

STATE BOARD OF ACCOUNTS
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INDIANAPOLIS, INDIANA 46204-2769

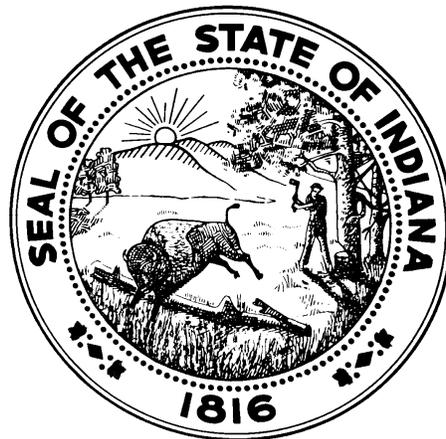
AUDIT REPORT

OF

CITY CONTROLLER

CITY OF FORT WAYNE
ALLEN COUNTY, INDIANA

January 1, 2007 to December 31, 2007



FILED
09/29/2008

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CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Controller	Patricia A. Roller	01-01-07 to 12-31-08
Mayor	Graham Richard Thomas Henry	01-01-04 to 12-31-07 01-01-08 to 12-31-11
Director of City Utilities and Public Works	Greg Meszaros Leonard Poehler (Interim) Kumar Menon	01-01-07 to 09-14-07 09-15-07 to 01-06-08 01-07-08 to 12-31-08
Director of Public Works	Robert Kennedy	09-15-07 to 12-31-08
Co-Directors of Public Safety	Timothy Davie Peter Kelly Russell York	01-01-07 to 08-20-07 08-21-07 to 12-31-08 01-01-07 to 12-31-08
President of the Common Council	Donald Schmidt Thomas Didier	01-01-07 to 12-31-07 01-01-08 to 12-31-08



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TO: THE OFFICIALS OF THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA

We have audited the records of the City Controller for the period from January 1, 2007 to December 31, 2007, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Audit Results and Comments. The financial transactions of this office are reflected in the Comprehensive Annual Financial Report of the City of Fort Wayne for the year 2007.

STATE BOARD OF ACCOUNTS

August 20, 2008

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS

APPROPRIATIONS

The records presented for audit indicated the following expenditures in excess of budgeted appropriations:

Fund	Excess
Highways and Streets	\$ 847,508
CEDIT	209,832
Cable Television	79,289

A similar comment appeared in prior Report B30477.

Indiana Code 6-1.1-18-4 states in part: ". . . the proper officers of a political subdivision shall appropriate funds in such a manner that the expenditures for a year do not exceed its budget for that year as finally determined under this article."

NEGATIVE FUND BALANCES

The City needs to make the necessary arrangements to eliminate the following negative fund balances at December 31, 2007:

Primary government:	
Governmental funds - negative fund balances:	
Nonmajor special revenue funds:	
Parking Meter	\$ 464,374
Omnibus Crime	17,624
Reimbursable State Grants	7,206
Public Safety Academy	145,708
Domestic Violence	4,619

The following fund has deficit net assets at December 31, 2007:

Primary government:	
Internal service funds - deficit net assets:	
General and Auto Liability Insurance	<u>\$ 1,253,788</u>

The overdraft of a fund or appropriation of a city or town is prohibited by law. Expenditures are limited to the balance in the particular fund and, in the case of budgeted funds, to the balance of the appropriation therefore. (Cities and Towns Bulletin and Uniform Compliance Guidelines, March 1998 and March 2008)

CREDIT CARDS (P-CARDS)

The Civil City, Park, and City Utilities are using credit cards (P-Cards) for travel purposes and also for smaller dollar purchases. We noted that they are not always complying with the following sections of their P-Card Policy and Procedure Manual:

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

- 11.) Tax Exemption – Sales tax was paid on some tax exempt purchases.
 - 13.) Documentation – There was not adequate documentation for some purchases.
- A similar comment appeared in prior Report B30477.

The State Board of Accounts will not take exception to the use of credit cards by a governmental unit provided the following criteria, among other criteria, are observed:

Credit cards should not be used to bypass the accounting system. One reason that purchase orders are issued is to provide the fiscal officer with the means to encumber and track appropriations to provide the governing board and other officials with timely and accurate accounting information and monitoring of the accounting system.

Payment should not be made on the basis of a statement or a credit card slip only. Procedures for payments should be no different than for any other claim. Supporting documents such as paid bills and receipts must be available. Additionally, any interest or penalty incurred due to late filing or furnishing of documentation by an officer or employee should be the responsibility of that officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

RECEIPTS – AUDIT TRAIL

Good internal control procedures require that a receipt be issued when money changes hands to officially document the transaction. The departments remit money to the City Controller's office via a cash transmittal form. The departments should be issued a city receipt for the money when it is remitted to the City Controller's office. The departments should then verify that the amount of the city receipt and the accounts posted agrees with their original cash transmittal form. The city receipt should then be attached to the department's copy of the cash transmittal form and retained for audit. This constitutes evidence that the transaction was properly handled.

Audit trails enable transactions to be traced from the original source document to entry within the system. An audit trail should also work in the other direction, from the entry in the system to the original source document. During the audit we found that it was extremely time consuming and, at times, next to impossible to trace departmental receipts and composition of monies from the departmental receipts to the city receipt and the subsequent deposit ticket. This would not be as difficult if the departments would attach the city receipt to their copy of their cash transmittal form and retain for audit.

We encountered several cash transmittal forms from all departments that did not have the city receipt attached or referenced on the form. A city receipt was not issued when monies changed hands. A city receipt was generated at a later time during the day. This started in October 2007, which coincides with the conversion to a new accounting system. This caused deficiencies in two areas: internal controls and audit trails.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other

CITY CONTROLLER
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AUDIT RESULTS AND COMMENTS
(Continued)

things, segregation of duties, safeguarding controls over cash and all other assets and all forms of information processing are necessary for proper internal control. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

The computerized accounting system must maintain electronic audit trails sufficient to trace all transactions from original source of entry into the system, through all system processing, and to the results produced by the system. The audit trails must also maintain sufficient information to trace all transactions from the final results produced by the system, through all system processing, and to the original source of entry into the system. Audit trails must also identify the user that processed the transaction or updated the information. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

PENALTIES AND INTEREST – CITY UTILITIES

Penalties and interest totaling \$10,141.77 were paid to the Indiana Department of Revenue on May 29, 2007, for Utilities Receipts Tax for the first quarter of 2007.

Officials and employees have the duty to pay claims and remit taxes in a timely fashion. Failure to pay claims or remit taxes in a timely manner could be an indicator of serious financial problems which should be investigated by the governmental unit.

Additionally officials and employees have a responsibility to perform duties in a manner which would not result in any unreasonable fees being assessed against the governmental unit.

Any penalties, interest or other charges paid by the governmental unit may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

LOANS RECEIVABLE - INTERNAL AUDIT

The City of Fort Wayne Internal Audit Department performs an annual audit of HANDS, Inc., and other home improvements loans receivable. The State Board of Accounts reviews the work that the Internal Audit Department has performed and determines whether they would draw the same conclusions that Internal Audit has.

The Internal Audit Department issued their memorandum of audit observations and recommendations for 2007 on June 26, 2008. We concur with their audit results.

VARIOUS ACCOUNTING GUIDES, MANUALS, AND OTHER PUBLICATIONS

Records presented for audit for the home improvement loans receivable in the Community Development Block Grant Fund (175), Home Fund (187), and FWHP Program Fund (189) did not indicate compliance with the double entry modified accrual basis accounting system for all transactions of the governmental unit in the City General Ledger (MUNIS). These loans were accounted for in the Loan System Program, which is maintained separately from the City General Ledger.

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AUDIT RESULTS AND COMMENTS
(Continued)

The following represents the areas that were not in compliance:

- Loans receivable were not consistently set up and accounted for on the City general ledger.
- Allowance for uncollectible accounts for loans receivable was not adjusted as required in the City general ledger.
- Fund balance reserved for encumbrances non-current loans receivable was not adjusted as required in the City general ledger.

A double entry modified accrual basis accounting system has been prescribed and is available for use by all Cities and Towns. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Page 10-1)

Compliance is required, as applicable, with generally accepted accounting principles, and standards issued by the Governmental Accounting Standards Board, Financial Accounting Standards Board, and other standards setting bodies and also with various accounting guides, manuals and other publications. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

PUBLIC WORKS

The Redevelopment Commission awarded a \$637,387 public works project for the demolition of the Harrison Square site on July 16, 2007. Total payments made to the contractor for this project were \$798,559, which is \$161,172 more than the original contract. Approved change orders were not presented for audit purposes for \$45,236 of the \$161,172 increase. The \$161,172 was 25.2% more than the awarded contract, which exceeds the 20% permitted by Indiana Code 36-1-12-18.

Indiana Code 36-1-12-18 states:

"(a) If, in the course of the construction, reconstruction, or repair of a public work project, it becomes necessary to change or alter the original specifications, a change order may be issued to add, delete, or change an item or items in the original contract. The change order becomes an addendum to the contract and must be approved and signed by the board and the contractor.

(b) If a licensed architect or engineer is assigned to the public work project, the change order must be prepared by that person.

(c) A change order may not be issued before commencement of the actual construction, reconstruction or repairs except in the case of an emergency. In that case, the board must make a declaration, and the board's minutes must show the nature of the emergency.

(d) The total of all change orders issued that increase the scope of the project may not exceed twenty (20%) of the amount of the original contract. A change order as a result of the circumstances that could not have been reasonably foreseen does not increase the scope of the project.

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AUDIT RESULTS AND COMMENTS
(Continued)

- (e) All change orders must be directly related to the original public work project.
- (f) If additional units of materials included in the original contract are needed, the cost of these units in the change order must be the same as those shown in the original contract."

CONFLICT OF INTEREST

We noted the following regarding Uniform Conflict of Interest Disclosure Statements: The Internal Audit Department annually sends out requests to numerous directors, managers, and key employees to fill out a conflict of interest disclosure form stating whether they have a conflict of interest with the City of Fort Wayne. The Law Department collects the completed forms and checks them off the original list that was sent out. It doesn't appear that all of the employees responded to the request. If the employees were important enough to be put on the list, efforts should be made to ensure that responses were obtained. The Law Department is also responsible for reviewing the completed forms determining if a conflict actually exists between an employee and the City. We noted no evidence on the completed forms that the Law Department had reviewed the forms and formulated a conclusion whether a conflict existed, as had been done in prior years.

No requests were sent to City Council, Board of Works, Park Board, and Redevelopment Commission. Timothy Pape, Council member, is an attorney with Carson Boxberger which does business with the City. Samuel J. Talarico Jr., Council member through December 31, 2007, is a partner with Barrett and McNagny which does business with the City.

We recommend that the City have all members of the City Council, Board of Works, Park Board, and Redevelopment Commission fill out conflict of interest disclosure forms annually.

Employees/principals of High Performance Government Network (Ryan Chasey, Kate Love-Jacobson, Joy Hudson, Lindsey Maksim, and Christopher Campbell) entered into contract, which included charges for 2007, with the City of Fort Wayne on December 27, 2007, while they were still employees of the City. No conflict of interest forms were filed for these individuals.

A similar comment appeared in prior Report B30477.

Indiana Code 35-44-1-3 states in part:

"(a) A public servant who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony. . . .

(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served . . . (3) if the public servant; (A) is an elected public servant. . . . and (B) makes a disclosure under subsection (d)(1) through (d)(6).

(d) A disclosure required by this section must: (1) be in writing; (2) describe the contract or purchase to be made by the governmental entity; (3) describe the pecuniary interest that the public servant has in the contract or purchase; (4) be affirmed under penalty of perjury; (5) be submitted to the governmental entity and be accepted by the governmental entity in a public

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CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

meeting of the governmental entity prior to final action on the contract or purchase; (6) be filed within fifteen (15) days after final action on the contract or purchase with: (A) the state board of accounts; and (B) . . . the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase. . . .

(g) A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of: (1) the public servant; or (2) a dependent of the public servant who: (A) is under the direct or indirect administrative control of the public servant; or (B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. . . .

(k) As used in this section, 'dependent' means any of the following: (1) The spouse of a public servant. (2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is: (A) unemancipated; and (B) less than eighteen (18) years of age. (3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant."

HIGH PERFORMANCE GOVERNMENT NETWORK

Contract

The City Controller signed a contract with the High Performance Government Network (HPG Network) on December 27, 2007. The contract was also signed by Joseph Kimmel on behalf of HPG Network. It is noted that Joseph Kimmel was also serving as Corporation Counsel for the City of Fort Wayne during that time.

In the contract with the HPG Network the City of Fort Wayne agrees to the following:

- Pay membership fees of \$95,000 in 2007, \$95,000 in 2008 and \$95,000 in 2009.
- Designate an organizational leader to serve on the HPG Network Advisory Board to assist in developing strategic partnerships with the Network.
- Designate an organizational leader to serve as the internal point of contact to coordinate the City of Fort Wayne's participation in Network training events.
- Share results and outcomes of performance improvement processes.

For the contract amounts received, the High Performance Government Network agrees to the following:

- Designate one advisory board position for an organization leader from the City of Fort Wayne during the three year term of their commitment.
- Recognize the City of Fort Wayne as Founding Member in the Network in promotional materials.

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AUDIT RESULTS AND COMMENTS
(Continued)

- Provide Network services in order to develop quality improvements using numerical data and statistical processes to identify service delivery opportunities and to establish working models for immediate and on-going improvements.
- Share annual results of Network members' performance improvements.

The contract with HPG Network was not approved by Common Council because it was under the \$100,000 threshold as determined by City Code Section 37.17 Approval or Ratification Required. We have determined that the contract is subject to the provisions of City Code Section 38.03 Hiring of Consultants and should have been approved by Common Council. "Consultants" under City Code Section 38.03 includes "any person, firm and entity who executes a contract with the city or any of the city utilities for the purposes of providing professional or expert or technical advice to the city or any of its utilities."

City Code Section 37.17 Approval or Ratification Required

Whenever the city, including any city-owned or -operated utility, makes any purchase, the contract for which purchase is not awarded to the lowest bidder, or is awarded to a single bidder, enters into any lease, or executes a contract which exceeds \$100,000 per year for the purpose of providing services to the city or any city-owned or -operated utility, other than contracts for consultants pursuant to section 38.03 of this code, all such purchases and / or leases or such contracts shall be entered into with the prior approval or subsequent ratification by the Common Council of the city by ordinance or resolution duly passed by the Common Council and approved by the Mayor. All such purchases and / or leases and such contracts entered into without such prior approval or subsequent ratification shall be null and void.

City Code Section 38.03 Hiring of Consultants (partial quotation)

(C)(1) All contracts and / or contractual arrangements to employ or utilize the services of a consultant or consultants with the city, either for civil governmental or utility purposes shall be approved by the Mayor or Board of Works and Safety of the city. Prior to the Mayor's or the Board of Works and Safety's execution of the contracts and / or contractual arrangements, the Common Council shall certify and approve, by ordinance, the need for the services of consultant or consultants when extrapolated over one full year, is equal to or greater than the amount specified in the ordinance governing approval of city and city utilities' purchases of supplies.

(C)(2) All such contracts or agreements with a consultant(s), hereafter entered into without such prior approval by the Common Council, shall be null and void.

(C)(3) In case of emergency only may the city enter into a contract or agreement for the hiring and employment of consultants without the necessity of prior approval by the Common Council.

(D) If any questions arise as to terms of any contracts for the employment of consultants by the city the City Controller or his / her representative or designee shall meet and confer with the Common Council for the purposes of answering any and all such questions.

We recommend this contract be approved by Common Council before any additional payments to HPG Network are remitted.

We could not verify that the city received \$95,000 in services for the year 2007 when the contract was only in effect for four days in 2007 (December 27, 2007 to December 31, 2007) and while the HPG Network employees were also city employees.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY CONTROLLER
CITY OF FORT WAYNE
AUDIT RESULTS AND COMMENTS
(Continued)

Conflict of Interest

As noted above, the employees/principals of HPG Network (Ryan Chasey, Kate Love-Jacobson, Joy Hudson, Lindsey Maksim, and Christopher Campbell) entered into a three year contract, which included charges for 2007, with the City of Fort Wayne on December 27, 2007, while they were still employees of the City. No conflict of interest forms were filed. Following are the positions that they held at the City when this contract was signed and the date when their employment with the City ended:

Ryan Chasey – Quality Director – December 31, 2007

Kate Love-Jacobson – Professional Development and Quality Enhancement – February 1, 2008

Joy Hudson – Administrative Assistant to Mayor – December 31, 2007

Lindsey Maksim – Public Information Officer – April 11, 2008

Christopher Campbell – Webmaster/Graphic Designer– May 6, 2008.

See Indiana Code 35-44-1-3 as stated in the Conflict of Interest Audit Result and Comment.

Municipal Code of Ethics

Executive Order 1-01, passed January 26, 2001, established a Municipal Code of Ethics for the Mayor, all nonelected City employees and all appointees of the Executive Department of the City, whether compensated or otherwise.

Section 3. Standards of Conduct

3.02 Disqualification from Acting on City Business

Any Covered Individual shall disqualify himself or herself from, and shall refuse to act upon, any matter in which the Covered Individual, or any member of his or her Immediate Family, or the private employer of the Covered Individual, has any material direct financial interest or might otherwise gain a profit, and upon which the Covered Individual would be required to act in the conduct of official duties.

3.03 Use of Office or Office

No Covered Individual shall use or attempt to use his or her position, or any individual, funds or property under his or her control, direction or custody, for the private benefit of the Covered Individual, his or her Immediate Family or any other individual or entity, except in the course of the proper conduct of official duties, or as otherwise expressly authorized by the City.

3.06 Outside Employment

(a) During the period serving any City Entity, no Covered Individual shall engage in or accept employment or render service, whether compensated or uncompensated, when such employment or service would impair, or reasonably appear to impair, his or her independence of judgment or action on behalf of the City Entity.

(b) After termination of public employment, for a period of twelve (12) months from the date of termination.

(b)(ii) No former full time employee of the City shall appear, with or without compensation, on behalf of any person or entity, before the City Entity with which the former employee was associated, or any employee assigned to such City Entity, on any matter which may reasonably be expected to come before any City Entity for official action

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(Continued)

(b)(iii) No former full time employee of the City shall appear, with or without compensation, on behalf of any person or entity, before any City board, commission, department, or employee, or confer with any of the same, on any matter which was pending (including matters with which the former employee was involved, or of which the former employee had knowledge), at the time of termination of employment.

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY CONTROLLER
CITY OF FORT WAYNE
EXIT CONFERENCE

The contents of this report were discussed on August 21, 2008, with Patricia A. Roller, Controller; Valerie Ahr, Deputy Controller; Mark Knepper, Deputy Director of Financial Operations; and Lynn Trittipo, Director of Internal Audit. The official response has been made a part of this report and may be found on pages 14 through 21.



CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

September 4, 2008

Mr. Bruce Hartman, CPA
State Board of Accounts
302 W. Washington St., Room E418
Indianapolis, IN 46204-2765

APPROPRIATIONS

IC 6-1.1-18-4 does state in part: "... the proper officers of a political subdivision shall appropriate funds in such a manner that the expenditures for a year do not exceed its budget for that year as finally determined under this article." However, this chapter specifically refers to "Limitations on Property Tax Rates and Appropriations." The three funds referenced as having expenditures in excess of budgeted appropriations are not supported by property taxes.

The Highways and Streets funds are included in the budget book and are also reported to the Department of Local Government Finance ("DLGF"). The City is in agreement that the expenditures did exceed the original appropriations. However, the City did obtain approval from City Council for the necessary additional appropriations but inadvertently failed to inform DLGF of the approval.

The County Economic Development Income Tax ("CEDIT") fund is included in the budget book and is also reported to the DLGF, even though it is not a requirement of the DLGF. The City respectfully disagrees that the expenditures exceed the appropriations, since the amount spent in 2007 was approved through a prior year CEDIT Plan. It was the understanding of the City after consulting with State Board of Accounts ("SBOA") that since the CEDIT Plan, passed by the City Council, is a multi-year plan the unspent approved dollars from prior years did not need to be approved again by City Council.

The Cable fund is included in the budget book, but is not required to be reported to the DLGF. The City does acknowledge that the expenditures did exceed the budget reflected in the budget book. However, since the Cable fund is not a property tax fund, the City was not aware that this fund required an appropriation.

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NEGATIVE FUND BALANCES – DEFICIT NET ASSETS

The City is in agreement that the following funds have negative fund balances or deficit net assets due to the following reasons:

The Parking Meter Fund has a negative fund balance due to the fact that the parking fines collected are being receipted to the General Fund and not the Parking Meter Fund per City Ordinance. There has not been a transfer appropriated from General Fund to the Parking Meter fund for the last two years, a fact which created the negative fund balance. City Code should be amended so that all revenues generated due to parking fees and fines are deposited in the Parking Meter fund.

The Public Safety Academy Fund has a negative fund balance that has decreased to \$(145,708) in 2007. The Reimbursable State Grants Fund has a negative fund balance that has decreased to \$(7,206) in 2007. These two funds were given a "watch" status at year end 2006, with the request that they be reviewed and procedures implemented to eliminate the negative fund balances. The City did review and did decrease the negative balances in 2007 with the intent they will be completely gone by 2008. However, even though the City took corrective action, the audit report reflects an Audit Result and Comment ("ARC") instead of another "watch" status. The City respectfully disagrees that these funds should be listed as an ARC.

The Omnibus Crime Fund as well as the Domestic Violence Fund were NOT put into a "watch" status at year end 2006, yet have been listed in this ARC for 2007. The City respectfully disagrees that these funds should be listed as an ARC. The Omnibus Crime Fund is a reimbursable grant fund, and not having the amount drawn from the State is a timing issue. The Domestic Violence Fund did not receive the requested property tax levy which left this fund with a rate less than the .0001 allowed by the State.

CREDIT CARDS (P-CARDS)

In response to the SBOA comments concerning the City's P-Card program, City states as follows:

Tax exemption – Sales tax was paid on some tax exempt purchases

The sample used by the SBOA was the P-Card charges for the month of October, 2007. In this sample, it was determined that sales tax in the amount of \$75.53 was incorrectly charged and paid. This amounted to less than .1% of the total amount of \$86,940.94 paid by Civil City in October. While the P-Card Manual does state that sales tax should not be paid, there are times when items must be purchased immediately and the purchaser does not have a copy of the tax exempt certificate to present to the vendor. Most vendors will not accept just the tax exemption number; a copy of the actual certificate must be given to the vendor. It would most likely cost the City more to have the employee obtain a copy of the certificate and return to the vendor's business than to pay the sales tax.

All employees using the P-Card are given a copy of the P-Card Manual and are made aware that sales tax should not be paid. However, there will be instances when this cannot be avoided and the City tries to minimize these instances. \$75.53 out of \$86,940.94 is a negligible amount.

Documentation – There was not adequate documentation for some purchases

The purchasing department will re-issue the P-Card Manual to each cardholder along with a letter pointing out that sales tax should not be paid, each charge must be supported/documented, and the support/documentation must be an original itemized cash register receipt, invoice, packing slip, etc. In addition, when the documentation is received in the Controller's department, it will be more closely monitored to ensure that original documentation (not copies) is received.

RECEIPTS – AUDIT TRAIL

In 2007, the City replaced the financial system for the first time since 1984. The Cash Handling Procedures were first drafted in June 2002 and updated in June 2006. SBOA stated that it was extremely time consuming and at times next to impossible to trace departmental receipts and composition of monies from the departmental receipts to the City receipts and the subsequent deposit ticket. In discussion with Internal Audit, which received the same amount of training, the Director of Internal Audit reported no difficulty when testing receipts of the various departments. The City will continue to work with the SBOA auditors to ensure a better understanding of the new financial system.

The City respectfully disagrees that City receipts were not issued when monies changed hands started in October, 2007, which coincides with the conversion to the new financial system. Historically, receipts have not been issued when money changed hands. This practice did not change with the implementation of the financial system.

In a discussion with the SBOA and Internal Audit during the conversion process, it was determined and the City thought it was agreed that a receipt would not be issued. The departments were to verify the deposits in the financial accounting system to ensure all cash receipts were properly booked. It is difficult to monitor that departments have, in fact, verified the recording of the cash receipts.

In order to ensure verification that exchange of cash and/or checks has been made, the Cash Handling Procedures have been updated as follows: "...The Controllers Office will accept the deposit package, verify all information (including tallying amounts), and sign off on the copy of the CRT that was brought with the deposit."

PENALTIES AND INTEREST – CITY UTILITIES

Penalties and interest were paid to the Indiana Department of Revenue. The City will pay all claims and remit taxes in a timely fashion.

LOANS RECEIVABLE – INTERNAL AUDIT

See response under Various Accounting Guide, Manuals and Other Publications.

VARIOUS ACCOUNTING GUIDE, MANUALS AND OTHER PUBLICATIONS

The City has taken the position not to overstate the assets on the general ledger for loans that will most likely not be collected if specific criteria are met. Therefore, the City will maintain the balances for all amortized loans only on the general ledger. The Loan System, separately maintained from the general ledger, will continue to track all loans, regardless of status. All necessary adjustments will be completed in the general ledger with documentation to ensure all loan receivable balances are supported.

PUBLIC WORKS

The City agrees that the \$45, 236 should have been the subject of a change order approved by the Redevelopment Commission.

CONFLICT OF INTEREST

The City respectfully disagrees that no requests were sent to City Council, Board of Works, Park Board and Redevelopment Commission. Numerous completed forms are located in the Law Department, including one from Councilman Tim Pape. Since it was early spring, 2008, that SBOA informed me of the need for the completion of these forms, it was determined that Sam Talarico, Jr. did not need to complete a form. Sam Talarico did not run for re-election and was not a member of the Common Council in 2008.

The City does issue conflict of interest forms annually to department heads and directs the department heads to inform each of their employees to complete a form as required.

Please see High Performance Government Network for response to the completion of conflicts of interest forms as it relates to the individuals identified.

HIGH PERFORMANCE GOVERNMENT NETWORK

The High Performance Government Network Corporation ("HPGNC") is an Indiana non-profit domestic corporation, duly formed effective January 18, 2007, and in good standing under Indiana corporation law. Corporate documents provided by HPGNC to the City indicate that HPGNC has three Directors, Nelson Coats, Michele Hill, and Joseph Kimmell, each of whom serve without compensation of any kind. Until 2008, it had no paid employees. From its creation through the end of 2007, it transacted business through the actions of its Directors. As the City understands it, the function of HPGNC is to assist local governments and related entities in improving performance by providing training, developing models for measurement of improvement, and providing networking opportunities among its members. On December 27, 2007, HPGNC entered into an agreement with the City (the "Contract") whereby the City agreed to join the Indiana Chamber of Commerce, the Indiana Association of Cities and Towns, and the Indiana University School of Public and Environmental Affairs in becoming a founding partner with HPGNC.

In all respects regarding the Contract, the City acted in accord with applicable law.

Contract

In return for the services to be provided by HPGNC to the City, the Contract provides that the City agrees to “[p]ay membership fee of \$95,000 in 2007, \$95,000 in 2008 and \$95,000 in 2009.” The SBOA characterized the Contract as one for consultant services under City Code § 38.03. Contracts for hiring of consultant services must be approved by City Council if the fee, when extrapolated over one full year, is at least \$100,000. Even if the Contract is characterized as one for services under City Code § 37.17, it requires Council approval if it exceeds \$100,000 per year. Given the language of the Contract regarding the City’s payment obligation, the State Board of Accounts concern with the payment of \$95,000 in 2007 for a contract executed on December 27, 2007 is understandable. However, as I made clear during a lengthy presentation at City Council on June 17, 2008, in which I fully discussed the Contract, the intent of the parties is that the contract period extends through 2010. That is, the 2007 payment is for services to be rendered in 2008, the 2008 payment is for services to be rendered in 2009, and the 2009 payment is for services to be rendered in 2010. Accordingly, under either City Code §37.17 or §38.03, the Contract does not require City Council approval because the City’s payment obligation is under \$100,000 in each of the contract years. The City and HPGNC have prepared an amended agreement which more clearly describes the City’s payment obligation and the term of the Contract. The amended contract will be executed by September 30, 2008. A copy of the amended agreement is available for SBOA’s review.

SBOA notes that the Contract was signed by Joseph Kimmell on behalf of HPGNC at a time when Kimmell was serving as Corporation Counsel for the City of Fort Wayne, but does not expressly attribute any significance to that fact. Kimmell’s actions in this regard were entirely appropriate. Kimmell at all times has served HPGNC as a Director without compensation of any kind, and he has never had a pecuniary interest either in the Contract or HPGNC.

Conflict of Interest

To the extent the SBOA suggests that the Contract with HPGNC resulted in a conflict of interest under I.C. 35-44-1-3, the City respectfully disagrees. First, as stated above, HPGNC is a duly incorporated Indiana non-profit corporation. As such, it is a legal entity in itself, with the power, among other things, to enter into contracts, including the Contract with the City dated December 27, 2007. Therefore, the SBOA premise that “the employee/principals of HPG Network (Ryan Chasey, Kate Love-Jacobson, Joy Hudson, Lindsey Maksim, and Christopher Campbell) entered into a three year contract with the City” is simply and fundamentally incorrect. The City entered into the Contract with HPGNC (and not with the individuals identified above) through its Controller, at the direction of its Mayor, Graham Richard.

I.C. 35-4-1-3(a) provides that:

A public servant who knowingly or intentionally:

- (1) has a pecuniary interest in; or
- (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest[.]

I.C. 35-44-1-3(g) provides:

A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:

- (1) the public servant; or
- (2) a dependent of the public servant who:
 - (A) is under the direct or indirect administrative control of the public servant; or
 - (B) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

The Mayor and the Controller have never had a pecuniary interest in the Contract, either at the time of its execution or any time thereafter. The other individuals only gained a pecuniary interest (and only by the very broadest definition of that term) when they left the employ of the City and became employees of HPGNC. Even then, the only pecuniary interest is in their wages. Those individuals were not paid wages by HPGNC until after they left the employ of the City and earned them as employees of HPGNC. At no time were any of the individuals identified above employed simultaneously by the City and HPGNC.

HPGNC has a multitude of members besides the City. These individuals would have drawn pay as employees of HPGNC even if the City had not contracted with HPGNC.

Municipal Code of Ethics

To the extent the SBOA suggests that in its transaction with HPGNC, the City has not complied with Executive Order 1-01 (the Municipal Code of Ethics), the City respectfully disagrees. As stated above, HPGNC is an Indiana non-profit corporation. HPGNC, and not the individuals referenced by the Board (Ryan Chasey, Kate Love-Jacobson, Joy Hudson, Lindsey Maksim and Christopher Campbell), entered into the Contract with the City. SBOA's misunderstanding of that fact causes its analysis to be flawed.

The SBOA reference to the standards of conduct in the Ethics Code is vague regarding the SBOA's application of them to the Contract. Granted, each of the persons identified by the SBOA was, while an employee of the City, a "Covered Individual." In order to be disqualified from acting on City business under Sec. 3.02, the Covered Individual must be required to act on the matter at issue in the conduct of his or her official duties and must have (or the private employer of the covered individual must have) a financial interest in the matter. None of the individuals in their positions as City employees were required to act on the Contract. Only one of the employees, Ryan Chasey, was even involved in discussions pertaining to the Contract, and he did not have decision-making authority. The Contract was acted on by the Mayor, who authorized it, and the Controller, who executed it on behalf of the City. Neither of them had nor have any financial interest in the Contract whatsoever. Even if they had acted on the Contract (which they did not), as discussed above, none of the other persons had a financial interest in the Contract while they were employed by the City (and therefore "Covered Individuals"). In other words, they only gained a financial interest after they ceased to be "Covered Individuals." Accordingly, Section 3.02 does not apply.

SBOA has misconstrued the purpose of Section 3.02. That section is intended to prevent a situation in which a Covered Individual with decision-making authority benefits herself or himself or the Covered Individual's private employer. That simply did not occur here.

Section 3.03 is inapplicable as well. SBOA fails to identify any person who used his or her position for private benefit. That is because there was none. As now stated numerous times, no "Covered Individual" gained private benefit from the Contract. The only benefit from the Contract even tangentially gained by the persons listed was in wages earned as employees of HPGNC after they left the employ of the City and ceased to be "Covered Individuals." Moreover, there is no basis to say that any of the persons involved with the Contract acted outside the course of proper conduct.

Similarly, Section 3.06(a) does not apply. No one was employed by both the City and HPGNC simultaneously. The individuals who eventually became employees of HPGNC may have accepted offers of employment while still "Covered Individuals," but such acceptance did not impair or reasonably appear to impair any independence of judgment on behalf of the City. Again, none of the eventual employees of HPGNC were decision-makers regarding the Contract; only one was even involved in any discussions regarding it. These persons simply were people who left the employ of the City to take jobs with a corporation which had been in existence for approximately a year and which happened to do business with the City, among many other clients. That is hardly an inappropriate or novel situation.

Section 3.06(b) does not apply either. With respect to 3.06(b)(ii), the former City employees who now work for HPGNC have not and will not "appear . . . on behalf of any person or entity before the City Entity with which the former employee was associated . . . on any matter which may reasonably be expected to come before any City Entity for official action." They merely perform their jobs as employees of HPGNC, a part of which is doing tasks associated with HPGNC's obligations under the Contract. This Code provision is concerned with "appear[ing] on behalf of" in the sense of advocating on behalf of an employer. Its intent is to prevent former employees of a particular City Entity from urging official action from that entity (for twelve months after termination of employment) because of the possibility that the former employee might enjoy special favor or influence over that particular City Entity. A prime example of the intended application of this provision would be the prevention (for the relevant period) of a former member of the Plan Commission (a City Entity as defined in the Ethics Code) from representing a developer or a group in opposition to a development before the Plan Commission. That situation is simply not present here.

Section 3.06(b)(iii) is a slight variation on Section 3.06(b)(iii). It broadens the scope of the exclusion to advocacy before any City Entity (and not simply the particular City Entity with which the former employee was associated) where the issue is a matter with which the former employee was involved or of which the former employee had knowledge. Again, this section is simply inapplicable. The employees of HPGNC have not and do not "appear before" any City Entity in the manner intended by the Ethics Code.

1925 POLICE PENSION PAYMENTS

The City will follow up with the Police Pension Secretary.

OFFICIAL BONDS

The City is unclear as to why or how this is an ARC.

ADDITIONAL AUDIT COSTS

The City is unclear as to why or how this is an ARC and how additional costs could have been incurred.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia A. Roller".

Patricia A. Roller, CPA
City Controller