Chamber of Commerce	8,708
Professional Fees	74,793
Total	<u>\$ 4,091,015</u>

Source: IDA records

We tested expenditures in Table 1 and noted deficiencies in the IDA’s administration of funds related to the Technology Grant (see finding Nos. 1 through 3) and the acquisition of a building to house the Technology Center (see finding No. 4).

**Finding No. 1: Compliance with Chapter 159, Florida Statutes**

Part II of Chapter 159, Florida Statutes, the Florida Industrial Development Financing Act (Act), provides local agencies with necessary or convenient powers to carry out any of the purposes enumerated in the Act. Part III of Chapter 159, Florida Statutes, provides for the creation, purpose, and powers of Industrial Development Authorities (IDAs). Section 159.46, indicates that IDAs are created for the purpose of financing and refinancing projects for the public purposes described in the Act and Part III of Chapter 159, Florida Statutes, and for the purpose of fostering the economic development of a county.

Section 159.29, Florida Statutes, requires the IDA, in undertaking any project, to observe certain criteria and requirements, including a determination that the project is appropriate to the needs and circumstances of, and shall make a significant contribution to the economic growth of, the county in which it is located. Further, the project shall provide or preserve gainful employment; protect the environment; or serve a public purpose by advancing the economic prosperity, public health, or the general welfare of the State and its people. The term “project” is defined in Sections 159.27(5) and 159.44(2), Florida Statutes, and means any capital project comprising various types of facilities, including an industrial or manufacturing plant, research and development park, a tourism facility, trade show facility, trade center, among many others.

Section 159.29(2), Florida Statutes, provides that no financing agreement for a project shall be entered into with a party that is not financially responsible and fully capable and willing to fulfill its obligations under the financing agreement, including the obligations to make payments in the amounts and at the times required; to operate, repair, and maintain at its own expense the project leased; and to serve the purposes of this part and such other responsibilities as may be imposed under the financing agreement. In determining the financial responsibility of such party, consideration is to be given to the party’s ratio of current assets to current liabilities; net worth; earning trends; coverage of all fixed charges; the nature of the industry or activity involved; the party’s inherent stability; any guarantee of the party’s obligations by some other financially responsible corporation, firm, or person; and other

factors determinative of the capability of the party, financially and otherwise, to fulfill its obligations consistently with the purposes of this part of law.

On October 11, 2011, the IDA entered into a grant agreement (hereinafter referred to as the technology grant) with a startup company for the stated purpose of funding its operation and infrastructure creation. The grant required the company to “develop a web-based solution to be marketed to the public and supported by customer service personnel to be located in Hardee County” and to “consult and assist in the development of technological infrastructure for the purpose of creating a Technology Center to support operations and the development of software solutions.” The company was also to recruit additional technology companies to co-locate in the Technology Center.

In connection with the technology grant, the IDA disbursed monthly draws of varying amounts to the company based on the grant budget, totaling \$2,657,813, as detailed in Table 2.

**Table 2**

Description	Amount
Salaries	\$ 216,201
Consultants	138,000
Contractual Services	84,000
Customer Services	36,400
Marketing	25,810
Sales	70,833
Rent	19,273
Intellectual Property Agreement	8,370
Miscellaneous and Data Hosting	9,600
Application Program Interface (API)	615,000
Development Contract	1,434,326
<b>Total</b>	<b>\$ 2,657,813</b>

Source: IDA Records

Our review of the IDA’s award of the technology grant disclosed the following:

- The purposes for which the technology grant was awarded, as described above, do not appear consistent with Section 159.27(5), Florida Statutes, which defines “project” as a capital project comprising various types of facilities.
- The company awarded the grant did not exist at the time of the grant application. The company was incorporated on September 19, 2011, 18 days after the grant application, and 22 days before the grant agreement. Accordingly, the IDA had no company history to determine its viability as a going concern or financial stability and responsibility at the time the IDA received the application or made the award. The grant application did not include any financial data to establish availability of company financial resources to contribute to the project or require minimum contributions or assumption of financial risk by the officers or directors of the company, contrary to Section 159.29(2), Florida Statutes. Three officers of the company executed a note agreeing to be personally liable in the event the company failed to act in good faith to fulfill the stated goals of the grant or used the grant funds in a manner patently inconsistent with the grant objectives. However, as discussed in finding No. 2, the failure of the grant agreement to contain specific and quantifiable deliverables made this guarantee of limited value.
- Although the grant agreement stated that the company would develop a Web-based solution to be marketed to the public and supported by “customer service personnel to be located in Hardee County,” the company was located in Tampa and did not relocate to Hardee County. Further, the agreement provided no timeline for it to relocate in Hardee County. Additionally, as further discussed in finding No. 2, the grant agreement also did



not contain any measurable deliverables to ensure that the project provided significant economic gains to the County, contrary to Section 159.46, Florida Statutes. Although the IDA indicated that the grantee company intended to relocate in the Technology Center at the time the grant was awarded, the IDA did not own the property intended to house the Technology Center.

On September 10, 2012, the grantee company sold all its interest in the Web-based application to another business for 1,250,000 shares of Series B, common stock, in the purchaser's business. One of the officers of the grantee company at the time the grant agreement was executed between the IDA and the company was the Chairman, President, Vice President, and Treasurer of the business that purchased the Web-based application. The business that purchased the application was incorporated on September 14, 2011, and is also not located in Hardee County. The agreement between the grantee company and the purchaser's business contained a provision for the purchaser's business to assume the grant agreement. Contrary to the provisions of the grant agreement, the company did not obtain prior written approval from the IDA to sell this asset or assign the grant agreement to the purchaser. This Web-based application essentially represents the deliverable created from the \$2.7 million (see Table 2 above) invested by the IDA with the company. Without this asset, the worth of the grantee company is significantly diminished and the IDA's recourse against the company for failure to comply with the term of the grant is further weakened (see further discussion in finding No. 2).

The Economic Development Director stated that numerous meetings and conferences were held with company officials prior to its incorporation and, based on the economic conditions at the time of the grant, the IDA felt it would be difficult to attract a "blue chip" or risk-free firm to the County. The Economic Development Director also stated that the company was staffed with extremely experienced personnel and was supported by another established company in developing the application; however, IDA records did not evidence that it had obtained data to support the experience of the personnel or the fiscal viability of the other company. Without evidence of the potential for additional funding sources or financial resources from the company or its officers and directors, the IDA was assuming all liability for the success of the project. Further, the grant agreement did not provide any method for the IDA to recoup its investment in the company nor financially participate in the success of the company if its business venture was successful.

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**Recommendation:** The IDA should only finance projects authorized by Parts II and III of Chapter 159, Florida Statutes. Additionally, prior to entering into future funding agreements for projects, the IDA should: (1) require documentation from the business to demonstrate that it is financially responsible and fully capable and willing to fulfill its obligations under the financing agreement as required by Section 159.29, Florida Statutes; (2) only consider such an agreement if it will potentially further the economic growth of Hardee County as required by Section 159.46, Florida Statutes; and (3) consider the deficiencies discussed in finding Nos. 2 and 3 in drafting such an agreement.

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#### Follow-up to Management's Response

*In his response, the IDA Chairman indicated that management disagrees with our interpretation of the requirements within Chapter 159, Florida Statutes, and suggests that the IDA is empowered to enter into any contracts that "foster economic development." We agree that the IDA is authorized to foster economic development; however, in doing so, the IDA is limited to financing or refinancing a project as defined in Section 159.44(2), Florida Statutes. The purposes for which this grant was awarded do not appear to be consistent with the statutory definition of "project," and the IDA Chairman did not provide any information or documentation to show that the IDA is exempt from this requirement.*

*The IDA Chairman also indicated that Hardee County has been identified as a “rural area of economic concern” and that this designation demonstrates the legislative and executive branch recognition of the need for extraordinary measures designed to enhance the economic conditions of the County. While it is true that the County has been so designated, and the designation provides potential benefits and additional authority to the County, these provisions do not extend to special districts such as the IDA.*

*The IDA Chairman further indicated that while IDA management recognizes it is appropriate to apply financial evaluation criteria to a grant award recipient, the statutory requirements would not be applicable to grant awards designed to foster economic development. However, he did not provide any information or documentation to support this assertion.*

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### **Finding No. 2: Grant Agreement Design**

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The technology grant agreement stated that “In consideration of this agreement and subject to adequate additional funding,” the company would work with the County and IDA to: (1) develop a Web-based solution to be marketed to the public and supported in the County; (2) consult and assist in development of technology infrastructure to create a Technology Center; (3) make available investment opportunities within the County; (4) recruit additional technology companies to locate in the County; and (5) assist in the feasibility and planning of a data center located in the proximity of the Technology Center (within the County). The term of the grant agreement commenced upon full execution of the agreement and was to continue through full performance of both parties; however, the phrase “full performance” was not defined in the grant agreement. The grant agreement also stipulated that full performance of the project was subject to adequate additional funding, but did not indicate the source, method, or timing of any additional funding. The grant application stated that the company anticipated the need for an additional \$6.5 million to complete the project.

The responsibilities of the company pursuant to the grant agreement did not contain sufficient project descriptions of deliverables, including measurable outcomes to be accomplished within established timeframes. Additionally, although the grant agreement required the IDA to provide a format for reports to be completed by the company for the IDA, no such reports were developed by the IDA or required of the company (see further discussion in finding No. 3). Since the project descriptions and performance criteria contained in the grant agreement were not sufficiently described or defined, it would be difficult for the IDA to clearly determine the company’s full compliance with the grant requirements.

The grant agreement provided that in the event that the company was sold, the terms of sale shall require that the acquiring party:

- Reimburse the IDA the greater of one percent of the stated gross purchase price, not to exceed two times the amount invested by the IDA in the company, or 75 percent of the amount of money invested by the IDA in the company, or
- Agree to continue the company’s level of operations within the County as of the date of sale, for not less than three years from the date of the IDA's last investment.

Under the grant agreement, the company was scheduled to receive \$2,657,813 in grant funds, which would mean that a \$265.8 million sales price would be needed for the IDA to receive a full reimbursement of its contribution to the company if the company was sold and the acquiring party did not agree to continue the company’s level of operations within the County for at least three years. Otherwise, the IDA would receive only \$1,993,360, or 75 percent of its contribution to the company. If the company received additional grant funds, which was contemplated in the grant agreement, these amounts would considerably increase. Pursuant to the grant agreement, should the company be

sold, the acquiring party could leave the County after three years with no penalty, which significantly increased the risk that the IDA's funding of the company would not result in achieving the grant's goals of creating economic development and job creation in the County should the company be sold prior to project completion. Further, the grant agreement is silent as to the remedies available to the IDA if the company sells the assets developed in accord with the grant agreement, such as discussed in finding No. 1. The failure to address this contingency may result in the inability of the IDA to achieve any of the grant objectives or recoup any of the funds advanced to the company.

The Economic Development Director indicated that each of the listed responsibilities of the company in the grant agreement was designed to support the IDA's overall economic development process and strategy for the County. He also indicated that full performance of these responsibilities was expected to take more than one year, and substantial progress had been made toward each of these conditions; however, IDA records did not document any progress towards completion of such responsibilities. He further indicated that the company's performance could be measured in terms of progress towards completion of the Web-based application, with support staff occupying an adequate facility with other tenants, which result in an identifiable Technology Center in the County. However, as of September 2012, IDA records did not evidence completion of the application or assistance provided to the IDA by the company regarding development of technology infrastructure, and, since the building purchased to house the Technology Center had not been renovated, neither the company nor similar tenants had located to Hardee County.

Exhibit B to the grant agreement was a note stating that if the IDA performed in accordance with the agreement, three company officers would be individually liable for the repayment of moneys provided by the IDA if the company failed to substantially comply with the scope and purpose of the grant, failed to act in good faith to fulfill the stated goals of the grant, or used funds in a manner patently inconsistent with the objectives of the grant. However, given the deficiencies discussed in the preceding paragraphs regarding the grant's lack of measureable deliverables and established timeframes, it may be difficult for the IDA to demonstrate the company's failure to comply with the grant. The grant was drafted with so few obligations and requirements that could be enforced against the company, and provided so few enforceable remedies for the IDA, it is not apparent that this arrangement was primarily for a public and governmental purpose as prescribed by Sections 159.26(4) and 159.46, Florida Statutes.

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**Recommendation:** For future grants, the IDA should design agreements to provide measurable deliverables with established timeframes to ensure that it may determine grantee performance under the agreement. Additionally, grant agreements should provide a reporting mechanism so that funding under the grant is dependent upon the grantee providing deliverables within the established timeframes.

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### **Finding No. 3: Grant Monitoring**

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The IDA disbursed approximately \$2.4 million (see Table 1 preceding finding No. 1) based on a budget of approximately \$2.7 million (see Table 2 in finding No. 1) to the company during the period October 2011 to July 2012. The disbursements were not supported by detailed invoices or other documentation, except for a budget worksheet. The grant agreement required that the company provide detailed reports to the IDA regarding the Web-based application and that the IDA make site visits and review supporting documentation of reported outcomes and expenses of the company including receipts, canceled checks, basis for disbursements, and invoices. Following a site visit or review, a written report was to be provided to the IDA Board, with comments and recommendations regarding the manner in which services were being provided. However, IDA records did not include written reports of site visits, evidence of review of documentation of reported outcomes and expenses, or written reports prepared by the company or the Economic Development Director.

The Economic Development Director indicated that the company and he presented oral reports and power point presentations to the IDA Board at public meetings, but the company did not provide written reports because of the sensitive nature of the Web-based application, and the grant agreement did not require these reports to be written. The Economic Development Director also stated that he performed detailed reviews of supporting documentation and orally reported to the IDA Board at public meetings; however, he did not provide written reports to the IDA Board because of the sensitive nature of the Web-based application. Our review of the minutes of IDA meetings indicated that while the Economic Development Director and company staff provided periodic presentations to the IDA Board as to the Web-based application progression, the IDA did not record such presentations and reports in its records for public inspection.

We acknowledge the concerns over the protection of intellectual property or proprietary information of the project; however, copies of invoices, contracts, and written reports demonstrating that grant moneys were used in accordance with grant terms and budget, and that the project was progressing towards successful completion, are essential for the IDA to satisfy its fiduciary responsibility in administering the terms of the grant agreement. Financial data and written reports can be carefully designed within established parameters to provide sufficient evidence that the project was progressing towards satisfactory completion and that the general funding conditions were being met without disclosing sensitive intellectual property or proprietary information.

After numerous requests, on October 8, 2012, the Economic Development Director provided us with a company-prepared statement of cash expenditures, a draw schedule, an income statement, and a balance sheet purporting to provide an accounting of the grant funds drawn and disbursed by the company from October 18, 2011, to October 5, 2012. These documents, prepared nearly one year after the grant was entered into, generally agreed with the budget draw schedule attached to the grant, but contained no further support, such as evidence of the Economic Development Director's review and approval of the underlying supporting documentation of the reported expenditures, or any reports prepared by the Economic Development Director containing comments and recommendations to the IDA Board.

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**Recommendation:** The IDA should develop procedures and methodologies that will sufficiently demonstrate in its public records that it met its stewardship responsibilities regarding monitoring of grants. Such procedures, at a minimum, should include obtaining supporting invoices, preparing required reports of the project's progression, and presenting the results of reviews of the company's financial activity to the IDA Board.

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#### **Finding No. 4: Acquisition of Building for Technology Center**

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On May 11, 2012, the IDA purchased a building from a utility company, using moneys received pursuant to the development agreement, to establish a Technology Center. The building was purchased at the appraised value of \$996,000. On the date of purchase, the IDA entered into an agreement with the utility company for the provision of a dedicated backup power source for the building. The agreement provided that the utility company would be paid \$200,000 to dedicate 100 kilowatts of electrical power capacity from an emergency generator owned by the utility company and located adjacent to the building purchased.

The agreement stated that the capacity would be available only at such time as the generator was actually generating for the purpose of supplying emergency electrical power to the utility company and other locally designated loads, and that the term of the agreement was for the remaining useful life of the generator. Also, future use of the generator depended upon the mechanical condition of the generator. The agreement further stated that the utility company,

subject to these conditions, would use its best effort to furnish the emergency electrical power as set forth in the agreement; however, if the company was unable to provide the emergency electrical power, it would not be liable for any damages caused thereby.

The IDA did not perform an analysis to determine whether the acquisition of a backup power source through the utility company was a more efficient and cost-effective option than other available means for providing a reliable source of backup power. IDA staff indicated that they did not believe that another reliable, affordable source of backup power was readily available.

While we agree that to effectively operate a Technology Center there must be an effective and reliable alternative power source, in the absence of a detailed analysis of the various alternatives, IDA records did not demonstrate that the agreement was cost effective or in the IDA’s best interest. Furthermore, the agreement requires the company to “use its best efforts” to furnish emergency power and, in the event that the company’s best efforts fail to yield the required emergency power, no damages would result under the contract. Additionally, the term of the agreement was for the remaining useful life of the generator, which was not defined in the agreement, and did not have a termination or cancellation provision. Further, the contract failed to provide any assurance that damages incurred as a result of power outage would be indemnified by the company. In the absence of a meaningful indemnification clause, the IDA may be responsible for paying damages incurred by tenants of the Technology Center caused by a power failure.

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**Recommendation:** To ensure that the most efficient and cost-effective option is achieved, the IDA should implement procedures to ensure that an analysis of all alternatives is performed prior to entering into similar agreements. Additionally, the IDA should ensure that its interests are protected within the agreement with clearly defined terms and remedies.

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<b>Financial Reporting and Administration</b>
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**Finding No. 5: IDA Financial Reporting**

The IDA was created in 1984 and meets the definition of a special district pursuant to Section 189.403, Florida Statutes. Section 218.32, Florida Statutes, requires special districts to file annual financial reports with the Florida Department of Financial Services (DFS), and Section 218.39(1), Florida Statutes, requires special districts meeting the audit threshold<sup>2</sup> to provide for a financial audit and to file the audit report with us. Prior to the 2010-11 fiscal year, both reports were required to be filed within 12 months of the fiscal year end. Effective for the 2010-11 fiscal year, the filing requirements changed to within 9 months of the fiscal year end.

The IDA had not prepared or filed annual financial reports with DFS for any fiscal year since its existence. Also, since at least the 2008-09 fiscal year, the IDA met the audit threshold provided in Section 218.39, Florida Statutes, but had not filed any financial audit reports with us. 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 a letter dated November 9, 2011, the Legislative Auditing Committee inquired with the IDA as to why the above mentioned reports were not filed. The IDA’s General Counsel stated that the IDA was not aware of the statutory

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<sup>2</sup> Pursuant to Section 218.39(1), Florida Statutes, a special district must provide for a financial audit if, for a given fiscal year, revenues or the total of expenditures and expenses exceed \$100,000, or revenues or the total of expenditures and expenses are between \$50,000 and \$100,000 and the special district has not been subject to a financial audit for the two preceding fiscal years.

filing requirements. In December 2011, the IDA filed annual financial reports and financial audit reports for the 2008-09 and 2009-10 fiscal years, 15 and 3 months, respectively, after the 12-month statutory due date. The IDA's annual financial report and financial audit report for the 2010-11 fiscal year were completed and timely filed by June 30, 2012.

Inclusion of the IDA as a component unit of the County's financial statements, as discussed in finding No. 12 would no longer necessitate the IDA's filing of annual financial reports or separate financial audit reports; however, the IDA would be required to provide the County financial information necessary for the County to prepare its annual financial report and to comply with its financial audit requirements.

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**Recommendation:** The IDA should ensure that it timely complies with applicable financial reporting and audit requirements.

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### **Finding No. 6: Independent Auditor's Findings**

Management letters prepared by the IDA's independent auditor for the 2008-09, 2009-10, and 2010-11 fiscal years, included several internal control deficiencies that were considered material weaknesses. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. As part of our audit, we determined what actions the IDA took to correct the material weaknesses reported by the independent auditor. The results of our follow up of these material weaknesses and other internal control deficiencies are summarized below:

#### **Material Weaknesses**

***Preparation of Financial Statements.*** The IDA was responsible for establishing and maintaining internal controls and for the fair presentation of its financial statements in accordance with generally accepted accounting principles. The IDA's audit reports indicated that, due to limited expertise and resources, fund balance, capital assets, inventory, and expenditure balances were materially misstated resulting in material audit adjustments to present the financial statements in accordance with generally accepted accounting principles.

In its response to the independent auditor's finding, the IDA indicated that it was in the process of contracting with an accounting firm to perform financial statement preparation services. However, as of September 24, 2012, the IDA was preparing a Request for Proposals (RFP) for accounting services, but no RFP had been issued.

***Inadequate Separation of Duties.*** The IDA was required to have a system of internal control over accounting and financial reporting that would allow management, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. Such controls should be designed to separate duties to the extent practicable with existing personnel. Individuals with responsibility for recording transactions should not also have access to assets.

The IDA's audit reports indicated that there was an inadequate separation of duties in that the same individual opened the mail; initiated, prepared, and disbursed checks; and prepared the bank deposits and bank account reconciliations. There was also a lack of audit trail as monthly bank reconciliations were not printed. In its response to the independent auditor's finding, the IDA indicated that office and accounting procedure changes to separate duties, as well as develop a formal policy, had been adopted subsequent to September 30, 2011. However, as of September 24, 2012, the Office Manager was still responsible for initiating, preparing, and disbursing checks, and also preparing bank deposits and bank account reconciliations.

At its February 14, 2012, meeting, the IDA Board approved internal control policies to be implemented, in part, to correct these deficiencies. Our review of key control procedures included within that policy, and compliance therewith, disclosed the following:

- The IDA's internal control policies required that a daily log of cash receipts be maintained. Records of cash received were to be totaled, initialed, and dated by authorized employees. Cash collection records were to be compared and reconciled to bank deposit receipts on a monthly basis. As of August 23, 2012, the IDA was not maintaining a log of receipts, whether cash or check.
- The IDA's internal control policies required that only prenumbered checks be used, and always in sequential order. While the IDA utilized prenumbered checks for its general bank account, the IDA continued to exclusively use cashiers' checks for the development account, and did not keep any blank check stock for this account. In response to our inquiry regarding why the IDA only used cashiers' checks for this account, IDA staff indicated that it is less expensive to use cashiers' checks than ordering prenumbered checks.
- The IDA's internal control policies required that access to blank checks be limited to persons authorized to prepare checks. Blank check stock was to be locked in a secure place when not in use. Based on our observation on July 25, 2012, we noted that the IDA maintained blank check stock in an unlocked desk drawer within an office that was not routinely locked.
- The IDA's internal control policies provide that the Economic Development Director prepare deposits; however, the Office Manager was performing this duty as of September 24, 2012.
- The IDA's internal control policies required that an external accountant perform certain duties, including the posting of adjusting journal entries, review of bank account reconciliations, and comparison of receipts logs to bank account statements and reconciliations. However, because the IDA had not contracted with an outside accountant, these duties were not being performed as of September 24, 2012.

While the IDA had limited staff, without implementation of adequate compensating controls there was an increased risk that IDA funds could be diverted or stolen without timely detection.

**Formal Documented Policies.** The IDA's audit reports indicated that the IDA had not formally documented its accounting policies or procedures. In its response, the IDA indicated that formal documented policies were adopted subsequent to September 30, 2011. Our review disclosed that while the IDA adopted the internal control policies discussed above, the policies did not adequately address all issues presented in the audit finding. The IDA had not adopted policies and procedures for its year-end closing process, fraud risk assessment and monitoring, investment of available moneys, review and approval of transfers between bank accounts, and asset capitalization. Formal documented policies that clearly define responsibilities of staff are essential to provide the IDA Board and staff with guidelines regarding the efficient and consistent conduct of IDA business and the effective safeguarding of IDA assets.

**Compliance with Florida Statutes and the State Constitution.** The IDA's audit reports indicated that the IDA had not complied with the following provisions in law:

- Adopting a budget in accordance with Section 189.418(3), Florida Statutes.
- Filing qualified public depository forms as required by Section 280.17, Florida Statutes.
- Filing oaths of affirmation as required by Article II, Section 5(b) of the State Constitution.

In its response to the independent auditor's finding, the IDA indicated that the qualified public depository forms and the oaths of affirmation were both properly filed subsequent to September 30, 2011. While the IDA had been in existence since 1984, it had never prepared or adopted an annual budget for any fiscal year, contrary to law. In a letter dated November 9, 2011, the Legislative Auditing Committee inquired as to why budgets were not prepared. The IDA's General Counsel responded that the IDA never adopted a "formal" budget and its revenues were inconsistent,

unpredictable, and entirely dependent upon grant awards, if any, and sale of land in a commerce park. Subsequently, the IDA adopted, by resolution, a budget for the 2011-12 fiscal year at its February 14, 2012, Board meeting.

**Lack of Supporting Documentation.** The IDA's audit reports disclosed areas for which supporting documentation could not be located, causing a deficiency in the audit trail. Specifically, the following documentation was not available:

- Documentation evidencing that monthly bank account reconciliations were performed on all IDA bank accounts.
- A listing of attendees for several IDA board meetings.
- Documentation supporting payments for contracted services provided to the IDA.

In its response to the independent auditor's finding, the IDA indicated that accounting and policy procedures had been instituted to remedy this situation. Our current review confirmed that there existed documentation evidencing that monthly bank account reconciliations were now being performed on all bank accounts, board meeting minutes were now including a listing of all attendees, and, except for the payments on the technology grant discussed in finding No. 3, documentation was being maintained to support payments for contracted services.

#### **Other Internal Control Deficiencies**

**Improperly Recorded Transfers.** The IDA's audit reports indicated that the IDA maintained several bank accounts as a tracking mechanism instead of utilizing a pooled bank system, contrary to common practices of governmental entities. The audit reports further noted that funds were transferred from bank accounts and later replenished when funds were available. This was necessary to temporarily finance projects funded through grants from the EDA on a reimbursement basis; however, these transactions were not properly recorded as transfers, resulting in an overstatement of revenues and expenses.

In its response to the independent auditor's finding, the IDA indicated that it had corrected accounting procedures, implementing appropriate changes. Our review confirmed that, as of July 2012, the IDA consolidated its bank accounts to two accounts; however, as discussed above under *Formal Documented Policies*, the IDA had not implemented formal procedures for review and approval of bank transfers, should they occur between these two accounts.

**Property Owners' Association.** The IDA's audit reports noted that a separate general ledger account for the Hardee County Commerce Park Property Owners' Association, Inc., was created to establish a property owners' association for tenants in the commerce park. The audit reports further indicated that since the property owners' association did not exist as a separate legal entity, the bank account balance and related transactions must be included in the IDA's audited financial statements, and since the IDA had not filed appropriate reports with the Internal Revenue Service (IRS) to properly establish an association, the account was considered an IDA bank account.

In its response to the independent auditor's finding, the IDA indicated that the IDA agreed that appropriate reports to create a property owners' association would be filed with IRS when deemed necessary. Our current review disclosed that the IDA closed the bank account in March 2012, and the IDA was no longer accounting for such transactions separately.

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**Recommendation:** The IDA should continue in its efforts to address material weaknesses and other internal control deficiencies reported by the independent auditor.

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**Finding No. 7: IDA Bank Accounts**

During the 2011-12 fiscal year, the IDA maintained eight bank accounts in two banks. Balances in these accounts totaled \$7,602,652 at June 30, 2012. The IDA maintained a list of authorized signers for each account and established the individuals authorized to sign checks and initiate transactions. Our review of the authorized signers for each account during the 2011-12 fiscal year disclosed that the IDA’s former treasurer continued to be authorized to initiate transactions subsequent to his resignation in November 2011. Additionally, we noted that for two of the eight bank accounts, only one signer was required to initiate transactions. Although our tests did not disclose any errors or misappropriations relating to this weakness, under these conditions, there was an increased risk that unauthorized withdrawals or expenditures could be made and not timely detected. In June 2012, subsequent to our inquiry, the IDA reduced the number of bank accounts from eight to two and updated the agreements to remove the former board member’s signature authorization, and include a requirement of at least two authorized signers on the accounts.

**Recommendation:** The IDA should implement procedures to ensure that it timely amends bank agreements for personnel changes.

**Finding No. 8: IDA Staffing**

The IDA did not employ staff to perform its financial, accounting, and administrative functions. These activities were performed, at no cost to the IDA, by the Economic Development Council (EDC), which consisted of the Economic Development Director, Economic Development Coordinator, and Office Manager. The EDC is a nonprofit corporation established to promote economic development in the County, and was funded by the EDA and the BCC. Our review disclosed that while the IDA utilized EDC staff, the IDA and the EDC did not have a written agreement regarding this staffing arrangement. Such an agreement is necessary to establish, at a minimum, staff responsibilities and educational requirements, descriptions of services to be provided, supervisory responsibilities, and an indemnification provision. In the absence of such an agreement, the IDA is subject to potential liability if the EDC fails to properly perform the duties delegated to it by the IDA.

**Recommendation:** The IDA should develop a written agreement with the EDC that contains, at a minimum, the elements described above.

**Construction Administration**

**Finding No. 9: IDA Construction of Speculative Building**

On August 25, 2009, the EDA awarded the IDA a \$1.776 million reimbursement grant to fund the construction of a speculative (spec) building within the Hardee County Commerce Park (commerce park). On February 23, 2010, the EDA authorized the IDA to use \$410,000 of this grant to purchase an existing warehouse in the commerce park for prospective tenants, with the remaining grant money to be used for the construction of the spec building. Shortly after signing the grant agreement, the IDA identified a company interested in moving to the commerce park and constructed a suitable building for the company. The spec building, which remained the property of the IDA, was leased to the company along with the purchased warehouse.

Construction of the spec building was administered as a design-build (DB) project. Under the DB process, contractor profit and overhead are contractually agreed upon, and the contracted firm is responsible for all scheduling and

coordination in both the design and construction phases, and is generally responsible for the successful, timely, and economical completion of the construction project. DB firms may also be required to offer a guaranteed maximum price (GMP). The GMP provision allows, for projects in which actual costs are less than the GMP, for the difference between the actual cost of the project and the GMP amount, or net cost savings, to be returned to the IDA.

Our review of the IDA's administration of this construction project disclosed the following:

***Selection of Construction Management Entity.*** Section 287.055(9)(c), Florida Statutes, provides for the use of a competitive proposal selection process in selecting a construction management entity (CME) for a DB contract, and specifies certain requirements when using the process. Our review of the IDA's administration of the competitive proposal selection process disclosed:

- The IDA did not prepare a design criteria package for the project prior to selection of the CME, contrary to Section 287.055(9)(c)1., Florida Statutes.
- The IDA issued a request for proposals and qualifications (RFPQ) in January 2011 that required respondents to include the cost of general conditions (as a per-month charge), preconstruction services fee, design fee, the CME's fee for construction services, and the cost of a payment and performance bond based on a \$1.4 million project. Additionally, the RFPQ indicated that final selection would be based on the following qualifications:
  - Previous preconstruction services and construction management at risk services experience;
  - Qualifications and resumes of proposed team members;
  - Compatibility of key individuals proposed with other project team members;
  - Financial position/bonding/insurance coverage; and
  - Fees and general conditions

Although the RFPQ indicated that the selection of the CME would be based on qualifications, IDA records indicated that it selected the CME based solely on price and fees, contrary to Section 287.055(9)(c)3., Florida Statutes.

- The IDA did not consult with a design criteria professional concerning the evaluation of the responses or bids submitted by the DB firms, contrary to Section 287.055(9)(c)5., Florida Statutes.

Upon inquiry, IDA staff indicated that this was not a true DB construction project, as the CME did not contract for the design of the project. However, IDA records indicated that design fees were included in both the RFPQ and pay applications submitted by the CME.

***Subcontractor Bidding Process.*** On April 4, 2011, the IDA entered into a construction management agreement (contract) with the CME selected for this project. The contract required that the CME develop subcontractor interest in bidding on the project, take competitive bids, prepare a bid tabulation analysis for review by the IDA, and provide written recommendations to the IDA for the award of subcontracts. Additionally, the contract stipulated that subcontracts for less than \$50,000 may be awarded based upon written quotes. All quotes or bids received were to be recorded on a tabulation sheet and copies of the bids, quotes, and tabulation sheets were to be sent to the IDA for review and comment prior to the CME awarding subcontracts.

IDA records indicated that the CME awarded subcontractor bids; however, IDA records did not include detailed bidding information. IDA staff indicated that all bids were reviewed by the Economic Development Director and the Economic Development Coordinator before awards were made; however, IDA records did not evidence such review. Furthermore, IDA staff indicated that this review consisted solely of examination of CME-prepared tabulation sheets, and did not include a review of the submitted quotes or bids. Additionally, IDA records indicated that tabulation

sheets were obtained for only 6 (24 percent) of 25 line items subject to quotes or bids, as included in the GMP established by change order No. 1 (see discussion under the heading *GMP/Substantial Completion Date/Liquidated Damages*). Also, our review of the tabulation sheets disclosed that the amounts listed did not match the amounts ultimately included in the GMP established by change order No. 1 and, in one instance, two conflicting tabulation sheets were on file for the same work item, indicating different subcontractor selections. IDA records did not evidence reasons for the differences between tabulation sheets and amounts ultimately included in the GMP. Without an adequate monitoring process for subcontractor selection, the IDA cannot be assured that subcontractor services were obtained at the lowest price consistent with acceptable quality.

***GMP/Substantial Completion Date/Liquidated Damages.*** The contract required the CME to provide a GMP proposal for the total sum of the project within 30 days of completion of the construction documents. The contract also stipulated that the construction phase commencement date and the construction phase substantial completion date were to be included in the GMP proposal. The contract further stipulated that should the CME fail to substantially complete the work within the required time period, the IDA would be entitled to assess liquidated damages for each calendar day thereafter until substantial completion is achieved. The liquidated damage amount was to be established in the GMP proposal submitted by the CME.

Contrary to the contract, the CME did not provide a GMP proposal to the IDA. Instead, a GMP amount of \$1.7 million was established in the first change order for the project. However, the change order did not include a substantial completion date or liquidated damages amount, therefore providing no financial penalty for untimely completion of the project. Financial penalties provide the IDA with a means to hold the CME responsible, thereby increasing the CME's incentive to complete the project by a certain date.

***Payment and Performance Bond.*** The initial contract totaled \$416,638, representing the amounts to be paid for preconstruction and construction phase services prior to establishment of the final GMP. The contract required the CME to provide the IDA with a bond in the total amount of the GMP. It further stated that no work was to be performed until evidence of an adequate bond was provided to the IDA. Our review disclosed that the IDA obtained evidence, dated July 26, 2011, of a payment and performance bond for the initial contract amount of \$416,638. Change order No. 1, dated July 21, 2011, established a GMP amount of \$1.7 million; however, IDA records did not include a revised payment and performance bond for the GMP established by change order No. 1.

Subsequent to our inquiry, IDA staff provided evidence of a payment and performance bond, dated August 30, 2012, which reflected the final GMP amount after all change orders. IDA records indicated that the project was substantially completed on December 13, 2011. The CME, through the IDA, indicated that its bonding agent required the CME to provide all project change orders and the final pay application in order for the bonding agent to provide the consent of surety to final payment. However, failure to obtain evidence of an adequate payment and performance bond, or some alternative form of security, in advance of the work performed increases the risk that the IDA may be held responsible for the CME's failure to perform its contractual obligations or to properly pay all subcontractors engaged on the projects.

***Direct Material Purchases.*** Section 212.08(6), Florida Statutes, provides an exemption from sales tax to governmental entities when payments are made directly to the vendor by the governmental entity. Department of Revenue Rule 12A-1.094, Florida Administrative Code, addresses the taxation of transactions in which contractors manufacture or purchase supplies and materials for use in public works. The Florida Department of Revenue also issued several technical assistance advisements that describe in detail the steps that governmental entities, including the IDA, must take for sales tax exemptions. To qualify for an exemption from the payment of sales tax, the

governmental entity must directly purchase, hold title to, and assume the risk of loss of the tangible personal property prior to its incorporation into realty, and satisfy various specified conditions.

To obtain sales tax savings on the direct purchase of materials needed for the project, the IDA approved change order No. 2 on August 29, 2011, reducing the GMP by \$431,399 for anticipated direct material purchases. However, because the IDA had not applied for the tax exemption, sales tax totaling \$25,743 was paid on direct materials purchased during the project. Therefore, the IDA did not utilize the most cost-effective method of purchasing construction materials for the project, nor for any additional goods or services purchased by the IDA that may be subject to sales tax within its normal course of business. IDA staff indicated that because the building was built within an enterprise zone, the IDA intended to request reimbursement of sales tax paid, as provided for in Section 212.08(5)(g), Florida Statutes. However, as of September 2012, the IDA had not applied for such reimbursement. Also, reimbursement under this program is restricted and capped at a maximum of \$10,000, which would result in \$15,743 remaining unreimbursed.

***Support for General Conditions.*** The contract provided for the IDA to compensate the CME for personnel costs, including actual wages paid, as well as an indirect salary cost element commonly referred to as labor burden. Components of labor burden typically include social security and Medicare taxes, unemployment taxes, medical insurance, workers' compensation, and may include various company-paid benefits. The costs, coupled with other reimbursable costs, such as vehicle expense, communications, and office supplies, made up the general conditions cost of the project.

IDA records indicated that general conditions scheduled costs totaled \$88,920, or \$14,820 per month for a period of six months. The CME-submitted applications for payment for the project did not include sufficient supporting documentation, such as payroll records, copies of invoices, or any other related support for the amounts charged the IDA for general conditions. Additionally, the contract allowed for a fixed mark-up rate of no more than 36 percent for labor burden; however, because of the lack of supporting documentation, IDA records did not indicate the mark-up rate charged. Absent such documentation, IDA records did not evidence that amounts paid for general conditions were appropriate and reasonable.

***Support for Subcontractor Charges.*** The contract also provided for the IDA to reimburse the CME for the cost of subcontractors performing work on the project. The CME-submitted applications for payment for the project did not include subcontractor invoices or other similar documentation supporting the charges. Accordingly, IDA records did not evidence the basis upon which the IDA paid the CME \$780,596 for subcontractor services. Without reconciling the CME pay requests to detailed supporting documentation from subcontractors, the IDA had limited assurance that reimbursements paid to the CME were appropriate and that it had realized maximum cost savings.

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**Recommendation:** The IDA should implement procedures to competitively select the most qualified firm for construction projects in accordance with Section 287.055, Florida Statutes. The IDA should also ensure that the subcontractor selection process is properly monitored and implement procedures requiring construction contracts to contain appropriate penalty clauses for noncompliance and receipt of evidence of adequate payment and performance bonds prior to commencing work. In addition, the IDA should seek sales tax exemption status and enhance its procedures to ensure that general condition items and subcontractor charges are supported by payroll records, invoices, or other appropriate documentation.

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**Finding No. 10: IDA Construction of Broadband Network**

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On February 2, 2010, the EDA awarded the IDA a \$2 million reimbursement grant for the construction and maintenance of a broadband infrastructure network (project) within Hardee County. Accordingly, the IDA entered into an agreement, in March 2010, with a company to govern the construction, maintenance, and ownership of the network. The agreement term was three years, and required a matching \$2 million investment by the company. While IDA records indicated that the project was fully constructed by August 2011, the agreement will not expire until March 2013. Our review of the administration of the agreement and the construction activities related to the project through September 2012 disclosed the following:

**Matching Investment.** The agreement required the company to contribute \$2 million in cash, equipment, and services to the project, and stipulated that the investment would be proportioned over the term of the agreement. Although the agreement allowed the IDA to request documentation of the company's investment at any time, as of September 2012, IDA records did not evidence that it had determined and monitored the company's compliance with the proportional investment requirements. IDA staff indicated that the company's investment would be satisfied at closeout, and that the company provided updates to the IDA on a regular basis; however, as of September 2012, the company had not provided evidence of its proportional investment. Absent adequate and timely monitoring of the company's investment throughout the entire term of the project, the IDA has limited assurance that the project will be equally funded by each party, as required by the agreement.

**Performance Requirements.** The agreement stipulated that upon expiration of the grant term, if the company substantially satisfied the performance requirements set forth in schedule 2 of the agreement, title to, and ownership of, equipment purchased for the project would transfer from the IDA to the company. However, our review of the agreement disclosed that schedule 2 of the agreement did not exist. IDA staff indicated that schedule 2 was not created because the term of the agreement had not expired. However, without defined performance requirements established in the agreement, there is an increased risk that the project will not be constructed to the IDA's expectations.

**Project Insurance Requirements.** The agreement required that the company maintain property and casualty (including liability) insurance on the project and any other property acquired with grant funds in amounts customary and appropriate for similar projects. IDA records did not evidence that the company obtained the required insurance coverage. Under such circumstances, the IDA could be responsible for losses (property or otherwise) that could or may have occurred. On September 24, 2012, subsequent to our inquiry, the IDA obtained from the company evidence of insurance held by the company during the term of the agreement.

**Site Agreement Insurance Coverage.** The IDA entered into four separate site lease agreements with the City of Wauchula, City of Zolfo Springs, City of Bowling Green, and Hardee County to provide the company access to certain sites and locations for housing the broadband equipment. Each agreement required the company to obtain insurance, with one of the agreements also requiring the IDA to obtain insurance. However, IDA records did not evidence that the company or the IDA obtained insurance coverage. IDA staff indicated that the company maintained insurance, but the IDA did not obtain evidence of such coverage. Under such circumstances the IDA could be found in violation of site agreements and additionally could be held responsible for losses (property or otherwise) that could or may have occurred.

**Capitalization of Project Expenditures.** On August 1, 2011, the IDA certified to the EDA that the project had been completed and submitted a final request for reimbursement of project expenditures. Our review of the IDA's 2010-11 fiscal year financial statements disclosed that the project expenditures were not capitalized, contrary to

generally accepted accounting principles (GAAP). EDA records indicated that a total of \$1,999,099 was spent by the IDA on the project for the 2009-10 and 2010-11 fiscal years. IDA staff indicated that this issue would be discussed with the IDA’s independent auditor for the 2011-12 fiscal year.

***Annual Compliance Certificates.*** The agreement required the company to provide an annual compliance certificate stating that during such year the company fulfilled its obligations under the agreement and including a description of any known material defaults in the fulfillment of such obligations. Additionally, the certificate was required to be signed by the company’s acting chief financial officer and delivered within 45 days of the close of each calendar year. Accordingly, compliance certifications should have been filed with the IDA no later than February 14, 2011, and 2012. However, IDA records did not evidence that the certifications were filed. IDA staff indicated that, while certificates had not been submitted, the company provided updates to the IDA on a regular basis during various meetings.

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**Recommendation:** The IDA should determine the company’s proportional investment in the project, create schedule 2 of the agreement, ensure evidence of insurance coverage is maintained for each site and location, capitalize expenditures in accordance with GAAP, and obtain the required compliance certifications. For future grants, the IDA should obtain evidence of required insurance coverage prior to beginning new projects.

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**Follow-up to Management’s Response**

*In his response, the IDA Chairman indicated that the IDA disagrees with an assertion of inadequate monitoring of the company jointly developing the broadband project. He further indicated that the construction office for the project was based within the IDA’s office space, that custody of the records and documentation related to the project was the responsibility of the company, and that the information may not have been reviewed as a part of the audit. However, the point of our finding is that the IDA should have determined and monitored the company’s proportional investment as required by the agreement throughout the term of the agreement rather than at project closeout as suggested by the IDA Chairman. Additionally, the IDA is responsible for maintaining in its public records documentation evidencing its monitoring of the company’s performance under the contract and was required to provide us such documentation upon our request. We requested that the IDA provide us with all such documentation and reviewed the documentation provided to us.*

**HARDEE COUNTY ECONOMIC DEVELOPMENT AUTHORITY (EDA)**

**Grant Administration**

The purpose of the EDA is to solicit, rank, and fund projects that provide economic development opportunities and infrastructure within the geographic boundaries of Hardee County, and to otherwise maximize the use of Federal, State, local, and private resources. The EDA’s major source of funding is the phosphate severance tax distributed to Hardee County pursuant to Section 211.3103, Florida Statutes. The EDA received phosphate severance taxes totaling \$8,485,909 for the 2008-09 through 2011-12 fiscal years.

**Finding No. 11: Hangar and Broadband Projects**

We reviewed the EDA’s administration of grants, totaling \$7.8 million, awarded from phosphate severance tax funds from April 2007 through October 2010. Our review disclosed the following regarding two grant-funded projects:

### **Hangar Project**

In April 2007, the EDA awarded the City of Wauchula an infrastructure grant, totaling \$775,000, to partially fund the materials, equipment, and labor to construct a hangar facility at the City's municipal airport. The remaining costs of the hangar facility were funded by other sources received by the City. Our review of the EDA grant and expenditure reimbursements related to the grant disclosed the following:

***Insufficient Support for Expenditures.*** The grant agreement signed on April 25, 2007, included various exhibits, including an Exhibit B describing various requirements related to requests for reimbursement of project expenditures and including a standard form for submission of reimbursement requests. The form specified that copies of invoices, along with proof of payment, were required for EDA to approve reimbursements. Our review of EDA records disclosed six applications for payment from the CME, totaling \$420,301, that were unsigned by the acting architect on the project. An architect's signature certifies to the owner of a project that the progress and sum due indicated by the CME properly reflects the status of the project. In response to our inquiries, EDA staff requested an explanation from the officials of the grantee, who indicated that because the CME submitted pay applications electronically to the City, signatures were not always obtained, but the architect emailed approval to the City for each of these payments. However, the emailed approvals were not provided to the EDA and, therefore, EDA records did not evidence that amounts reimbursed were properly approved.

### **Broadband Project**

As discussed in finding No. 10, in February 2010, the EDA awarded the IDA a \$2 million reimbursement grant for the construction and maintenance of a broadband infrastructure network within Hardee County. Our review of the grant and reimbursements related to this grant disclosed the following:

***Insufficient Support for Expenditures.*** The grant agreement signed on February 2, 2010, included various exhibits, including an Exhibit C describing various requirements related to requests for reimbursement of project expenditures and including a standard form for submission of reimbursement requests. The form specified that copies of invoices, along with proof of payment, were required for the EDA to approve reimbursements. Our review of reimbursement payments to the IDA related to this project disclosed:

- Reimbursement payments totaling \$7,880 were issued without supporting invoices (see further discussion below under the heading *Unrelated Expenditures*).
- Reimbursement payments totaling \$1,427,354 were made based on submitted invoices but did not include proof of payment, such as signed or canceled checks.

While we were able to confirm that the checks were ultimately signed, without adequate evidence of goods or services received and payments made at the time of reimbursement, the EDA had limited assurance that grant funds were appropriately expended, and there was an increased risk of overpayment.

***Unrelated Expenditures.*** Exhibit C of the grant agreement specified that the grant be issued on a reimbursement basis in accordance with good cash management principles, and include only expenditures related to the project elements and the time period identified in the agreement. Our review of grant records disclosed reimbursement payments, totaling \$7,880, for grant writing and consulting charges incurred by the IDA that did not appear to be related to the grant. Although invoices were not available for review, other EDA records (a spreadsheet with descriptions of what payments to consultants were for) indicated that the charges were related to the preparation of a distance learning and telemedicine grant application, a rural business opportunity grant application, and a report entitled "Rural Florida Data Center." In response to our inquiries, EDA staff requested an explanation from IDA staff, who indicated that the consultant originally assisted in pursuing broadband opportunities in Hardee County and

subsequently was contracted to solicit additional grant opportunities related to broadband, including data center feasibility. However, the reimbursement of expenditures related to applications for nonrelated grants, and the preparation of a report related to data center feasibility, did not represent necessary and reasonable costs of the project for which grant funds were awarded.

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**Recommendation:** The EDA should implement procedures to ensure that expenditures submitted for reimbursement pertain to the grant award and that reimbursement requests are adequately supported in accordance with the grant requirements.

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**HARDEE COUNTY BOARD OF COUNTY COMMISSIONERS (BCC)**

**Financial Reporting**

**Finding No. 12: BCC Financial Reporting**

The Governmental Accounting Standards Board (GASB) has established accounting and financial reporting standards for all governments that require that an entity determined to be a component unit be reported within the primary government’s basic financial statements. A primary government’s failure to include a component unit’s transactions in its basic financial statements may cause the financial statements to be misleading or incomplete.

GASB has established criteria for determining whether an entity is a component unit. Based on GASB component unit criteria in effect for the 2010-11 fiscal year<sup>3</sup>, an entity was required to be reported as a component unit of the BCC if the BCC (primary government) was financially accountable for the entity. The BCC was financially accountable for an entity if the entity was fiscally dependent on the BCC or there was a potential for the entity to provide specific financial benefits to, or impose specific financial burden on, the BCC.

The BCC’s 2010-11 fiscal year financial statements did not include the IDA as a component unit. Instead, the IDA’s financial activities were reported separately from the BCC. However, our application of the GASB component unit criteria to the IDA disclosed that the IDA should have been reported as a discretely presented component unit in the BCC’s financial statements as the BCC is financially accountable for the IDA because the BCC appoints a voting majority of the IDA’s governing board and the IDA imposes a specific financial burden on the BCC, as discussed below.

As previously discussed in finding No. 1, the BCC entered into an agreement with a developer allowing the developer mining and reclamation rights for certain properties described as South Fort Meade Mine. In return, the developer agreed to pay the IDA \$42 million over a 10-year period, of which \$5 million is to be transferred to the BCC. The IDA received payments totaling \$5 million for the 2010-11 fiscal year, of which the IDA remitted \$500,000 to the BCC. The BCC was not required to enter into the development agreement and, in entering into the agreement, chose to allow a portion (\$4.5 million for the 2010-11 fiscal year) of the consideration paid by the developer be paid to the IDA. By doing so, under GASB component unit criteria, the BCC voluntarily assumed the obligation to pay this amount to the IDA resulting in a specific burden being imposed on the BCC by the IDA.

Correspondence from BCC legal counsel indicated that the BCC has no discretion over amounts payable to the IDA. While we agree that based on the terms of the agreement the BCC has no such discretion, the BCC was not legally compelled to enter into the agreement and, as such, it had discretion as to whether or not to enter into an agreement

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<sup>3</sup> GASB Statement No. 61 amends the criteria for determining component units effective for fiscal years beginning after June 15, 2012.



allowing payments to be made to the IDA in return for allowing the developer mining and reclamation rights for the subject properties (i.e., the BCC could have chosen to have such payments made directly to the BCC before providing the funding to the IDA).

In response to our inquiry, BCC and IDA staff indicated that they did not consider payments to the IDA to be BCC support because the developer remitted the payments directly to the IDA. However, under GASB component unit criteria, the payments effectively represent BCC support to the IDA since the agreement was between the BCC and the developer, and the BCC opted to allow the payments to be made to the IDA.

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**Recommendation:** In accordance with GASB's accounting and financial reporting standards, the County should report the financial activities of IDA, as a discretely presented component unit, in its 2011-12 fiscal year basic financial statements.

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#### Follow-up to Management's Response

*In her response, the BCC Chairperson indicated that the treatment of the IDA as a component unit depends entirely on whether the BCC ever had control over the funds disbursed by the developer and that, without control, no financial burden exists on the BCC. However, whether or not the BCC has, or had, control over funds disbursed by the developer to the IDA is not the basis for our conclusion that the IDA imposes a financial burden on the BCC. Rather, the basis for our conclusion is that the BCC, although not compelled to do so, voluntarily entered into an agreement authorizing a portion of the funds to be paid to the IDA.*

*The BCC Chairperson also indicated that the developer was not legally compelled to provide funding to the IDA to consummate the agreement. However, her response also states that the payments to the IDA were incorporated into the development agreement largely to provide an additional element of collectability, which indicates the BCC's intent to require the developer to provide such funding to consummate the agreement.*

*She further indicated that inclusion of the IDA as a component unit would be misleading to the users of the financial statements as they may infer that the BCC had (or has) the ability to control the disposition of these funds. However, while the BCC had control over whether to agree to have a portion of the funds provided to the IDA, the development agreement requires that the applicable portion of the funds be paid to the IDA and does not provide the BCC control over such funds.*

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### OBJECTIVES, SCOPE, AND METHODOLOGY

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The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. The operational audit of the Economic Development Authority (EDA) and the Industrial Development Authority (IDA) and the financial relationships of these entities' with the Hardee County Board of County Commissioners (BCC), was conducted pursuant to Section 11.45(3)(a), Florida Statutes.

We conducted this operational audit from June to September 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of this operational audit were to:

- Evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management’s control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those controls.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management’s internal controls, instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

For those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit’s findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

The scope and methodology of this operational audit are described in Exhibit A. Our audit included the selection and examination of various records and transactions occurring from October 1, 2010, through June 30, 2012, and selected transactions and actions taken prior and subsequent thereto through September 2012. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

**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.

David W. Martin, CPA  
Auditor General

**MANAGEMENTS’ RESPONSES**

Managements’ responses are included as Exhibit B.

**EXHIBIT A**  
**AUDIT SCOPE AND METHODOLOGY**

Scope (Topic)	Methodology
Relationships between the BCC, EDA, EDC, and IDA and flow of any funds between the entities.	Determined individual Board composition and existence of any potential conflict of interests. Reviewed any financial interrelationships between the entities.
Annual financial reports and audited financial statements.	Reviewed annual financial reports and audited financial statements for the 2008-09, 2009-10, and 2010-11 fiscal years to determine compliance with Sections 218.32 and 218.39, Florida Statutes.
Budgets and oaths of office.	Reviewed budgets and oaths of office for the 2010-11 and 2011-12 fiscal years to determine compliance with Florida law and the State Constitution.
Audit findings disclosed by the IDA’s independent auditor.	Reviewed all findings reported by the auditor and determined the status of the IDA’s corrective action.
IDA banking practices, disbursements, and collections of miscellaneous revenue (rent and grove receipts).	Tested cash receipts, disbursements, and transfers, authorized signatories, and miscellaneous collections of rental and grove income.
Development agreement, dated August 14, 2008, and the attached Exhibit B - Economic Development Terms.	Reviewed the development agreement and Exhibit B to determine the appropriateness of the allocation and reporting of moneys received by the IDA and the reporting of the IDA’s financial activity.
Construction projects, change orders, and bids.	Determined whether the EDA and IDA constructed buildings during the period October 2008 through May 2012 and, if so, whether the processes used complied with policies and law.
Land and building acquisitions.	Determined whether the EDA and IDA acquired land and buildings during the period October 1, 2010, through September 30, 2012 and, if so, whether the acquisition processes complied with State law, including the use of bids and appraisals, as appropriate.
Grants awarded by the EDA from the phosphate severance tax proceeds.	Reviewed grant award processes, agreements, and monitoring procedures used by the EDA. Tested expenditures for compliance with grant terms for the period October 2008 through May 2012, with selected follow up through September 2012.
Grants awarded by the IDA from the development agreement money.	Reviewed grant award processes, agreements, and monitoring procedures used by the IDA. Tested expenditures for compliance with grant terms for the period August 2011 through July 2012, with selected follow up through September 2012.

**EXHIBIT B**  
**MANAGEMENTS' RESPONSES**

**HARDEE COUNTY**  
**INDUSTRIAL DEVELOPMENT AUTHORITY**

January, 17, 2013

David Martin, Auditor General  
111 West Madison Street  
Tallahassee, FL 32399-1450

Dear Sir,

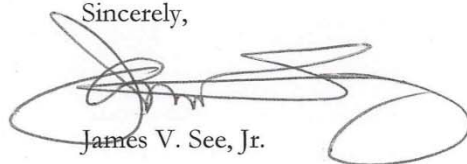
Enclosed are responses from the Hardee County Industrial Development Authority to your preliminary and tentative audit findings and recommendations dated December 19, 2012. The Responses and Corrective Action proposals have been prepared for your consideration as a result of the recent operational audit in Hardee County for the following entities:

Economic Development Activities Administered by the Hardee County Industrial Development Authority (IDA), Hardee County Economic Development Authority (EDA), and Hardee County Board of County Commissioners (BCC), and Other Administrative Matters

Pursuant to Section 11.45(4)(d), Florida Statutes, we are submitting to you within thirty (30) days after receipt of your list, a written statement of explanations concerning all of the findings, including proposed corrective actions.

The IDA has only included an explanation and actual or proposed corrective actions for finding numbers 1 through 10 in Word format. It will be provided both electronically and hard copy to follow in U.S. Mail.

Sincerely,



James V. See, Jr.

107 East Main Street  
Wauchula, FL 33873

PHONE (863) 773-3030  
FAX (863) 773-4915  
E-MAIL info@hardeemail.com  
WEB SITE http://www.hardeebusiness.com

**HARDEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY**  
**(IDA) USE OF ECONOMIC DEVELOPMENT FUNDS**

**Finding No. 1:** In awarding a technology grant of \$2,657,813, the IDA may not have complied with Chapter 159, Florida Statutes, in that the purposes for which the grant was awarded do not appear to be consistent with the definition of a “project” as defined in the Florida Industrial Development Act, and which requires the grantee to be financially responsible and fully capable of fulfilling its obligations under the grant. Also, the IDA did not include in the grant agreement a timeline for the grantee to relocate to Hardee County to ensure that the project provided economic gains to the County.

**Recommendation:** The IDA should only finance projects authorized by Parts II and III of Chapter 159, Florida Statutes. Additionally, prior to entering into future funding agreements for projects, the IDA should: (1) require documentation from the business to demonstrate that it is financially responsible and fully capable and willing to fulfill its obligations under the financing agreement as required by Section 159.29, Florida Statutes; (2) only consider such an agreement if it will potentially further the economic growth of Hardee County as required by Section 159.46, Florida Statutes; and (3) consider the deficiencies discussed in finding Nos. 2 and 3 in drafting such an agreement.

**Management Response:** Management respectfully disagrees with the Finding and believes the Auditor General has either misinterpreted or misapplied the provisions of Chapter 159 as more particularly described below.

Section 159.46 provides that one of the purposes of an Industrial Development Authority is to “foster economic development”. Section 159.47(1)(e) empowers Authorities to enter into contracts for any of the purposes identified in Section 159.46, F.S. Additionally, Section 159.53, F.S., provides a statutory directive to construe all of the foregoing provisions “liberally” to effect the intent and the purpose of Chapter 159. Full copies of each of the aforementioned sections are attached hereto for convenient reference.

Hardee County has been identified as a “rural area of critical economic concern” pursuant to Section 288.0656, F.S. This designation demonstrates the legislative and executive branch recognition of the need for extraordinary measures designed to enhance the economic conditions of the County. See attached Section 288.0656, F.S.

Clearly, the IDA is empowered to enter into contracts to foster economic development in the County. The financing and refinancing of “projects” as that term is defined, is identified as another purpose of the Authority but to restrict the Authority to financing and refinancing of projects would be to ignore the other statutory purpose and direction to construe liberally to effect economic development.

Section 288.075, Florida Statutes, provides that an Industrial Development Authority is an Economic Development Agency and recognizes Economic Development Agencies participate in Economic Incentive Programs statewide.

While management recognizes that it is appropriate to apply financial evaluation criteria to a grant award recipient, it disagrees that the statutory checklist applies to grant awards designed to foster economic development in the County.

The agreement failed to contain a timeline for relocation to Hardee County primarily because the delay in relocation was attributable to the Authority and a timeline was impossible at the time to specify.

The Industrial Development Authority is taking action to seek an opinion from the Florida Attorney General on the issue of the interpretation of Chapter 159, Florida Statutes.

**Corrective Action:** None.

**Finding No. 2:** The grant agreement used by the IDA for the technology grant did not contain sufficient project descriptions of deliverables, including measurable outcomes to be accomplished within establish time frames, that would demonstrate grantee performance and provide a basis for funding.

**Recommendation:** For future grants, the IDA should design agreements to provide measurable deliverables with established timeframes to ensure that it may determine grantee performance under the agreement.

Additionally, grant agreements should provide a reporting mechanism so that funding under the grant is dependent upon the grantee providing deliverables within the established timeframes.

Management response: As stated in the grant award agreement, the project is funded as a pilot (trial/experimental) Technology center business operation and infrastructure creation for a RACEC community. The IDA recognizes in the agreement that to accomplish such development that the facilitation of additional capital needs and infrastructure development in/to LifeSync, LLC including additional job creation incentives/grants, buildings, fiber optic cable installation and complementary broadband framework will be necessary (PRECO building acquisition and retrofit/Big Blue agreement/broadband facilitation with multiple redundancies).

The deliverables contained in the contract recognizing the grantee as possessing the technological expertise and acumen (as determined by the IDA members in a publicly advertised hearing) and having reasonable potential to develop and incubate economic diversity in Hardee County are listed below:

- The grantee or its assignor is obligated to the following in section 5 of the agreement:
  - Development a web-based solution to be marketed to the public and supported by customer service personnel to be located in Hardee County including:
    - a. *Application development*
    - b. *Managing information*
    - c. *Securing information*
    - d. *Storing information*
    - e. *Sharing information*
  - Consult and assist in the development of technological infrastructure for the purpose of creating a technology center to support operations and the development of solutions.
  - Make available investment opportunities within Hardee County subject to all federal rules and regulations.
  - Recruit additional technology companies to co locate within the technology center.
  - Assist in the feasibility/ planning of data center located within reasonable proximity of Technology Park.
- In addition the contract addresses divestiture deliverables as follows:
  - One percent of the stated gross purchase price not to exceed two times the total investment of the IDA into LifeSync.
  - Or a minimum of 75 percent of the amount of money of the IDA into LifeSync Technologies.
  - Upon divestiture, company had to continue operations in Hardee County for not less than three years upon completion of the IDA investment.
- The grantee is also obligated to provide documentation of self-sustainability for an evaluation of cessation of funding.
- The agreement is also supported with a performance based note that obligates the grant recipients to be individually liable for repayment of IDA funds for failure to substantially comply with the scope of the agreement, failure to act in good faith to fulfill the goals of the agreement or to use funds in a manner patently inconsistent with the objectives of the agreement.

There are multiple public mandates to pursue technology as a primary economic development objective at the local, state and national level. These mandates have been noted in the ensuing agreement with Continuum Labs, LLC.

Documentation recommendations aside, in this instance the real measure of the success of this funding will be attainment of viable, long term profitability in the Hardee County market place. The main objective is direct and indirect job creation as a function of economic diversity in Hardee County and the State.

The physical build out of the infrastructure can and will be documented along with the effectiveness of the education syllabus, but without sustainable profitability of one or more business entities occurring as a result of this initiative the

project will be considered a failure by the IDA and the public. The IDA accepts this suggestion on its merit but also recognizes the difficulty in measuring “economic development” pilot projects within established timeframes.

**Corrective Action:** The IDA has and will continue to modify existing contracts where possible thru public dialogue with current grant/incentive recipients to clarify and define measurable objectives and to further identify anticipated subjective goals.

**Finding No. 3:** The IDA did not demonstrate of record that it adequately monitored the technology grant by failing to establish required detailed reports to be submitted by the grantee or to provide written reports and recommendations to the IDA Board, contrary to the grant agreement.

**Recommendation:** The IDA should develop procedures and methodologies that will sufficiently demonstrate in its public records that it met its stewardship responsibilities regarding monitoring of grants. Such procedures, at a minimum, should include obtaining supporting invoices, preparing required reports of the project’s progression, and presenting the results of reviews of the company’s financial activity to the IDA Board.

**Management response:** The IDA concurs with the need for refinement of the process. In the current instance, the IDA has made significant progress in remedying this circumstance thru allowing Continuum Labs, LLC to assume the assets of BlueWater and reconstruction of documentation/presentation obligations in the grant contract.

**Corrective Action:** The IDA will continue refining its grant monitoring procedures within the confines of FS 288.075.

**Finding No. 4:** The IDA did not perform an analysis prior to entering into an agreement with a utility company for providing emergency electrical power. Further, the IDA did not take steps to ensure that the agreement was in the IDA’s best interest.

**Recommendation:** To ensure that the most efficient and cost-effective option is achieved, the IDA should implement procedures to ensure that an analysis of all alternatives is performed prior to entering into similar agreements. Additionally, the IDA should ensure that its interests are protected within the agreement with clearly defined terms and remedies.

**Management response:** The IDA concurs with the practice and pragmatism of analysis, but maintains application of this practice in the instance cited was moot. It will provide further documentation to protect interests (both public and private) in the future.

**Corrective Action:** The IDA will be more deliberate in documenting analytical aspects of projects in the future.

## **FINANCIAL REPORTING AND ADMINISTRATION**

**Finding No. 5:** Prior to December 2011, the IDA had not filed required annual financial reports or provided for annual financial audits, contrary to law.

**Recommendation:** The IDA should ensure that it timely complies with applicable financial reporting and audit requirements.

**Management response:** The IDA has registered as a special district created by general law in FS 159. As noted above, the IDA board received a letter dated November 9, 2011 notifying it of its noncompliance with reporting requirements. The IDA was given a deadline of December 28, 2011 to file audited financial statements and annual financial reports for the fiscal years ended September 30, 2009 and 2010. The IDA met that deadline. We also filed audited financial statements and the annual financial report for the fiscal year ended September 30, 2011 with the State before June 30, 2012, in compliance with the State’s reporting requirements. Our independent auditors are currently in the process of completing their audit of the September 30, 2012 financial statements and we will file those audited financial statement and the annual financial report before the June 30, 2013 deadline.

**Corrective Action:** Consistent compliance with rules applying to ‘special districts’.

Finding No. 6: The IDA had not taken full corrective actions in response to financial reporting and internal control findings reported by its independent auditor as material weaknesses and other deficiencies.

**Recommendation:** The IDA should continue in its efforts to address material weaknesses and other internal control deficiencies reported by the independent auditors.

**Management response/Corrective Action:** In addition to seeking outside professional input, the IDA will continue to review findings and implement remedies that rectify material weaknesses and other internal control deficiencies.

Finding No. 7: The IDA had not timely removed its former treasurer from the list of authorized signers on its bank accounts and two bank accounts required only one signature to initiate transactions.

**Recommendation:** The IDA should implement procedures to ensure that it timely amends bank agreements for personnel changes.

**Management response:** The IDA concurs.

**Corrective Action:** The IDA will periodically review signature cards on file with institutions to prevent such occurrences in the future.

Finding No. 8: The IDA did not have a written agreement with the Economic Development Council (EDC) regarding a staff arrangement whereby the EDC provided staff to the IDA to perform financial, accounting, and administrative functions.

**Recommendation:** The IDA should develop a written agreement with the EDC that contains, at a minimum, the elements described above.

**Management response:** The IDA concurs in formalizing a management structure.

**Corrective Action:** The IDA will formalize a management structure thru legal advice.

## CONSTRUCTION ADMINISTRATION

Finding No. 9: The IDA did not comply with Section 287.055, Florida Statutes, in selecting a construction management entity to oversee the construction of a speculative building and we noted several issues of concern with the IDA's administration of the project. Such concerns included inadequate review of subcontractor bid awards and charges, failure to establish completion dates and provisions for liquidating damages, the lack of timely evidence of a payment and performance bond, failure to take advantage of sales tax savings for direct material purchases, and inadequate support for general condition charges.

**Recommendation:** The IDA should implement procedures to competitively select the most qualified firm for construction projects in accordance with Section 287.055, Florida Statutes. The IDA should also ensure that the subcontractor selection process is properly monitored and implement procedures requiring construction contracts to contain appropriate penalty clauses for noncompliance and receipt of evidence of adequate payment and performance bonds prior to commencing work. In addition, the IDA should seek sales tax exemption status and enhance its procedures to ensure that general condition items and subcontractor charges are supported by payroll records, invoices, or other appropriate documentation.

**Management Response:** Management understands there were shortcomings with respect to compliance with Section 287.055, Florida Statutes, in the selection process, but most shortcomings in the selection process were driven by an absolute necessity to place a job creating company on an abbreviated timeline. Management will commit to be more diligent in compliance, review of bid awards, and other file administrative matters on similar projects.

**Corrective Action:** Management will be more diligent in documenting the construction project file to ensure review of subcontractor bid awards and charges, timely documentation of payment and performance bond increases, and all other administrative matters in relation thereto.



Finding No. 10: The IDA did not adequately monitor performance of a company under contract for the construction, maintenance, and ownership of a broadband infrastructure network. The IDA did not, for example, determine the company's compliance with a matching investment requirement, verify the company's compliance with insurance requirements, or obtain required annual compliance certificates from the company.

**Recommendation:** The IDA should determine the company's proportional investment in the project, create schedule 2 of the agreement, ensure evidence of insurance coverage is maintained for each site and location, capitalize expenditures in accordance with GAAP, and obtain the required compliance certifications. For future grants, the IDA should obtain evidence of required insurance coverage prior to beginning new projects.

**Management Response:** The IDA disagrees with an assertion of inadequate monitoring of the company jointly developing the pilot broadband project. The construction office for the project was based in the economic development office and there was full cooperative communications between the parties during the "middle mile" construction period. Additionally, the Section 6.1 of the Agreement in March of 2010 provides for custodianship of records and documentation related to the project to be the responsibility of Rapid Systems. This information which is comprehensive and substantial may not have been reviewed as a part of the audit. This information will be included in the closeout audit process mentioned in the next section.

Management has recently obtained permission from the IDA to begin developing a process to audit the timely closeout of the project (including proportional investment by the company) and an economic impact assessment thru the University of South Florida.

The schedule 2 objective, intentionally after the fact will acknowledge the creation of a successful, ubiquitous Broadband system, that is self-sustaining, profitable and creator of direct and indirect jobs with the empirical value of rural broadband remaining nebulous or ill-defined for years to come, but with high expectations. The State and Federal government would be welcomed and well advised to comprehensively study the architecture and functionality of the Hardee Broadband system.

Because the project was begun on County right of way, the insurance documentation was kept in the possession of the BOCC. We have since obtained copies of appropriate insurance coverage's from BOCC files and placed in IDA files. The IDA concurs in obtaining evidence of insurance.

The total amount expended will be reflected as "capital assets" on the 9/30/2012 financials and will be restated for appropriate prior years.

The IDA believes this project to be an overwhelming success. In many respects it is a "hallmark" example of public/private partnership for the general welfare and common good.

**Corrective Action:** The IDA will include duplicate records and files for future projects and use greater care in providing evidence of stewardship for future audits.

Attachment:

<a href="#"><u>Title XI</u></a>	<a href="#"><u>Chapter 159</u></a>	<a href="#"><u>View Entire</u></a>
COUNTY ORGANIZATION AND	BOND	<a href="#"><u>Chapter</u></a>
INTERGOVERNMENTAL RELATIONS	FINANCING	

**159.46 Purposes.**—Industrial development authorities, as authorized by ss. [159.44-159.53](#), are created for the purpose of financing and refinancing projects for the public purposes described in, and in the manner provided by, the Florida Industrial Development Financing Act and by ss. [159.44-159.53](#) and for the purpose of fostering the economic development of a county. Each industrial development authority shall study the advantages, facilities, resources, products, attractions, and conditions concerning the county with relation to the encouragement of economic development in that county, and shall use such means and media as the authority deems advisable to publicize and to make known such facts and material to such persons, firms, corporations, agencies, and institutions which, in the discretion of the authority, would reasonably result in encouraging desirable economic development in the county. In carrying out this purpose, industrial development authorities are encouraged to cooperate and work with industrial development agencies, chambers of commerce, and other local, state, and federal agencies having responsibilities in the field of industrial development.

History.—s. 2, ch. 70-229; s. 14, ch. 80-287.

<a href="#"><u>Title XI</u></a>	<a href="#"><u>Chapter 159</u></a>	<a href="#"><u>View Entire</u></a>
COUNTY ORGANIZATION AND	BOND	<a href="#"><u>Chapter</u></a>
INTERGOVERNMENTAL RELATIONS	FINANCING	

**159.47 Powers of the authority.**—

- (1) The authority is authorized and empowered:
  - (a) To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business;
  - (b) To adopt an official seal and alter the same at pleasure;
  - (c) To maintain an office at such place or places in the county as it may designate;
  - (d) To sue and be sued in its own name and to plead and be impleaded;
  - (e) To enter into contracts for any of the purposes enumerated in ss. [159.44-159.53](#) and in the Florida Industrial Development Financing Act;

**Title XI**  
COUNTY ORGANIZATION AND  
INTERGOVERNMENTAL RELATIONS

**Chapter 159** **View Entire**  
BOND **Chapter**  
FINANCING

**159.53 Construction.**—Sections [159.44-159.53](#), being necessary for the prosperity and welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

History.—s. 10, ch. 70-229.

**Title XIX**  
PUBLIC  
BUSINESS

**Chapter 288**  
COMMERCIAL DEVELOPMENT AND  
CAPITAL IMPROVEMENTS

**View Entire**  
**Chapter**

**288.0656 Rural Economic Development Initiative.**—

(1)(a) Recognizing that rural communities and regions continue to face extraordinary challenges in their efforts to significantly improve their economies, specifically in terms of personal income, job creation, average wages, and strong tax bases, it is the intent of the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in such rural communities.

ECONOMIC DEVELOPMENT AUTHORITY  
412 WEST ORANGE STREET, ROOM 103  
WAUCHULA, FL 33873

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January 17, 2013

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

Dear Mr. Martin:

In response to your letter dated 12/19/12 regarding the Hardee County Economic Development Authority preliminary and tentative audit findings and recommendations, please find our response below:

**Finding No. 11:** The EDA did not ensure that grant reimbursement requests for two grants were adequately supported in accordance with the grant agreements and only included expenditures related to the applicable project.

**Recommendation:** The EDA should implement procedures to ensure that expenditures submitted for reimbursement pertain to the grant award and that reimbursement requests are adequately supported in accordance with the grant requirements.

Insufficient Support for Expenditures

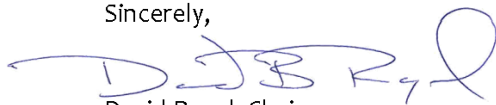
When processing future reimbursements the EDA support staff will be vigilant in ensuring that all documentation as to the validity of the expenditures, evidence of the amount expended and the progress of the project is received, properly executed, signed and filed with the reimbursement request. All staff will be trained on appropriate procedures and a checklist developed to assist in validating proper documentation is received and verified prior to forwarding the reimbursement request to the accounting department.

Broadband Project

Unrelated Expenditures

When processing future reimbursements the EDA support staff will ensure that all expenditures are related to the project elements of the grant award as per the approved contract. If any questions or concerns arise as to the legitimacy of a component of the reimbursement request, relative to the scope of the project, staff will seek an interpretation from legal counsel and if necessary seek the direction of the EDA Board before denying or processing a specific expenditure for reimbursement.

Sincerely,



David Royal, Chairman



HARDEE COUNTY  
 BOARD OF COUNTY COMMISSIONERS  
 412 West Orange Street, Room 103  
 Wauchula, Florida 33873  
 (863)773-9430 \*Fax (863)773-0958  
[bcc@hardeecounty.net](mailto:bcc@hardeecounty.net) [www.hardeecounty.net](http://www.hardeecounty.net)

January 17, 2013

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

Dear Mr. Martin:

In response to your letter dated 12/19/12 regarding the Hardee County Board of County Commissioners preliminary and tentative audit findings and recommendations, please find our response below:

**Finding No. 12: The BCC's financial statements did not include the IDA as a component unit, contrary to governmental accounting and financial reporting standards.**

**Recommendation: In accordance with GASB's accounting and financial reporting standards, the County should report the financial activities of IDA, as a discretely presented component unit, in its 2011-12 fiscal year basic financial statements**

**Management Response:**

**The treatment of the IDA as a component unit depends entirely on whether the BOCC ever had control over the funds disbursed by Mosaic. Without having control over the disposition of those funds, there would be no financial burden placed on the BOCC and, therefore, the IDA would not meet the criteria for being included as a component unit as defined by the GASB.**

**Management of the BOCC asserts that it was never the intent of Mosaic that the BOCC have control or discretion over the \$42 million being paid to IDA over a ten year period. While the BOCC was not legally compelled to enter into the agreement, neither was Mosaic legally compelled to make payments of \$42 million to consummate the agreement. Other mining permits have been issued without such payments and Mosaic could have taken a variety of other actions to meet the economic development component of the comprehensive plan, many of which would not involve making payments to any government entity. The payments were incorporated into the development agreement largely to provide an additional element of collectability; however, they were specifically directed to the IDA to comply with Mosaic's intent that the BOCC not have access to these funds.**

Sue Birge, Chairperson - Frederick (Rick) M. Knight, Vice-Chairperson  
 Mike Thompson - Colon Lambert - Grady Johnson  
 County Manager Lexton H. Albritton, Jr. - County Attorney Ken Evers

"An Equal Opportunity Employer"

Hardee County Board of County Commissioner's  
Audit General Response Letter  
Page Two

The GASB staff cited GASB Statement No. 14, paragraph 32 as support for treating IDA as a component unit. This paragraph describes a situation where "a taxing government temporarily waives its right to receive incremental taxes from its own levy" to provide tax increment financing to another governmental entity. There are two major differences in this scenario and the Mosaic payments. First, as noted above, management asserts it was never Mosaic's intent that the BOCC control or have access to these funds. Therefore, the BOCC could not have the ability to waive a right it never had. Second, as opposed to tax increment financing, this is not a temporary condition. The BOCC will never have the ability to access this funding stream in the future.

Finally, BOCC management believes that including IDA as a component unit will be misleading to the users of the financial statements, i.e. the citizens of Hardee County, as already demonstrated by certain public reaction to the Auditor General's preliminary findings. By including IDA as a component unit, users of the financial statements may infer that the BOCC had (or has) the ability to exercise control over these funds. Again, BOCC management asserts it never had access to, or the ability to control the disposition of, these funds. In addition, by including IDA as a component unit, users of the financial statements may conclude that the BOCC has the ability to impose its will on the IDA and, thereby, may have some future claim to this funding stream for the benefit of the BOCC. As clearly specified in the Development Agreement, the BOCC does not have the ability to access the funds paid to IDA.

Sincerely,



Sue Birge, Chairperson