

PORCH & ASSOCIATES LLC

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

CITY OF LAS VEGAS, NEW MEXICO

Consulting Services Report

For the Period of January 1, 2016 to November 17, 2017

CITY OF LAS VEGAS, NEW MEXICO

TABLE OF CONTENTS

	Page
List of Principal Officials.....	i
Report of Independent Accountant.....	1
Background	2
Scope	2
Overall Procedures	3
Specific Procedures Regarding Procurement	5
Specific Procedures Regarding Personnel and Human Resources	14
Specific Procedures Regarding Budgets and Budget Reporting.....	20
Specific Procedures Regarding the Housing Authority	22
Specific Procedures Regarding Shredding of Documents by the City	24
Specific Procedures Regarding Conflicts of Interest	25
Specific Procedures Regarding Related Parties and Nepotism.....	27
Other Procedures Performed During the Special Audit.....	28
Findings and Recommendations - Findings.....	31
Findings and Recommendations - Recommendations.....	51
Exit Conference	54

CITY OF LAS VEGAS, NEW MEXICO

List of Principal Officials

Mayor

Tonita Gurule-Giron

City Council

David Ulibarri	Ward I
Vince Howell	Ward II
Barbara Perea-Casey	Ward III
David Romero	Ward IV

Administrative Officials

Richard Trujillo	City Manger
Ann Marie Gallegos	Finance Director
Casandra Fresquez	City Clerk

Report of Independent Accountant

Mr. Wayne A. Johnson, New Mexico State Auditor, and
Ms. Tonita Gurule-Giron, Mayor, and
The City Council
City of Las Vegas, New Mexico

We have performed consulting services for the City of Las Vegas, New Mexico for the period January 1, 2016 through November 17, 2017. This consulting services engagement was conducted in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants, the Audit Act (NMSA 1978, Sections 12-6-1 et seq.), and the Audit Rule (NMAC 2.2.2.1 et seq.). The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested, or for any other purpose.

The consulting procedures performed in this engagement do not constitute an examination, investigation, or an audit made in accordance with U.S. Generally Accepted Auditing Standards, the objective of which would be the expression of an opinion on the items reviewed as part of our consulting services.

Consulting services differ fundamentally from the Certified Public Accountant's (CPA) function of attesting to the assertions of other parties. In an attest service, the CPA expresses a conclusion about the reliability of a written assertion that is the responsibility of another party, the asserter. In a consulting service, the practitioner develops the findings, conclusions, and recommendations presented. The nature and scope of work is determined solely by the agreement between the CPA and the client. Generally, the work is performed only for the use and benefit of the client.

This report is intended solely for the information and use of the City Council, management of the City of Las Vegas, New Mexico, and the New Mexico State Auditor, and is not intended to be, and should not be, used by anyone other than these specified parties.

Porch & Associates, LLC

Albuquerque, New Mexico
March 28, 2018

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

BACKGROUND

The State of New Mexico Office of the State Auditor (State Auditor) received information raising concerns related to procurement practices, budget compliance, personnel issues, and other transactions at the City of Las Vegas, New Mexico (City). The City Council voted to initiate a special audit to evaluate the concerns received by the State Auditor. On September 29, 2017, the State Auditor issued a letter to the City providing formal notice that the State Auditor had designated the City for a special audit.

The State Auditor is charged with the constitutional and statutory duty to examine the financial affairs of governmental agencies within New Mexico that receive or expend public money. Pursuant to Section 12-6-3 (C) NMSA 1978 (Audit Act), in addition to the agency's annual financial audit, the State Auditor "may cause the financial affairs and transactions of an agency to be audited in whole or in part." Additionally, in accordance with 2.2.2.15 NMAC (Audit Rule), the State Auditor may initiate a special audit regarding financial affairs and transactions of an agency or local body based on information it receives.

The special audit may be performed by the State Auditor or an Independent Public Accountant selected by the City in accordance with procurement rules and approved by the State Auditor. On November 15, 2017, the City contracted with Porch & Associates LLC (Firm) to perform the special audit procedures.

SCOPE

The Firm performed consulting services in accordance with the Audit Rule and the American Institute of Certified Public Accountants (AICPA) consulting standards for the period from January 1, 2016 through November 17, 2017.

The Firm examined whether specific sampled transactions were compliant with relevant laws, regulations, and policies and procedures, and utilized the U.S. Government Accountability Office's Green Book as the basis for making recommendations to the City regarding potential improvements to financial and administrative practices. Relevant laws, regulations, and policies and procedures include those which address issues affecting personnel, procurements, conduct of government officials, the budget adjustment process, and processes for discrete events such as document destruction and insurance claims.

The Firm performed tests to identify if perceived conflicts of interest between those charged with governance, executive management, and contractors or employees actually exist.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

OVERALL PROCEDURES

The Firm conducted thirty-two interviews with elected officials, directors, management, employees, and citizens of the City. The interviews were used to identify transactions, events, dates, meetings, and other data relevant to the special audit. The interview process was also used to collect evidence provided by the people being interviewed.

The Firm also provided questionnaires to most departments of the City and asked that they be mailed back directly to the Firm. The Firm provided the following questionnaires with the following questions:

Related Party Questionnaire

Please disclose below all related party transactions you are aware of (please call if you have questions about what a related party is, or if a particular transaction is a related party transaction). A related party transaction would occur if the City transacted with members of the governing board, administrative boards or committees, joint ventures, administrative officials and their immediate families (or companies owned by them), and affiliated or related organizations.

Relationship and Outside Employment Questionnaire

Please disclose in the space provided below all relationships between Group 1 and Group 2 as defined below.

Group 1: City elected officials, officers, and employees.

Group 2: Businesses, individuals, or any other entity being paid by the City for any reason (not including salary or wages for employment). Family members of City elected officials, officers, and employees.

Please also disclose all employment outside of the City by anyone in Group 1 above.

Family Relationship Questionnaire

Please disclose in the space provided all family relationships between City elected officials, officers, and employees.

Undue Influence, Abuse of Office in Public Service, Nepotism, and Cronyism Questionnaire

Please disclose in the space provided on the back of this form all instances of undue influence, abuse of office in public service, nepotism, and cronyism of which you are aware. Definitions and examples of each are as follows (these are examples and not all inclusive):

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

- Undue influence is where one person has the ability to dominate the will of another through coercion, manipulation of actions.
- Abuse of office in public service includes items such as spending City money on personal expenses, asking someone to destroy documents or create documents after the fact, or making someone do something they believe is unethical or illegal.
- Nepotism is the practice among those in power of favoring relatives or friends, especially by giving them jobs or contracts.
- Cronyism is the appointment of friends and associates to positions of authority, without proper regard to their qualifications.

The questionnaires provided data related to transactions, relationships, timelines, and other events.

Based on the interviews and the questionnaires, we performed the specific procedures enumerated below.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

SPECIFIC PROCEDURES REGARDING PROCUREMENT

Hardwood Flooring in City Hall

Almost every person interviewed expressed concern regarding the installation of hardwood flooring at the City. We separately tested the initial and subsequent installation.

Initial Installation of the Hardwood Flooring

A concern brought up by one of the people interviewed was to question if the initial installation of the hardwood flooring in City Hall had a warranty on the work. The reinstallation of the drinking fountain (per the person interviewed) caused the leak that later required the replacement of the hardwood flooring and carpet. Therefore, this work should have been done for free if there was a warranty.

We found that the reinstallation of the water fountain was done by the City's Public Facilities Department. Therefore, the leak is the City's responsibility, not the vendors.

We obtained the documentation for the initial hardwood flooring installation. We reviewed the following:

- PO #162038, dated 05/06/2016, to the winning bidder, in the amount of \$8,998.00 for the install of hardwood floor at City Hall, 1,000 square feet, and the removal and disposal of existing tile.
- We reviewed the three written quotes on the purchase requisition:
 - Quote #1 \$8,998.00
 - Quote #2 \$9,052.00
 - Quote #3 \$6,529.19 – this bid was for laminate, and not hardwood. Therefore, it was disqualified.

The City Prepared a Requisition for Purchase. The requisition was dated 09/21/2016 (more than four months after the PO). The original requisition and PO were issued on 5/21/16. The purchase/services crossed over to the next fiscal year. PO #162038 was cancelled on June 30, 2016, as part of the year-end procedures. The Public Facilities Department then requested Purchasing to reissue a revised PO referring back to PO #162038 on 9/21/16 for completion of the work and for payment of the final invoice.

The Purchase Request was for a total of \$19,123.35, which is more than the initial bids collected above. The reason is that the City Manager added hardwood flooring for the executive offices after the bid was awarded. The initial bid was \$9,998.00 for 1,000 square feet of hardwood flooring. The Purchase Request added \$3,900.00 for 390 square feet of hardwood flooring, and \$3,720.00 for wood molding instead of rubber trim (and several other small charges).

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

We reviewed the invoice for payment and attached warranty. The invoice was not dated.

Several people who were interviewed stated that they believe the bidding was fixed because the winning bid was only \$54.00 less than the second bid. There is no way to test for this.

Conclusion: The City should have requested bids for the additional work instead of changing the initial award without additional bids. Subsequent to accepting the initial bid, the City added the executive administrative office areas for the same price (\$9.00 per square foot). The specifications of the installation were changed after the quotes were obtained. Therefore, the City should have rebid the work.

Subsequent Installation of Hardwood Flooring

After the initial installation of the hardwood flooring in City Hall, there was a leak at the water fountain which flooded part of City Hall. The area flooded included the City Manager's office, the secretarial area between the City Manager's office and the Mayor's office, the Mayor's office, half the hallway, the Assistant Finance Director's office, and the Finance Director's office. The City Attorney's office, finance area, and the remaining area of City Hall towards the main entrance of the building were not affected by the flooding.

Per the City, they obtained separate quotes for the affected areas and the remaining office areas so they could submit proper insurance claim information for the water damaged area only.

We reviewed PO #171742 dated 03/31/2017 in the amount of \$10,000.00 awarded to a construction contractor. The description on the PO reads:

Emergency PO Water Damage
Emergency PO to repair flooring @ City Hall to
prevent the formation of mold and other health
hazards due to extensive water damage caused by an
overnight water leak/breakage in City Hall/the hall
and several offices were affected.

There was a memo attached to the PO from Veronica Gentry, Public Works Director to Ann Marie Gallegos, Finance Director as follows:

The City of Las Vegas (City Hall) discovered a major water leak on March 31, 2017 destroying (water damage) the majority of the city offices. As a result of the major damage, the Public Works Department is requesting an Emergency Purchase Requisition 13-1-127. Emergency Procurement, based that water indoors can cause an abnormal condition and can cause or contribute to a number of problems. The damage and health implications increase the longer material remain wet. The possibility of water damages can cause where water migrates into areas not originally affected. Water spreads laterally into adjoining rooms, penetrates material below and wicks up into porous material, saturated material begins

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

swelling as they absorb moisture, as water evaporates, it causes an abnormal humidity condition and also mold and bacterial spores germinate and multiply rapidly, which are causes for an emergency repair, where there exists a treat [threat] to public health, welfare, safety of all public and city employees.

Water damage is a progressive condition and that drying time varies depending on the types of material, quantity of water, degree of saturation, airflow volume and temperature of indoor humidity. Therefore, I understand it is impractical to give an accurate quote for services before completion. I am requesting a standard price of \$10,000 to begin the process.

Conclusion on the Emergency Procurement: We interviewed many people regarding the flooding. Many of them believed that this should not have been an emergency procurement because mold does not develop in a few days. The Firm agrees with that. However, several of the people interviewed indicated there was a chemical smell even after the water had been sucked up by the maintenance department. We agree that an emergency procurement was necessary to remove the carpet and any other damaged material. Many people are sensitive to chemical odors. This was a health issue.

The Firm also agrees that the carpet removed could have been replaced with carpet. This could have been done just as quickly as hardwood (note that the emergency procurement PO did not indicate hardwood).

However, the carpet removed was replaced with hardwood. This was not necessary. In addition, the initial PO for emergency procurement was updated with the following language (same PO # and date, but an additional paragraph was added to the original PO):

To cover extensive water damage repairs
update to cover additional water damage repairs/
water leak from 3/31/2017

The cost of this additional work was \$84,204.00. The work performed was to replace all carpet in City Hall with hardwood instead of just the damaged carpet.

In addition, although the initial procurement qualified as an emergency procurement, the subsequent change to hardwood flooring and the installation of hardwood flooring in nondamaged offices should not have been an emergency procurement. The emergency procurement should not have included converting City Hall from carpet to hardwood. The City improperly converted an emergency procurement in the amount of \$10,000 for the replacement of carpet to a project costing approximately \$94,000 for the cleanup of water and conversion of the City offices from carpet to hardwood.

Contracts Awarded to a Construction Contractor

The majority of the people interviewed were concerned about the City awarding contracts to one particular construction contractor. The concern is that most people interviewed referred to this construction contractor as the Mayor's boyfriend (Contractor). The people

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

interviewed believed that the Mayor was giving contracts to her boyfriend instead of following the procurement code.

We asked many of the people interviewed to provide evidence that the Mayor and the Contractor are, or were, boyfriend and girlfriend. We asked if anyone had a picture of them being romantic such as holding hands or kissing, or if anyone could provide any evidence at all that they were actually boyfriend and girlfriend. No one could provide any evidence that this was true. Most people stated that the City of Las Vegas is a small city, and everyone knows what is going on. From an investigation perspective these types of statements are absolutely useless. Without proof, these statements are useless.

We interviewed the Mayor and asked her about the nature of her relationship with the Contractor. She said that the Contractor had been her campaign manager. She stated that they have a personal relationship, meaning they go to movies and dinner, but that they do not have a romantic relationship. She denied that the Contractor is, or was, her boyfriend.

The Mayor stated that this relationship ended years before she became Mayor. In addition, the Mayor has stated that she did not have any part in the procurement of services by the Contractor.

We reviewed all payments to the Contractor during the special audit period. The total of the payments was \$125,330.22. Of this amount, \$113,626.06 was related to the initial and subsequent installation of the hardwood flooring noted above.

The remaining payments to the Contractor were comprised of providing propane to the City Fire Department, sidewalk repair, and score board replacement.

Sidewalk Repair

We reviewed PO #240795 dated September 9, 2016. We also reviewed three bids attached to the PO. The low bidder was the Contractor. The amount of the repair was \$8,671.41.

Conclusion on the Sidewalk Procurement: The procurement of sidewalk repair was done properly by the City.

In addition to the procurement issue, during our interviews we were informed by people familiar with construction that the materials used by the Contractor did not meet code for sidewalks. It is not possible to test this as part of our procedures. However, it is reasonable that the City should have a process to determine if construction vendors are meeting code. This will be a recommendation later in the report.

Scoreboard Replacement

The City could not provide any procurement documentation for the scoreboard replacement. The amount of the invoice was \$3,013.00, which qualifies as a small purchase per state procurement code. However, the City did not document that any

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

procedures were performed in order to determine if the City was obtaining the best obtainable price.

During our interviews several people complained that the Contractor used the City's bucket truck and personnel. The invoice specifically says "with the use of boom truck". This was contemplated in the price. The invoice does not note that City personnel were used. However, we cannot find anywhere in code that this is disallowed.

Conclusion on the Scoreboard Replacement: Although the procurement qualified as a small purchase, the City did not document that any procedures were performed in order to determine if the City was obtaining the best obtainable price.

Overall Conclusion on Procurements Awarded to the Contractor

A summary of the procurements awarded to the Contractor is as follows:

- Initial installation of hardwood flooring: The City should have requested bids for the additional work instead of changing the procurement without bids. The specifications of the installation were changed after the quotes were obtained. Therefore, the City should have rebid the work.
- For the subsequent installation of hardwood flooring, the carpet removed in damaged and undamaged areas was replaced with hardwood. This was not necessary. The cost of this additional work was \$84,204.00. The work performed was to replace all carpet in City Hall with hardwood. This work was unnecessary. The carpet removed could have been replaced with carpet.

In addition, although the initial procurement qualified as an emergency procurement, the subsequent change to hardwood flooring should not have been an emergency procurement. The emergency procurement should not have included converting City Hall from carpet to hardwood. The City improperly converted an emergency procurement in the amount of \$10,000 for the replacement of carpet to a project costing approximately \$94,000 for the cleanup of water and conversion of the City offices from carpet to hardwood.

- The sidewalk repair procurement was done properly.
- Although the scoreboard replacement procurement qualified as a small purchase the City did not document that any procedures were performed in order to determine if the City was obtaining the best obtainable price.

Only one of the City's procurements for construction services by the Contractor met the requirements of the procurement code in state statute or in the administrative code. Considering the Mayor's past personal relationship with the Contractor, it would have been prudent for the City to show additional diligence in these procurements in order to avoid a

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

reasonable person's conclusion that the Contractor has been given preferential treatment in procurement.

It should be noted that during our interview process several people said that the mayor was involved in the procurement of the Contractor. However, there has been no evidence given to the accountant that proves that the Mayor had direct or indirect involvement in any procurement involving the Contractor.

Paving Machine Return Testwork

We reviewed minutes of the City of Las Vegas City Council Work Session held on Wednesday April 20, 2016. Section 5. Of the minutes reads:

5. Consideration of purchasing road maintenance equipment.

Public Works Director advised the city streets are deteriorating at a faster rate than city funds can repair them. The department's goal is to reconstruct resurface, repair, maintain and improve the streets of the city. Public Works Director advised that owning a combination of the Asphalt Zipper, Caterpillar AP255E Paving machine and the MT600 Mauldin Hot Tack Sprayer can provide the necessary tools to effectively and efficiently alleviate many of the basic issues related to street repair and maintenance. The total cost of the equipment is \$260,016.00. Public Works Director gave the Governing Body an overview of the purpose and how each machine is used and advised that each piece of equipment comes with its own warranty, training on the operation and basic maintenance.

Questions were asked if the equipment could utilize recycled oil as needed during maintenance and if there is staff within the department that could do routine maintenance to save department costs instead of taking them to a vendor.

Public Works Director advised the bigger equipment that the department has are under lease and are required to have the routine maintenance from the company that the equipment was leased from and he is under the impression that any staff that would be doing maintenance on heavy equipment needs to be a certified mechanic. Public Works Director advised that if he has the information incorrect he will check and inform the Governing Body.

Questions and discussion took place if the items would be leased or purchased. Public Works Director advised the equipment is a purchase.

Councilor requested that all Public Works Department employees receive the training provided by the company so each one is able to utilize the equipment.

The Governing Body agreed to place the item as a consent agenda item.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

We reviewed the April 27, 2016 Council Meeting minutes and found that the purchase of the paving machine was on the consent agenda and approved by the Council as item #4 – Approval to purchase road maintenance equipment.

Based on the Council's approval, the City began the purchase process for the equipment.

The City issued the following POs:

- PO #162026, dated 05/05/2016, in the amount of \$105,654.00 for 1 Caterpillar AP255EQ Paving Machine.

This PO was voided June 7, 2016.

- PO #162025, dated 05/05/2016, in the amount of \$23,072.00 for 1 Maulding MT-600 Hot Tack Sprayer and training, shipping, and spraybar.

This PO was voided June 6, 2016.

- PO #162032, dated 05/05/2016, in the amount of \$131,290.00 for 1 Asphalt Zipper ZA500-8173, 173HO John Deere Tier 3 and related containment system and water system.

This PO was voided May 19, 2016.

We asked the Finance Director if any payments were made on the equipment. She said that no payments were made on the POs. We verified this by searching the GL detail and vendor payment detail.

One payment in the amount of \$2,600.00 was made because the machinery had been delivered to the distributor. The City had to pay to have it shipped from the distributor back to the manufacturer. This was a payment for shipping, and not for the equipment.

Several people interviewed questioned where the funds budgeted for the machinery went. They question if the budgeted funds were transferred to another fund, and if the transfer was approved. Budget transfers are tested later in this report.

Conclusion: The City did not add the cancellation of the POs to the Council agenda. As a result, the Council did not have the opportunity to debate the cancellation. The Council approved the purchase of the machinery. Therefore, the Council should have been given the opportunity to debate the cancellation of the POs before they were voided.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Sole Source Procurements to Nonprofits

Several people interviewed were concerned that the City was awarding contracts to nonprofit entities without following the procurement code. We selected a sample of nonprofit entities that received contract awards from the City and reviewed the procurements for each. We reviewed the contracts awarded, reviewed the webpages for each entity to determine what their mission was, and reviewed their nonprofit status.

The City had determined that each of the awards should be sole source awards. We agree with this conclusion. However, the procurement code, Section 13-1-126, NMSA, 1978, states:

- A. Conditions for use. A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the state purchasing agent or a central purchasing office, employing due diligence, determines, in writing, that:
 - (1) there is only one source for the required service, construction or item of tangible personal property;
 - (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
 - (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

- D. A local public body central purchasing office, prior to award of a sole source contract, shall post the information required by statute on the local public body website, if one exists.

The procurement files did not contain documentation that the City had considered points 1 through 3 above, or any evidence that the sole source procurement was posted to the City's website.

Procurement of Professional Services

Several people interviewed expressed concern that the City was awarding contracts to attorneys without following the procurement code. We selected five attorneys used by the City and reviewed their payments for the special audit period.

For one of the law firms tested we found that the firm was paid \$149,956.26 during the special audit period. However, the payments were for a continuation of a contract that began before the special audit period. Therefore, this procurement was not tested.

The remaining four law firms tested did not receive more than \$60,000 during the special audit period. Therefore, the City has complied with the procurement code.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

However, it should be noted that the City should consider the need to request proposals for legal services if they expect that those services will cost in excess of \$60,000 in any given year.

Other Procurement Testwork

One person interviewed expressed concern that the Contractor had been awarded contracts for part of the recreation center construction. We reviewed all of the payments made to contractors relating to the remodel of the recreation center. None of the payments were to the Contractor.

One person interviewed expressed concern that a Council member voted to award a contract to the company for which the Council member worked. We obtained all payments made to the companies related to the Council members employer. We then reviewed all of the meeting minutes for the special audit period and could not find anywhere that the Council member voted on his employer's contracts.

We selected twelve other material procurements made during the special audit period and tested the procurement files for compliance with state statute. Eleven of the procurements were done properly. For one of the procurements tested we found that contract payments were being paid on an expired contract. The City was aware of the problem and was in the process of requesting bids for the contract.

We asked the City for a listing of all emergency procurements made during the special audit period. We found that the only emergency procurements during the special audit period were the ones listed above in the Contractor testwork. There were no other emergency procurements.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

SPECIFIC PROCEDURES REGARDING PERSONNEL AND HUMAN RESOURCES

New Hire Testwork

During our interviews with Councilors and City employees we found that there was concern that employees hired by the City during the special audit period were not qualified for their positions, received improper pay in excess of what Personnel Rules allow, and that the Personnel Rules (sections are referenced below) were not followed in the hiring process. We performed the procedures below in response to these concerns.

We selected a sample of new hires that occurred during the special audit period. We asked the City's Human Resources Department to provide the following data:

- Position job description.
- Pay and classification plans for the position (§66-13).
- § 66-19 Appointment Rate – Upon original appointment within the step schedule, all persons shall be paid at the minimum rate for their classification. However, the City Manager may authorize original appointments at higher than minimum rate within the designated pay range if the person possesses exceptional experience and training: Provide the documented justification for any person appointed at above the minimum rate for their classification.
- § 66-33 Application: Provide the application and resume for all people applying for the position. Provide a copy of the job advertisement.
- A list of the people on the Interview Committee.
- The documentation of the interviews and results of the Interview Committee.
- Interview Committee's recommendation to the City Manager.
- Step and pay rate awarded to the person hired.
- Step and pay rate of the person occupying the position before the hiring of the new person.
- Background check information obtained by the City.
- Documentation and results of reference checks performed by the City.
- Hire date.
- Date of first payroll.
- Date benefits became effective.
- All other documentation that exists relative to the hiring of the position.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Testwork Over New Hire Qualifications

We selected a sample of twenty-seven employees hired during the special audit period. We compared the requirements of the Position and Job Description for the position to the information available from resumes and applications. We found that seventeen new hires met the requirements for their position, nine did not, and one could not be tested because their personnel file did not contain a resume or an application.

Several people interviewed questioned whether the City Manager possessed the qualifications for the position. One of the requirements for the position is graduation from an accredited college with a master's degree in business or public administration or a related field. However, the requirements of the position also state "an equivalent combination of education and experience". We found that the resume and application in the City Manager's file did not show that he earned a master's degree, but our analysis of his experience shows that he is qualified for the position based on prior experience.

Although he met the experience requirement, he did not meet the ICMA certification requirement. One of the requirements for the City Manager position is "If not already certified by the International City Managers Association (ICMA), the applicant shall be working to achieve certification. All applicants shall be in the process of obtaining ICMA certification or shall be a corporate member when hired." The City Manager was hired April 20, 2016. He became a member of ICMA on August 25, 2016. There is no evidence that he was working on the ICMA certification when hired. Therefore, the City Manager did not meet the minimum requirements for the position.

One person interviewed was concerned that the ICMA certification required a college degree, and that the City Manager may not meet the requirements to become a member of ICMA. We spoke with the licensing specialist at ICMA and they verified that a college degree is not a requirement of ICMA certification.

Testwork Over Posting of Positions

We reviewed the position posting for twelve new hires. We found that three positions not posted. The positions were for appointed positions. There is no requirement that appointed positions be posted.

Testwork Over the Interview Committee Recommendation

We reviewed the composition of the interview committee, the notes of the interviews, and the interview committee recommendation to the City Manager. Of the twelve new hires tested, six people hired were the applicants recommended by the interview committee.

Three of the new hires tested did not have interview committees. For one the City hired someone other than the candidate recommended by the interview committee, for one the City could not find the interview committee data, and one of the new hires tested was for an appointed position, which does not require an interview committee.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Testwork Over Salary Level at Hire

The City's Personnel Rules § 66-19 Appointment Rate states "Upon original appointment within the step schedule, all persons shall be paid at the minimum rate for their classification. However, the City Manager may authorize original appointments at higher than minimum rate within the designated pay range if the person possesses exceptional experience and training.

We selected twenty-eight new hires for testwork. For salary testwork a new hire is either someone newly hired by the City, someone changing jobs within the City (new to the job) or transferred to a new job within the City. We compared their experience and education per their resume and application to the job requirements in the position job description. For any employee receiving a pay rate greater than the minimum rate for the position we reviewed all available data to determine if they possessed exceptional experience and training, as required above.

Of the twenty-eight new hires tested fifteen received the appropriate pay rate based on their experience. Thirteen new hires tested did not qualify for a salary level above step one, but received a salary above step one. Three of the thirteen received higher than the normal starting salary because they were transferred in to a position that normally receives a lower salary than the employee was already being paid. The City's Personnel Rules do not allow for salary reductions in the event of an involuntary transfer. It should be noted that one of the transfers was receiving a salary in excess of the maximum salary allowed for their position. This was the result of being transferred from a high paying job to a low paying job.

Transfers Testwork

Many people interviewed complained that they had been involuntarily transferred by the City, many more than once. Several people interviewed were concerned that people being transferred received pay reductions, or that the transfers were retaliation for not supporting the Mayor or City Manager's policies.

We selected a sample of eleven transferred employees for testwork. Several of the employees had been transferred many times. Therefore, the total number of transfers tested was twenty-five. We reviewed the employee personnel files and found that eleven of the transfers were voluntary, and fourteen were involuntary.

We tested the involuntary transfers to see if anyone received a pay decrease. None of them did. One person received what the City called a voluntary transfer even though there was no written request for transfer from the employee. The employee received a \$2.00 per hour pay decrease, but later received the \$2.00 per hour back. The employee did not receive retroactive pay for the \$2.00 decrease. We cannot determine if this was proper based on the documentation in the employee's personnel file.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

We reviewed the employee evaluations for the two years before each transfer for each person transferred. We would expect to see substandard evaluations on involuntarily transferred employees before their transfer. Seven of the transfers had good evaluations, two had average evaluations, and sixteen were missing evaluations in the personnel files. It was not possible to perform this test properly because of the number of missing evaluations.

During our interviews with City employees we found that transfers from high salary jobs to low salary jobs have caused pay issues between employees. The reason is that the salaries are not reduced during the transfer. This means that lower paid employees are working with higher paid employees. In some cases, employees are making as much as their supervisors. In one case, the pay is in excess of the pay scale for the position.

Terminations Testwork

We selected a sample of eight terminations during the special audit period. The sample included people who were interviewed during planning process (people terminated by the City), as well as a random sample of other terminations. Note that the random sample of terminations includes people terminated by the city, people who quit, and people who resigned.

Of the eight people terminated we found that we agreed with all eight of the terminations.

Removal of Officers Testwork

As part of our interviews of City employees and elected officials we received complaints that Officers and Directors were being removed from their positions without approval by the Governing Body.

The City Charter, Sections 5.04 E, 5.05 D, 5.06 C, and 5.07 D, states that Officers and Department Directors may be removed, subject to approval by the Governing Body.

We asked for a list of all Officers and Directors removed from office for the period January 1, 2016 to December 31, 2017. We also asked for documentation that the removal was approved by the governing body. Our results are as follows:

- In the December 28, 2017 Special Council Meeting minutes, we found the removal of the City Attorney subject to Section 5.04 E. A roll call vote was taken and all City Councilors approved the removal of the City Attorney.
- In the June 21, 2017 Regular Council Meeting minutes, we found the removal of the Community Development Director subject to Section 5.07 D. A roll call vote was taken and all City Councilors approved the removal of the Community Development Director.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

- In the July 11, 2016 Special Council Meeting minutes, we found the removal of the Community Development Director subject to Section 5.07 D. A roll call vote was taken – one Councilor abstained, one Councilor voted no, and two Councilors voted yes. The majority of the Councilors approved the removal of the Community Development Director.
- In the May 16, 2016 Special Council Meeting minutes, we found the removal of the Utility Department Director subject to Section 5.07 D. A roll call vote was taken and all City Councilors approved the removal of the Utility Department Director.

Our conclusion is that the removal of officers and directors were approved by the Governing Body, as required by the City Charter.

Background Check Testwork

Several people interviewed expressed concerns about the background, both criminal and personal, of other employees. We asked to review the background checks of twelve employees. We were told that the City only performs criminal background checks, and only calls references if asked to do so by the Department hiring for the position. This means that employees with unsatisfactory backgrounds or employment histories may be hired.

We will recommend that the City perform a reference check on every employee being considered for hire, as well as internet search be performed for potential background problems. We will recommend that this be done in addition to a criminal background check.

Special Procedures over Benefits for the City Manager

Several people interviewed expressed concern that the City Manager was receiving benefits before his hire date. We reviewed the data in the City Manager's personnel file. His hire date was April 20, 2016. The date of his first payroll was May 20, 2016, and the date his benefits became effective was June 1, 2016. The City manager did receive benefits before his City benefits became available. However, this was proper. We reviewed the benefits documentation in his personnel file and found that his benefits were transferred from his State employment. He had to pay the first portion of the benefits out of pocket. He brought in the payment. We found evidence of his payment in his personnel file.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Testwork Over Timesheets Being Changed by Supervisors

During our interviews we received complaints from two employees that their timesheets were being changed by supervisors. We obtained timesheets for the dates identified by the employees and found that supervisors were changing the employee's timesheets. We reviewed the Personnel Rules and did not find where supervisors were allowed to make changes to employee's timesheets. We discussed this with the City's Human Resources department and they agreed that supervisors should not be changing employee's timesheets. We will recommend that the City's Personnel Rules be updated to state that this is not allowed.

Testwork Over the Prohibition of the City Manager Acting as the Finance Director

One of the people interviewed expressed concern that the City Manager was acting as Finance Director, which is a violation of the City Charter. Per Section 5.07 of the City Charter, the City Manager may serve as a department director, provided that the Manager shall not serve as either the City Clerk or Finance Director.

We reviewed the City minutes for the December 28, 2017 Council Meeting and found that Ann Marie Gallegos was moved from Finance Director to acting City Manager at that meeting. We also found that Tana Vega was appointed interim Finance Director at that meeting. Therefore, the City Manager is not acting as the Finance Director.

Potential Violation of HIPAA Rights

Several Councilors interviewed stated that an employee's rights may have been violated because the City went to the employee's doctor's office to ask about the employee. We interviewed the employee regarding this issue and the employee confirmed the facts. The employee provided evidence on the issue. However, in the evidence was an email from the U.S. Department of Health and Human Services Office for Civil Rights (OCR). The employee had emailed OCR describing the details of the incident. In their email response, OCR tells the employee that the situation described is not a violation of HIPAA. The email states "Your employer can ask you for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance. However, if your employer asks your health care provider directly for information about you, your provider cannot give your employer the information without your authorization unless other laws require them to do so."

Based on the OCR email we believe there has not been a violation of the law. In addition, there are plenty of law firms that handle employment law. The employee should seek legal representation if they really believe their rights were violated.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

SPECIFIC PROCEDURES REGARDING BUDGETS AND BUDGET REPORTING

During our interviews several City Councilors expressed concern that budget adjustments were being made without approval by the Council. Several employees also complained that their budgets were changed without budget adjustments.

We obtained the City's original budget for the year ending June 30, 2017. We reviewed Resolution 16-26 dated July 25, 2016 and found that the Council approved the original budget. We also reviewed a letter dated September 6, 2016 from the Department of Finance and Administration's Local Government Division (DFALGD) approving the City's original budget.

We then obtained the City's 4th quarter budget report submitted to DFALGD. We communicated with the City's DFA Budget analyst and confirmed that the budget report was approved.

We then obtained the City's budget adjustments (BARs) for the year. We summarized the data from BAR 16-34, 16-40, 16-46, 17-03, 17-05, and 17-22. We reviewed the Council meeting minutes for approval of the BARs and found that the Council approved every budget adjustment made by the City for the year ending June 30, 2017.

We used the data from the BARs to rollforward the original approved budget to the final 4th quarter budget. In doing so we found that the budget did not roll forward by \$30,915. The City prepared an amended 4th quarter report after we identified the error. They submitted the report to DFALGD on February 12, 2018. Although we found an error in the report, it does not change the fact that all of the budget adjustments were reviewed and approved by the Council.

During our review of the BARs, we found that only one of the 41 line items adjusted was a reduction in spending. The remaining line item adjustments were to increase spending. Most of the increases were to budget the expenditure of grant funds received or to budget expenditures related to prior year carryover cash balances.

The reason this fact is important is because many people asked where the money for paving machine went. We do not see it being moved to another fund. There is no reduction in one fund with a corresponding increase in another fund. Therefore, the money was not re-budgeted to another fund.

We reviewed the June 30, 2017 audit report and noted that the auditors did not report a finding for expenditures in excess of budget.

Conclusion: All budget adjustments were approved by the City Council. No money is being moved without a corresponding budget adjustment. The City's spending is within its budget authority.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Lodger's Tax Budget

One of the Councilors we spoke with wanted the Lodger's Tax Budget to be reviewed as part of the special audit. The Councilor believed that the Lodger's Tax Board was supposed to set a budget, that the Board had not been duly constituted before July, and was concerned that the Council could not seem to get a clear picture about lodger's tax activity.

In regards to the budget, the Lodger's Tax Board does not set the budget for the lodger's tax fund, they City does. The City's Municipal Code, Chapter 389-14 Sections E and F are as follows:

E. The City Council shall furnish to the Board [Lodger's Tax Board] that portion of any proposed budget, report or audit filed or received by the City, pursuant to either NMSA 1978, Chapter 6, Article 6 (§ 6-6-1 et seq.), or the Audit Act that relates to the expenditure of lodgers' tax funds, within the 10 days of the filing or receipt of such proposed budget, report, or audit by the City.

F. The City Council shall report to the Division, on a quarterly basis, any expenditure of lodgers' tax funds pursuant to NMSA 1978, §§ 3-38-15 and 3-38-21, and shall furnish a copy of such report to the Board when it is filed with the Division.

We reviewed the City's budget and found that the Lodger's Tax fund is included in the budget as fund 214. We also reviewed the City's fund reports and found that the revenue and expenditures for the Lodger's Tax fund are reported.

If the Council is having a hard time understanding the flow of funds through the Lodger's Tax fund then they should ask for additional detail from the Finance Director. It is the Finance Director's responsibility to provide clear and complete financial reports for all funds.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

SPECIFIC PROCEDURES REGARDING THE HOUSING AUTHORITY

During our interviews of City Councilors and City employees we received numerous concerns relating to the City's Housing Authority (LVHA) and its Executive Director.

We interviewed personnel from the U.S. Department of Housing and Urban Development (HUD) who were reviewing the operations of LVHA at the same time we were performing special audit procedures. HUD issued their report December 22, 2017.

HUD's report on compliance noted the following findings that we believe should be noted in the Consulting Services Report:

HUD's review determined that the City of Las Vegas (CLV) and the Las Vegas Housing Authority have substantial compliance deficiencies in the areas of governance, financial management, and program management. Based on HUD's experience with the CLV and its reluctance to address long-standing deficiencies in the governance and administration of the program, HUD does not expect that the corrective actions will resolve the compliance issues over the long term. The long-term solution HUD recommends it to reposition the Annual Contributions Contract from CLV to another public housing authority willing and capable of administering the programs in accordance with HUD requirements.

Finding #3: CLV could not document that effective budget controls are in place, implemented, and revised, if necessary. The FYE June 30, 2018 budget was not prepared timely by the CLV Finance Department which led to failure of the Board to approve an operating budget before the deadline of June 30, 2017.

Finding #8: The CLV does not have policies and procedures in place to ensure that charges to the program are for eligible expenses. On at least two occasions, the Executive Director (ED) used program funds for ineligible expenses. The Public Housing fund was charged for the paralegal dues of the ED, who also certified to the State Bar that her employment was substantially based in legal work. The ED charged the program funds for mileage and twelve hours of travel time for a two-hour meeting in the Albuquerque HUD office. The ED informed HUD staff that she had brought a family member with her on the trip. HUD staff confirmed that the LVHA vehicle was available for the ED's use on that date.

As a result of finding #8, HUD's required corrective actions are for the ED to reimburse the public housing program funds for the cost of her paralegal dues, and for the costs of travel to and from the HUD office in her personal vehicle.

Finding #9: The CLV does not maintain proper controls over payroll allocations and travel claims of the Executive Director. The CLV Paralegal position appeared on the LVHA payroll ledger with the pay period beginning July 22, 2017. The Paralegal was appointed to the LVHA ED position on August 14, 2017, effective with pay period beginning August 19, 2017.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

HUDs summary reads: In addition to the lack of adequate governance, the CLV has not met its responsibilities for safeguarding federal funds and the LVHA assets. The Finance Department's lack of policies, procedures, and internal controls creates a material weakness in the LVHA's daily operation of its programs, the validity and reliability of data it submits regarding the performance of its programs, and brings into question the consistency of its compliance with applicable laws and regulations. The selection of an ED lacking any relevant experience necessary to manage the programs prevents LVHA staff from carrying out their responsibilities in an efficient and effective manner. In her short tenure, the ED has personally misused federal funds and resources on more than one occasion. This conduct is unacceptable and will be referred to HUD's Departmental Enforcement Center and Office of Inspector General for further investigation.

The Corrective Actions required to resolve the findings above are intended to remedy immediate compliance deficiencies in the administration of the programs, and ensure that LVHA staff can continue to provide decent, safe, and sanitary housing to eligible families. Based on our experience with the CLV and its reluctance to address long-standing deficiencies in the governance and administration of the program, we do not expect that these corrective actions will resolve the compliance issues over the long term. The long-term solution HUD recommends is to reposition the ACC from CLV to another public housing authority willing and capable of administering the programs in accordance with HUD requirements.

Conclusion: LVHA has insufficient budget controls. As already noted in our testwork over Personnel and Human Resources, there is insufficient vetting of resumes and experience when hiring. There is insufficient financial oversight by the Executive Director.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**SPECIFIC PROCEDURES REGARDING SHREDDING OF DOCUMENTS BY
THE CITY**

During our special audit procedures we twice received communications that City employees were shredding documents. We discussed the shredding with the City.

- The first instance of shredding occurred in the Finance Department. Per the Finance Director, they were shredding duplicate copies of old audits.
- The second instance of shredding occurred in the Housing Authority. Per the Executive Director, due to a shortage in funding for office supplies she recycled a binder by taking out old seminar information. She felt it was irresponsible to throw the papers in the trash so she shredded them. She provided the coversheet of the seminar information shredded as proof of what was shredded.

Section 1.21.2.7.F of the New Mexico Administrative Code defines a non-record as “extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition.” Non-records do not fall within the record retention and shredding rules. Therefore, the shredding above is not a finding.

We spoke with the City Clerk regarding the shredding and receive the following response:

The City Clerk’s Office is responsible for the shredding of all documents. The City Clerk’s Office has not authorized or processed any shredding during the special audit time period. The last time the Clerk processed shredding for any department was in October of 2015 and the City Clerk’s Office keeps a certificate of destruction for our records. We continue to follow best practices with regard to the disposition of records.

Conclusion: There is no finding related to shredding.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

SPECIFIC PROCEDURES REGARDING CONFLICTS OF INTEREST

Council Members Voting on Contracts for Non-Profits when the Council Member is on the Board of the Non-Profit

During our interviews of City Elected Officials, Councilors, and employees, we received many complaints that City Councilors were discussing and voting on contracts for non-profit organizations for which the City Councilors were on the Board of the non-profit organization.

Article IX of the City's Charter deals with conflict of interest and ethics. Section B is as follows:

B. Disclosure and Voting. In addition to any other applicable provision of law, the provisions of this section shall govern disclosure and voting by the Mayor and City Councilors as follows:

- (1) The Mayor or any Councilor who has a financial interest (including property ownership) in the outcome of any policy, decision, or determination before the Governing Body, shall disclose to the other members of the Governing Body the nature of the financial interest, and the disclosure shall be recorded by the Clerk as part of the minutes of the meeting at which the disclosure is made.
- (2) Disclosure of financial interest or possible interest on any issue coming before the Governing body shall not disqualify a member of the Governing Body from voting on the issue, unless:
 - (a) A majority of the remaining members of the Governing Body determine that the member who discloses his financial interest or possible interest should not in propriety vote on the issue; or
 - (b) The member having a financial interest or possible interest in the issue voluntarily disqualifies himself.

We reviewed the non-profit contracts for which Council members were also Board members of the non-profit. We also researched each of the non-profits. We did not find any financial interest by the Council members in the non-profits. Therefore, we do not find any violation of the rules above.

Council Members Who Own Businesses or Who's Direct Family Members Own Businesses

During our interviews several City employees and Council members stated that another Council member's son owned a towing business and a scrap metal business. Their concern was that the City was improperly contracting with the son's businesses.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Article IX of the City's Charter deals with conflict of interest and ethics. Section F is as follows:

F. Contracts. The City shall not enter into any contract for goods or services with any city elected official or city employee, with any former City elected official or City employee who was a City elected official or City employee during the immediate prior twelve months, or with the spouse or domestic partner of any of the above, or with a business in which such current or former city elected official or employee has a controlling interest, unless:

- (1) The existence of any controlling interest is disclosed; and
- (2) The contract is entered into after public notice and competitive bidding or competitive sealed proposals in which price is a factor.

The code section above does not prohibit the City from contracting with a family member of a Council member. The code section also does not require the disclosure of business owned by family members other than a spouse.

However, Chapter 10, Article 16 NMSA 1978, the Governmental Conduct Act, Section 10-16-7, Contracts Involving Public Officers or Employees, Section A states:

A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process.

We reviewed the City's invoices for towing services and receipts from scrap metal sales and did not find any transactions with a related party during the special audit period. Therefore, we do not find a violation of the Governmental Conduct Act. There will be violation of the Act if the City contracts with the Council members family member in the future and the rules of Section A above are not followed.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

SPECIFIC PROCEDURES REGARDING RELATED PARTIES AND NEPOTISM

Per the City's Personnel Rules Section 66-39, nepotism is prohibited in the City. No relative of a City employee, by blood or marriage, may be employed in any position with the City in which the employee may directly supervise, control, or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed. The term "relative" includes spouse, child, stepchild, mother, father, grandparents, mother-in-law, father-in-law, brother, sister, brother-in-law, and sister-in-law.

During our testwork over related parties and nepotism we noted twenty-six family relationships at the City. None of the relationships violated the rule above.

During our interviews and questionnaire process we had many people express concern over one particular relationship. The Chief of the Fire Department is the Brother of the City Clerk/Human Resources Director. The Chief of the Fire Department is also the boyfriend of the Human Resources Manager. This has left some members of the City Fire Department feeling that they cannot report personnel or human resources related issues. They feel they cannot go to the Fire Chief because of his relationship to the Human Resources Manager and Human Resources Director, and they cannot go to Human Resources because of their relationship to the Fire Chief.

We discussed this with the Human Resources Director and Manager. They said that they recuse themselves anytime there is an issue at the Fire Department. We told them, however, that this does not solve the problem of making Fire Department employees feel that they cannot report issues.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

OTHER PROCEDURES PERFORMED DURING THE SPECIAL AUDIT

SUSPECTED INSURANCE FRAUD

Several people interviewed stated that the City submitted a fraudulent insurance claim relating to the replacement of the hardwood flooring. We reviewed the claim, loss report, invoices, and interviewed the Risk Manager.

The City submitted an insurance claim for replacing the carpet and hardwood that was damaged in the flooding of City Hall. The City's Risk Manager submitted the claim to the insurance company which included pictures of the damage and an investigative report. When Risk Manager later received the invoices from the Contractor she noticed that the invoices included more offices that were reported as damaged, and that the invoices all said "replace wood flooring". The invoices from the Contractor stated "replace wood flooring" when in fact most of the floor covering replaced was carpet, and the invoices were for "City of Las Vegas Water Damage", when in fact some offices that were not damaged had their floor covering replaced.

The Risk Manager caught the problem before the insurance company paid out the claim. The Risk Manager received the statement of loss from the adjuster and she found that report was for wood floor replacement and not carpet. The Risk Manager emailed the insurance claim adjuster and stated that the statement of loss was incorrect because some of the offices were carpet and not wood, and that not all of the offices had been damaged.

The Risk Manager and insurance adjuster worked together to correct the statement of loss. The amount received by the City from the insurance company for the corrected statement of loss was \$42,069.50. This amount is \$2,500 less than the statement of loss because of the City's deductible of \$2,500. The payout based on hardwood flooring was going to be \$94,203.71.

The City's Risk Manager caught the errors and corrected the insurance claim.

We did not find fraud during our work over the insurance claim.

CITY CHARTER, ORDINANCES, AND OTHER CITY RULES

In researching the ordinances and rules that govern the City we found that the City Charter on the City Clerks website, as adopted March 2, 2010, Section 3.01 states that the Mayor shall serve a four-year term. However, the Municipal Code Book Section 14-1 states that the Mayor shall be elected for a two-year term. It does not appear that the City's charter, ordinances, and administrative rules have been completely review and updated. We suggest the City review and update their governing documents.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

ANTI-DONATION CLAUSE

Article IX, Section 14 of the New Mexico Constitution states “Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation.”

As part of our testwork we obtained emails between City employees stating that the Samaritan House was to be provided free transfer station services. The emails were dated December 13th and 15th, 2016. However, we also found a letter dated January 4, 2017 from the City of Las Vegas to the Executive Director of the Samaritan House stating “Per City regulations and the anti-donation clause of the New Mexico constitution, the City of Las Vegas is unable to provide no cost landfill services to any organizations even non-profit organizations. The Samaritan House is required to pay for bulk items that are taken to the transfer station. For the next 1 month the Samaritan House will not be charged for items taken to the transfer station that are a result of illegal dumping at the Samaritan House located at 720 Legion Drive in Las Vegas, New Mexico. Measures to limit the costs associated with illegal dumping and to reduce or eliminate the illegal dumping are listed as follows.....”

The City agreed to accept illegally dumped trash for one month. They did not agree to give free monthly services to the Samaritan House. We do not believe the City has violated the anti-donation clause.

OTHER AREAS INVESTIGATED

It is important to note that many allegations of impropriety were made by people interviewed. We could not complete our investigations into these areas many times because the person interviewed did not deliver evidence promised, or the evidence provided did not support the allegation.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

FINDINGS AND RECOMMENDATIONS

It should be noted that there is a difference between a finding and a recommendation. Any violation of law or good accounting practice, including instances of non-compliance of internal control weaknesses are reported as findings. If, during our testwork, we become aware of other areas we believe the City should improve, but the area does not rise to the level of a finding, then we will show them as recommendations.

It should also be noted that we will not be reiterating the findings made in the U.S. Department of Housing and Urban Development report dated December 22, 2017.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

FINDINGS

2018-001 Procurement – Changing Procurements After the Initial Award

Condition: During our testwork over procurement we found several instances where the specifications of the bid were changed after the quotes were obtained and bid awarded. Changes were made to the scope of work on contracts that had already been awarded without rebidding:

- The City obtained quotes for the initial hardwood flooring installation in City Hall. The quote accepted was in the amount of \$8,998. After the bid was awarded the City issued a purchase order in the amount of \$19,123.35. The reason for the change was that the City added hardwood flooring for the executive offices after the bid was awarded. In addition, the City added wood molding instead of rubber trim, and several other small changes.
- The City issued an emergency procurement in the amount of \$10,000 for the repair to City Hall after flooding. It is understandable that the \$10,000 figure would change for the emergency procurement because the scope of work was not known at the time of the flooding. However, after the City awarded the emergency procurement, they Changed the scope of work from replacing carpet with carpet, to replacing carpet with hardwood. The City also changed the scope of work to include replacing undamaged carpet with hardwood in areas that were not affected by the flooding. The total final cost of the award was \$94,204.

Criteria: Section 13-1-125 (C), NMSA, 1978, states that a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000), excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.

For the initial installation of hardwood flooring the City did not attempt to obtain the best obtainable price. They changed the scope of work after award instead of asking for new bids.

For the installation of hardwood flooring after the flooding the City did not comply with the procurement code. The City should have used the emergency procurement to replace the carpet and clean up the water. Changing from carpet to hardwood flooring in the flooded areas that originally had carpet, and changing to hardwood in the nonaffected areas that had carpet, should have been subject to a request for bid or request for proposal.

Cause: The City ignored the procurement code.

Effect: The City may not have obtained the best obtainable price for the work performed.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**2018-001 Procurement – Changing Procurements After the Initial Award
(Continued)**

Auditor's Recommendation: City procurement personnel should take refresher classes on the state procurement code. In addition, the City should consider hiring an outside party, not related to the City, to review all nonstandard procurements to ensure they comply with the procurement code.

Management's Response:

13-1-127 NMSA, 1978, Emergency procurements states as follows:

A. The state purchasing agent or a central purchasing office may make emergency procurements when there exists a threat to public health, welfare, safety, or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances.

B. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

C. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.

D. The state purchasing agent or a central purchasing office shall use due diligence in determining the basis for the emergency procurement and for the selection of the particular contractor. The determination shall be in writing and included in the procurement file.

E. Money expended for planning and preparing for any emergency response shall be accounted for and reported to the legislative finance committee and the department of finance and administration with sixty days after the end of each fiscal year.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**2018-001 Procurement – Changing Procurements After the Initial Award
(Continued)**

The City of Las Vegas did not ignore the procurement process. On March 31, 2017, at 8:00 am, I, Ann M. Gallegos, walked into the administrative offices. I was in charge on that day because City Manager had requested the day off. Prior to this date, the City had recently hired an outside vendor to replace a portion of the flooring in City Hall with hardwood flooring. That morning staff from the public facilities department were in the building attempting to contain a water leak. I asked staff member, Ernest Jaramillo what had happened. He then proceeded to tell me that the water fountain had leaked overnight and had leaked throughout the building. Ernest Jaramillo also told me that he had turned off the water at the water fountain. City personnel were attempting to sweep up as much as water as possible with a shop vac.

I proceeded to Public Facilities to speak to Director Veronica Gentry. I asked her if she knew about the water leak. She said no and we proceeded back to City Hall. After she and I assessed the extensive water damage we proceeded back to her office at Public Facilities to determine a plan of action. We determined that we should call the person who had originally installed the wood flooring so as try to minimize the damage to the wood that had been previously installed by this vendor. I did not know who the vendor was, however, Veronica Gentry informed me that it was the Contractor. We agreed to open a purchase order for \$10,000 to begin the process of remediating the water damaged areas. Veronica Gentry made the call to the Contractor. The Contractor came in within an hour with various equipment (fans, shop vacs, other tools). I asked him if he knew how much of the wood flooring was salvageable. He said he could not determine that at that time. But, he said that he would immediately start the process. As we opened up more and more offices we determined that there was extensive water damage to many of the offices as well as to the areas of the already installed wood flooring.

The determination in writing was a memorandum dated March 31, 2017 from Veronica Gentry, Public Works Director to Ann M. Gallegos and is as follows:

"The City of Las Vegas (City Hall) discovered a major water leak on March 31, 2017 destroying (water damage) the majority of the city offices. As a result of the major damage, the Public Works Department is requesting an Emergency Purchase Requisition 13-1-127. Emergency Procurement, based that water indoors can cause an abnormal condition and can cause or contribute to a number of problems. The damage and health implications increase the longer material remain we. The possibility of water damages can cause where water migrates into areas not originally affected. Water spreads laterally into adjoining rooms, penetrates material below and wicks up into porous material, saturated material begins swelling as they absorb moisture, as water evaporates, it causes an abnormal humidity condition and also mold and bacterial spores germinate and multiply rapidly, which are causes for an emergency repair, where there exists a threat to public health, welfare, safety of all public and city employees.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**2018-001 Procurement – Changing Procurements After the Initial Award
(Continued)**

Water damage is a progressive condition and that drying time varies depending on the types of material, quantity of water, degree of saturation, airflow volume and temperature of indoor humidity. Therefore, I understand it is impractical to give an accurate quote for services before completion. I am requesting a standard price of \$10,000 to begin the process.

If any questions, please make contact with the Public Works Office. (see attachment #1)."

I approved the purchase order based on this recommendation.

13-1-127, Emergency procurements, specifically states that an emergency condition is a situation that creates a threat to public health, welfare or safety as may arise by reason of floods,

An emergency determination was documented.

The planning of removing and installing hardwood flooring throughout the City Administrative Offices was a planned renovation that had been taking place for a number of months. The original carpet had been mended with duct tape for many years. Then tile was installed, it broke off and became unglued and became a safety issue. We had been unable to complete the entire floor replacement project because of funding issues. Both the City Manager and myself continued to identify funding sources that could be available for the hardwood flooring project.

Porch and Associates has cited as a condition that the City issued an emergency procurement in the amount of \$10,000 for the repair to City Hall, however, the \$10,000 purchase order and the memorandum to Ann M. Gallegos from Veronica Gentry was only to begin the remediation process. The exact wording of PO #171742 dated 03/31/2017 is as follows:

"Emergency PO Water Damage
Emergency PO to repair Flooring @ City Hall to prevent the formation of mold and other health hazards due to extensive water damage caused by an overnight water leak/breakage in city hall/ the hall and several offices were affected."

Never was the scope of work changed from replacing carpet to hardwood. The intent was to continue the planned project of removing the old carpet and installing hardwood flooring throughout the City Administrative Offices.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**2018-001 Procurement – Changing Procurements After the Initial Award
(Continued)**

In Management's opinion, it would not have made sense to install hardwood flooring where hardwood flooring had been installed and to install carpet where carpet was installed. This would have changed the aesthetics, wood type, workmanship and consistency of flooring that had been previously installed and that was planned for the City Administrative Offices. For once, Management had a plan to install hardwood flooring throughout the building and to be able to create a safe and healthy environment for the public as well as employees for a long time to come.

The additional purchases were on a price per square foot basis, at the rate included in the original small purchase contract. A portion of the work was paid by the City's insurance carrier. I was not aware of the rumors of the Mayor's supposed relationship with the owner of the Contractor. As a result, this could not have influenced me in the decision to continue with the Contractor who had been installing the hardwood flooring. At no time did I ask the Mayor's opinion of who the City should be hiring to do the follow-up work on the floor replacement.

The City of Las Vegas processes approximately 9,000 payables (invoices) annually and yet these invoices to the Contractor are the only procurements being tested.

On April 19, 2017, at the City Council meeting I, Ann M. Gallegos, reported to Mayor and Council regarding the issue of the flooding of City Hall. Councilor Casey stated that she received a text message regarding the leak occurring and she asked how bad the damage was and was told that it was not bad at all. I never contacted Mayor or Council regarding the water leak.

The Auditor also states that the City should consider hiring an outside party, not related to the City to review all non-standard procurements to ensure they comply with the procurement code. Should the Governing Body wish to hire an outside party, not related to the City to review all non-standard procurements to ensure they comply with the procurement code, this would need to be done by amending the City's Ordinance regarding Procurement. There would need to be a definition of what a "non-standard procurement" would consist.

Corrective Action(s): Follow the procurement code process.

Responsible person(s): The Procurement Officer.

Timeline of corrective action: Immediately

Accountants Rebuttal: The City's response above states that the PO was for the beginning of the remediation process. Remediation is a separate activity from changing from carpet to hardwood in areas that were not damaged. Nothing in the City's response changes the fact that the City should have gone through the procurement process for hardwood flooring. Hardwood flooring is not part of the remediation process.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**2018-001 Procurement – Changing Procurements After the Initial Award
(Continued)**

In addition, the City’s response above states “Never was the scope of work changed from replacing carpet to hardwood. The intent was to continue the planned project of removing the old carpet and installing hardwood flooring throughout the City Administrative Offices.” If this was a planned project then the City should have had the procurement process already finished before replacing carpet with hardwood.

The City’s response above also takes into account esthetics. The procurement code does not consider esthetics in the procurement process.

Lastly, the City’s response states “The City of Las Vegas processes approximately 9,000 payables (invoices) annually and yet these invoices to the Contractor are the only procurements being tested.” This is simply not true. The procurement testwork in this report covers many types of procurements to many vendors.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

2018-002 Procurement – Small Purchases

Condition: During our testwork over procurement we found one instance where the City did not comply with the procurement rules for small purchases:

- Although the scoreboard replacement procurement qualified as a small purchase, the City did not document that any procedures were performed in order to determine if the City was obtaining the best obtainable price.

Criteria: Section 13-1-125 (C), NMSA, 1978, states that a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000), excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.

Cause: The City ignored the procurement code.

Effect: The City may not have obtained the best obtainable price for the work performed.

Auditor's Recommendation: City procurement personnel should take refresher classes on the state procurement code. The City should document all procurement procedures performed in order to show what has been done in order to obtain the best obtainable price. In addition, the City should consider hiring an outside party, not related to the City, to review all nonstandard procurements to ensure they comply with the procurement code.

Management's Response: The City of Las Vegas did document the procedures for repairing scoreboards. Only two contractors within City limits own boom trucks, making it difficult to acquire quotes. This in fact does qualify as a small purchase at the best obtainable price.

The Auditor also states that the City should consider hiring an outside party, not related to the City to review all 'non-standard procurements' to ensure they comply with the procurement code. Should the Governing Body wish to hire an outside party, not related to the City to review all non-standard procurements to ensure they comply with the procurement code this would need to be done by amending the City's Ordinance regarding Procurement. There would need to be a definition of what a "non-standard procurement" would consist.

Corrective Action(s): Follow the procurement code at all times.

Responsible person(s): Procurement Officer.

Timeline of corrective action: Immediately and ongoing.

Accountant's Rebuttal: The PO provided by the City does not identify any other vendors contacted or show quotes from other vendors. If there are only two vendors with boom trucks, then there should have been at least two quotes on the PO.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-003 Procurement – Sole Source Purchases

Condition: During our testwork over procurement we found several instances where the City did not comply with the procurement rules for sole source procurements. During our procedures we selected a sample of nonprofit entities that received contract awards from the City. The City had determined that these should be sole source awards. We agree with this conclusion. However, the City did not comply with the documentation requirements of the procurement code, or the requirement to post the procurements to the City’s website.

Criteria: Section 13-1-126 (A), NMSA, 1978, states:

A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the state purchasing agent or a central purchasing office, employing due diligence, determines, in writing, that:

- (1) there is only one source for the required service, construction or item of tangible personal property;
- (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
- (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

Section 13-1-126 (D), NMSA, 1978, states:

A local public body central purchasing office, prior to award of a sole source contract, shall post the information required by statute on the local public body website, if one exists.

Cause: Unknown.

Effect: The City is not in compliance with the documentation or posting requirements of the procurement code above.

Auditor’s Recommendation: The City should document the reasoning for sole source procurements and keep the documentation with the purchase order or in a vendor file. The City should post all sole source procurement on the City’s website.

Management’s Response: Contracts for Mainstreet and Economic Development Corporation were reviewed by Thad Porch who included the recommendation that the City of Las Vegas document these contracts as sole source vendors.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

2018-003 Procurement – Sole Source Purchases (Continued)

The Governing Body can require that when a contract for local organizations, such as Mainstreet, the EDC. The LV First Independent Business Alliance and the like are considered at the Council Level, the Procurement Documentation as to why they should be considered a sole source, be presented to them at that time. The Governing Body could also require that these contracts be bid out, and that organizations report on their "deliverables," from past contracts to be assured that the organizations are performing their prior contracts. These requirements could be added to the City Ordinances by the adoption of revised ordinances should the Governing Body wish to do this.

These non-profits entities are recognized by the City of Las Vegas as non-profits that are serving the community and funding has been recommended by the State and by local resolution approved by the governing body. However, in the future, City Staff will be directed to include any funding as a sole source in the purchasing file for these non-profits agencies who assist the City of Las Vegas and post the contracts on the City Website.

Corrective Action(s): Include sole source documentation as approved by Mayor and Council and post the contracts on the City website.

Responsible person(s): The Community Development Department.

Timeline of corrective action: This will be implemented during the next funding cycle.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-004 Procurement – Violation of the Governmental Conduct Act

Condition: A summary of the procurements awarded to the Contractor is as follows:

- Initial installation of hardwood flooring: The City should have requested bids for the additional work instead of changing the procurement without bids. The specifications of the installation were changed after the quotes were obtained and bid awarded. Therefore, the City should have rebid the work.
- For the subsequent installation of hardwood flooring, the carpet removed was replaced with hardwood. This was not necessary. The cost of this additional work was \$84,204.00. The work performed was to replace all carpet in City Hall with hardwood. This work was unnecessary. The carpet removed could have been replaced with carpet.

In addition, although the initial procurement qualified as an emergency procurement, the subsequent change to hardwood flooring should not have been and emergency procurement. The emergency procurement should not have included converting City Hall from carpet to hardwood. The City improperly converted an emergency procurement in the amount of \$10,000 for the replacement of carpet to a project costing approximately \$94,000 for the cleanup of water and conversion of the City offices from carpet to hardwood.

- Although the scoreboard repair procurement qualified as a small purchase, the City did not document that any procedures were performed in order to determine if the City was obtaining the best obtainable price.

Only one of the City's procurements for construction services by the Contractor met the requirements of the procurement code in state statute or in the administrative code. Considering the Mayor's past personal relationship with the owner of the Contractor, it would have been prudent for the City to show additional diligence in these procurements in order to avoid a reasonable person's conclusion that the Contractor has been given preferential treatment in procurement.

It should be noted that during our interview process several people said that the mayor was involved in the procurement of the Contractor. However, there has been no evidence given to the accountant that proves that the Mayor had direct or indirect involvement in any procurement involving the Contractor.

This is a violation of the Governmental Conduct Act in that the Mayor did not disclose the real or potential conflict of interest in the City's awarding of contracts to a close personal friend (See section C in the Criteria below).

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-004 Procurement – Violation of the Governmental Conduct Act (Continued)

Criteria: Section 10-16-3, NMSA 1978, Ethical Principles of Public Service, Sections A and C state:

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

Cause: Unknown.

Effect: Citizens, Councilors, and employees of the City feel as though the Mayor has abused her position. As a result, confidence in the government of the City has been degraded.

Auditor's Recommendation: The City should consider hiring an outside party, not related to the City, to review all nonstandard procurements to ensure they comply with the procurement code, and to ensure there are no potential conflicts of interest in the procurement process.

Management's Response:

Response to bullet #1:

See Management Response to Procurement-Changing Procurements After the Initial Award above. The price for the initial flooring and the additional work remained at the same price as in the original procurement. This meets the requirements of the State Procurement Code and the approved Resolution #14-18 which states \$0 to \$19,999 should be procured at the Best Obtainable Price; It seemed to me, as the Acting City Manager on the day of the initial occurrence of the water leak and later as the City's Finance Director that it would not make sense to acquire additional quotes and possibly change the aesthetics, quality of flooring, consistency and workmanship of the flooring.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-004 Procurement – Violation of the Governmental Conduct Act (Continued)

Response to bullet #2:

The argument that replacing the carpet with hardwood was not necessary is true. However, given the circumstances that an original portion of the flooring had already been changed from carpet to hardwood and it was the plan to make the change throughout the building when resources were available, to replace the balance of the carpet with hardwood flooring made sense to me. Thad Porch does comment that some employees were experiencing health issues with the carpet. The hardwood flooring, although steeper in cost, has proven to be healthier and safer for employees as well as the public. (In many areas of the City Offices, the carpet had been mended with duct tape, smelled of mold, different spills). The hardwood flooring does not have these type of issues. The Procurement Code does not rule that carpet must be replaced with carpet and hardwood replaced with hardwood.

The statement of the Acting City Manager, who was the Finance Director at the time of the matters involved in this finding, was that she did not ask the Mayor her opinion as to who to hire in regard to installation of the flooring and was not aware of the allegations regarding a personal relationship between the owner of the Contractor and the Mayor. The Mayor also has assured the Special Auditor that she was not involved in the decision making regarding the flooring award nor in the award of this contract. It does not appear that there is evidence otherwise in regard to this allegation.

The Auditor also states that the City should consider hiring an outside party, not related to the City to review all non-standard procurements to ensure they comply with the procurement code. Should the Governing Body wish to hire an outside party, not related to the City to review all non-standard procurements to ensure they comply with the procurement code, this would need to be done by amending the City's Ordinance regarding Procurement. There would need to be a definition of what a "non-standard procurement" would consist.

Corrective Action(s): Follow the procurement code and City and state regulations at all times.

Responsible person(s): The Procurement Officer.

Timeline of corrective action: Immediately and ongoing.

Accountant's Rebuttal: See our rebuttal in finding 2018-001 and 2018-002.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

2018-005 Personnel and Human Resources – Qualifications of New Hires

Condition: We selected a sample of twenty-seven employees hired during the special audit period. We compared the requirements of the Position and Job Description for the position to the information available from resumes and applications. We found that seventeen new hires met the requirements for their position, nine did not, and one could not be tested because their personnel file did not contain a resume or an application.

In addition, as noted in our testwork above, the City Manager met the experience requirement, but he did not meet the ICMA certification requirement. One of the requirements for the City Manager position is “If not already certified by the International City Managers Association (ICMA), the applicant shall be working to achieve certification. All applicants shall be in the process of obtaining ICMA certification or shall be a corporate member when hired.” The City Manager was hired April 20, 2016. He became a member of ICMA on August 25, 2016. There is no evidence that he was working on the ICMA certification when hired. Therefore, the City Manager did not meet the minimum requirements for the position.

Criteria: Chapter 66 of the City Charter contains the City’s Personnel Rules (Rules). During our testwork over new hire qualifications we compared the requirements of the Position and Job description to the qualifications of each employee. Therefore, we expected to find this as a requirement in the Rules. We cannot find this as a requirement anywhere in the Rules or Administrative Regulations governing hiring. It is only reasonable that the Position and Job Description used to evaluate applicants is binding on the position. Therefore, we have used the Position and Job Description as a basis for this finding.

Chapter 66-33 of the Rule states a person wishing to apply for employment within the City must fill out and submit a City employment application and resume. All applications and/or resumes are to be submitted to the Human Resource Department by deadlines set forth in the job advertisement. A person may apply for any position although no vacancies exist. Such applications will be kept on file for a period of six months.

Cause: During our interviews we were told that for many of the positions the City Manager said that the City would be hiring the candidate the Mayor wants in place. We asked the City Manager directly if he said this. He has denied saying this. Therefore, the cause is unknown.

Effect: The City has hired people who are not qualified for their positions.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

**2018-005 Personnel and Human Resources – Qualifications of New Hires
(Continued)**

Auditor's Recommendation: We found the employees in the Human Resources Department to be capable and intelligent. It seems, however, that they are prevented from doing their jobs correctly because of undue influence from the City Manager and Mayor. The City Manager and Mayor have denied this. Therefore, the only reasonable course of action is to recommend that the hiring, firing, promotion, pay increase, and transfer decisions be taken out of the City's hands. We recommend that the City hire an outside third party to oversee each of these functions as performed by City personnel. We recommend that the party hired have no relationship or tie to the City in any way.

Management's Response to Hiring: The Human Resource Department personnel are not prevented from doing their job, HR personnel makes recommendations based on the rules and regulations set forth by policy. The authority lies with the City Manager to adhere to recommendations or to decide otherwise.

Corrective Action(s): The City Manager, pursuant to the City Charter and City Ordinances, is the Chief Administrative Officer of the City and is charged with appointment of all department directors and directing and supervising all City Employees. The City Ordinances state that the City Manager shall: "Recommend to the governing body the hiring of department directors and appoint, subject to confirmation by the governing body, promote, suspend and discharge (subject to the provisions of a merit system ordinance) all other employees of the municipality".

Section 66-10 of the City Ordinances states:

66-10 Exclusive rights of City Manager.

Subject to applicable ordinances and resolutions for regulations and policies of the City Council, the City Manager has and retains all rights to administer the affairs of the City, including but not

limited to the exclusive right to:

- A. Reprimand, suspend, terminate, or otherwise discipline employees.
- B. Hire, promote, demote, reclassify, transfer, retire, reassign, assign, lay off, and recall employees to work.
- C. Judge the employee's skill, ability, efficiency, and general performance.
- D. Determine the starting and quitting times and number of hours to be worked.
- E. Determine the assignment of work and the size and composition of the work force.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

**2018-005 Personnel and Human Resources – Qualifications of New Hires
(Continued)**

- F. Revise, eliminate, combine, or establish new jobs and classifications.
- G. Establish, close down or expand the operation of any facility, department or division, and reduce, increase, alter, combine, transfer, or cease any department's operation, equipment or service.
- H. Subcontract and determine the services to be rendered, bought, or sold.
- I. Introduce technological changes, new, improved or modified services, methods, techniques and equipment and otherwise generally manage the operation and direct the work force.
- J. The City Manager reserves the right to postpone all paid leave, except authorized sick leave, injury, and temporary disability leave, and to call back an employee in the event of an emergency.

Because of these powers, the City Manager historically has had the ultimate control over hiring and firing of city personnel. Should the City Council wish to change this authority and, as the Special Auditor suggests, "take it out of the City's hands", this would need to be the subject of a Charter Amendment approved by the City electorate and/or an amendment to the City Ordinances.

Responsible person(s): The City Charter outlines several methods for initiating Charter amendments in Section 1.05C. The Charter also calls for periodic Charter Review to be initiated by the Governing Body, under Section 1.05A of the existing Charter. City Ordinances must be amended by adopting further Ordinances.

Timeline of corrective action: Amendment of the Charter must ultimately be approved by the electorate of the City of Las Vegas. Amendment of City Ordinances are executed by the Governing Body adopting new Ordinances.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-006 Personnel and Human Resources – Personnel Performance Evaluations

Condition: During our employee transfer testwork, as noted above, we tested eleven employees, several who had been transferred multiple times, for a total of twenty-five transfers. We reviewed the employee evaluations for the two years before each transfer for each person tested. During our testwork we found that sixteen of the years tested were missing personnel performance evaluations.

Criteria: Personnel Rule 66-20 (B) states that “The department director shall perform annual performance evaluation of positions in their respective departments...”.

Cause: Unknown.

Effect: The City is in violation of its Personnel Rules. In addition, the City cannot support many of the raise, transfer, promotion, and termination decisions because the employees’ personnel files do not contain data relating to their performance.

Auditor’s Recommendation: The City should perform and document the yearly performance evaluations as required by the Personnel Rules. The City should consider implementing an internal control to ensure every personnel file contains an evaluation each year.

Management’s Response: The Human Resource Department agrees that the City should comply with the personnel annual performance evaluation as per our Personnel Ordinance. Department Directors are required to evaluate annually or as needed; however, in certain cases Department Directors are not in compliance with our own ordinance and have not been held accountable by the City Manager who oversees all Directors, nor by the Governing Body. This can also be monitored by the Governing Body should they wish to install appropriate monitoring processes.

Corrective Action(s): The HR Department with the support of the City Manager will ensure that the Department Director's perform annual evaluations in their respective departments.

Responsible person(s): The Human Resource Department has been responsible for reminding Directors on a quarterly basis. City Manager is responsible for holding department directors accountable when evaluations are not completed. The Governing Body is responsible for insuring that the City Manager follows City Ordinances on this matter.

Timeline of corrective action: Upon appointment of the new City Manager, the concern will be brought to his/her attention. The Governing Body has the opportunity at any time to institute a monitoring process.

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

2018-007 Personnel and Human Resources – Salary Level at Hire

Condition: We selected twenty-eight new hires for testwork. For salary testwork a new hire is either someone newly hired by the City, someone changing jobs within the City (new to the job), or transferred to a new job within the City. We compared the employees experience and education per their resume and application to the job requirements in the position job description. For any employee receiving a pay rate greater than the minimum rate for the position we reviewed all available data to determine if they possessed exceptional experience and training, as required by the Personnel Rule.

Of the twenty-eight new hires tested fifteen received the appropriate pay rate based on their experience. Thirteen new hires tested did not qualify for a salary level above step one, but received a salary above step one. Three of the thirteen received higher than the normal starting salary because they were transferred in to a position that normally receives a lower salary than the employee was already being paid. The City's Personnel Rules do not allow for salary reductions in the event of an involuntary transfer. It should be noted that one of the transfers was receiving a salary in excess of the maximum salary allowed for their position. This was the result of being transferred from a high paying job to a low paying job.

Criteria: The City's Personnel Rules § 66-19 Appointment Rate states "Upon original appointment within the step schedule, all persons shall be paid at the minimum rate for their classification. However, the City Manager may authorize original appointments at higher than minimum rate within the designated pay range if the person possesses exceptional experience and training."

Cause: Unknown.

Effect: The City is in violation of its Personnel Rules regarding salary levels.

Auditor's Recommendation: We recommend that the City hire an outside third party to oversee the Human Resources Department's functions. We recommend that the party hired have no relationship or tie to the City in any way.

Management's Response: The Human Resource Department agrees that the City should comply with the Personnel Ordinance regarding salary levels. The Human Resource Department makes recommendations to the City Manager regarding salary level based on policy and pay scale; however, the City Manager may authorize a higher step if applicable. In some instances the City Manager has approved a higher salary rate disregarding the Human Resources Department recommendation. According to Personnel Ordinance, all employees shall be paid in accordance with the approved pay and classification plans. The City Manager shall have final authority with respect to the assignment or change in assignment of employees to rates within the approved pay and classification plan.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-007 Personnel and Human Resources – Salary Level at Hire (Continued)

In order for the "City to hire an outside third party to oversee the Human Resources Department's functions... (and) have no relationship tie to the City in any way" it would be necessary to amend the Charter or to amend the City Ordinances. The hiring practices can also be monitored by the Governing Body.

Corrective Action(s): Amend the City of Las Vegas Personnel Ordinance to accomplish the needed outcome and the Governing Body may install monitoring processes to see that the changes are being carried out.

Responsible person(s): The Human Resource Department has been responsible for providing the appropriate documentation to the City Manager in order to assist with the accurate salary range for each position in accordance with the approved pay plan. In accordance to the City of Las Vegas Personnel Ordinance, the City Manager has final authority, but his/her job performance, under Charter provisions, is to be monitored by the Governing Body.

Timeline of corrective action: It is up to the Governing Body to determine whether it wishes to amend the City Charter or amend City Ordinances and then to implement a monitoring process to assure that the amendments are being followed.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-008 Internal Controls Over the Budget Process

Condition: During our testwork over the budget reporting process we found that the 4th quarter budget report submitted to the Department of Finance and Administration's Local Government Division (DFALGD) contained an error. This error was not caught by the City's budget processes.

Criteria: Section 6-6-2, NMSA 1978, requires that the City submit a proposed budget to the DFALGD on or by June 1 of each year. DFALGD is to then approve and certify the budget by July 1 of each year. The budget should then be adjusted as needed by Board Resolution and DFALGD approval. In addition, the submittal of quarterly financial reports to the DFALGD is required.

Cause: The City's review process for the budget reports is insufficient to ensure all mistakes in budget reports are caught and corrected.

Effect: The City had to file a corrected 4th quarter budget report with DFALGD. The City filed the amended report in February of 2018.

Auditor's Recommendation: The City should develop a procedure to ensure that all budget reports filed with DFALGD are correct.

Management's Response: The City of Las Vegas filed the 4th quarter (June 30, 2017) revenue and expenditure report on July 31, 2017. The revenues and expenditures were accurate and tied to our general ledger and to our cash balances as reported to DFA and to Mayor and Council. The error occurred in not including \$30,915 as a budget adjustment that was approved by Mayor and Council. The City of Las Vegas did correct the budget error. However, revenues, expenditures and cash balances were accurately reflected.

Corrective Action(s): Corrected by the Finance Department.

Responsible person(s): The Finance Director.

Timeline of corrective action: Immediately

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

2018-009 City Charter and Ordinances

Condition: In researching the ordinances and rules that govern the City we found that the City Charter on the City Clerks website, as adopted March 2, 2010, Section 3.01 states that the Mayor shall serve a four-year term. However, the Municipal Code Book Section 14-1 states that the Mayor shall be elected for a two-year term. It does not appear that the City's charter, ordinances, and administrative rules have been completely reviewed and updated. The City's charter and ordinances govern how the City operates. How can the City operate properly when their governing documents conflict with each other?

Criteria: The City's charter and ordinances govern how the City operates.

Cause: Unknown.

Effect: The City's conflicting documents could cause legal trouble for the City.

Auditor's Recommendation: We suggest the City review and update their governing documents.

Management's Response: Management agrees that it would be appropriate to conduct a review of all City Ordinances to ensure that they are consistent with the Charter that was adopted by the City electorate. However, staff is also aware that if there are any inconsistencies between the City Charter and City Ordinances, the Charter provisions will prevail.

Corrective Action(s): Review all Ordinances in relation to the Charter and identify inconsistencies.

Responsible person(s): The City Attorney.

Timeline of corrective action: To be determined after a new City Attorney is hired. City Council may wish to enter into a contract with outside counsel to make this review.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

Recommendations

Recommendation #1: They city hired a contractor to perform sidewalk repair. Several people interviewed complained that the contractor did not use materials that met code for sidewalks. We recommend that the City develop a process to ensure all contractors hired by the City are complying with relevant building codes.

Recommendation #2: The City Council voted on the purchase of paving equipment. This was done after the Council was allowed time to ask questions and debate the procurement. The purchase of the paving equipment was cancelled without allowing the Council time to ask questions and debate whether the procurement should be cancelled. We recommend that changes to procurements approved by the Council should not be made unless the Council has had time to debate and approve the changes.

Recommendation #3: The City has procured legal services from several law firms. The contracts did not exceed the threshold that would have required the City to request quotes for the services. However, it is not possible for the City to know what their legal needs will be during any given year, as it is not possible to know when the City will be sued or need to sue. It is possible that legal services may cost in excess of \$60,000 in any given year. We recommend that the City prepare a request for proposal/quote for services when there is the possibility that services may exceed \$60,000 in any given year.

Recommendation #4: The City made payments on an expired contract. The City was aware of this problem and was in the process of requesting bids for the contract. We recommend that the City develop an internal control procedure to ensure payments are not being made on expired contracts.

Recommendation #5: During our interviews we received many complaints and concerns that Council Members were not independent in relation to contracts they were debating and voting on, Council Members were not independent in respect to the City having contracts with the Council Members employers, or Council Members had family members who owned businesses with which the City had contracts.

We reviewed the minutes, contract, and payments to Council Members, as noted in our testwork above, and did not find any violations of laws.

However, we did find that the City lacked procedures to ensure all potential conflicts and related parties are disclosed. We recommend that the City develop a robust system to identify and disclose all real and potential conflicts of interest and all related parties. We further recommend that these statements be made public knowledge at a Council meeting and posted on the City's website.

We would like to reiterate that we could not find evidence of payments for services to companies owned by Councilors or their family members. We also could not find evidence of scrap metal sales to companies owned by Councilors or their family members. However, during our interviews, we were made aware that the City was withholding scrap metal sales until after the special audit procedures were completed. We would like to say clearly that

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

it would be a violation of Chapter 10, Article 16, Section A, NMSA 1978, the Governmental Conduct Act, if these scrap metal sales are made to a business owned by a Council Member or a business owned by a family member of a Council Member unless this information is disclosed through public notice, or unless the contract for business or sale of scrap metal is awarded pursuant to a competitive process.

Recommendation #6: Administrative Rule number A12-205 (08-29-2016 revision), Section (D) (5) (b) states that the Department Director or designee *may* select an interview team to assist in the interview process. Interview committees are not a requirement at the City. We recommend that the City consider changing its Administrative Rules to make interview committees a requirement.

Section (h) also states that if the City Manager feels that the interview committee's recommendation should not be considered for hire, the City Manager shall provide written justification for such, along with the recommendation for hire. Although we found these letters in personnel files, the letters did not explain in detail why the City Manager decided against the interview committee's recommendation. We recommend that the administrative rule be changed to include detail of the City Managers decision process in the written justification. The detail should be specific as to why the City Manager disagrees with the interview committee.

Recommendation #7: Many people interviewed complained that they had been involuntarily transferred. Some of them had been transferred several times. The City's administration stated that this was to save the persons job – transferring them instead of terminating the person. However, many people stated that they believed the transfers were retaliation by the City administration for not agreeing with the administration on all issues. Considering the number of people complaining about the transfers, we recommend that the City hire an outside third party to oversee the Human Resources Department's functions related to transfers. We recommend that the party hired have no relationship or tie to the City in any way.

Recommendation #8: Several people interviewed expressed concerns about the background, both criminal and personal, of other employees. We asked to review the background checks of twelve employees. We were told that the City only performs criminal background checks, and only calls references if asked to do so by the Department hiring for the position. This means that employees with unsatisfactory backgrounds or employment histories may be hired.

We recommend that the City perform a reference check on every employee being considered for hire, as well as internet search be performed for potential background problems. We recommend that this be done in addition to a criminal background check.

Recommendation #9: During our interviews we received complaints from two employees that their timesheets were being changed by supervisors. We obtained timesheets for the dates identified by the employees and found that supervisors were changing their timesheets. We reviewed the Personnel Rules and did not find where supervisors were allowed to make changes to employee's timesheets. We discussed this with the City's

CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017

Human Resources department and they agreed that supervisors should not be changing employee's timesheets. We recommend that the City's Personnel Rules be updated to state that this is not allowed.

Recommendation #10: Several Councilors have complained that the financial and budget data they get is not sufficient to understand the financial position of the City. It is the job of the Finance Department to provide sufficient detail to the Councilors so that they may make decisions in governing the City.

We are sure the Finance Department is providing financial documents to the Councilors, so it is important to understand that the documents are either insufficient to help the Councilors understand the financial position of the City, or the Councilors are not getting them in advance of the meetings with enough time to read and understand the data.

We recommend that the Finance Department and the Councilors work together to determine what the problem is. We suggest that the Finance Department provide detailed financial and budget reports to the Councilor's well in advance of meetings, and be available to answer any questions the Councilors have before the meetings.

We also recommend that the budget adjustments prepared by the City contain more descriptive detail about why the adjustment is necessary. The Finance Department should consider attaching a descriptive report to the budget adjustments for clarity.

Likewise, the Council is having a hard time understanding the inflows and outflows of the Lodger's Tax fund. We recommend that the Finance Department prepare fund level financials in sufficient detail so that the Council can understand the activity in the fund.

Recommendation #11: During our interviews and questionnaire process we had many people express concern over one particular relationship. The Chief of the Fire Department is the Brother of the City Clerk/Human Resources Director. The Chief of the Fire Department is also the boyfriend of the Human Resources Manager. This has left some members of the City Fire Department feeling that they cannot report personnel or human resources related issues. They feel they cannot go to the Fire Chief because of his relationship to the Human Resources Manager and Human Resources Director, and they cannot go to Human Resources because of their relationship to the Fire Chief.

We discussed this with the Human Resources Director and Manager. They said that they recuse themselves anytime there is an issue at the Fire Department. We told them, however, that this does not solve the problem of making Fire Department employees feel that they cannot report issues.

We recommend that the City hire an outside third party to oversee personnel and human resource issues at the Fire Department. We recommend that the party hired have no relationship or tie to the City in any way.

**CITY OF LAS VEGAS, NEW MEXICO
CONSULTING SERVICES REPORT
For the period January 1, 2016 to November 17, 2017**

An exit conference was held March 28, 2018, and attended by the following:

For the City of Las Vegas

Tonita Gurule-Giron, Mayor

David Ulibarri, Councilor for Ward I

Vince Howell, Councilor for Ward II

Barbara Perea-Casey, Councilor for Ward III

David Romero, Councilor for Ward IV

Ann Marie Gallegos, Acting City Manager

Tana Vega, Acting Finance Director

Casandra Fresquez, City Clerk

Danelle Smith, Acting City Attorney

For the New Mexico Office of the State Auditor

Wayne A. Johnson, New Mexico State Auditor

C. Jack Emmons, CPA, CFE, New Mexico Deputy State Auditor

For Porch & Associates LLC

Thad E. Porch, CPA, Managing Principal