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STATE OF IOWA

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NEWS RELEASE

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FOR RELEASE November 2, 2018

Auditor of State Mary Mosiman today released a reaudit report on the City of Dubuque for the period July 1, 2015 through June 30, 2016. The reaudit was performed at the request of petitioners pursuant to Section 11.6(4)(a)(3) of the *Code of Iowa*. The petition submitted to the Office of Auditor of State requested a reaudit of the year ended June 30, 2016.

The reaudit was requested due to concerns regarding City operations, including certain relationships between the City, City officials and outside organizations, the propriety of disbursements to certain vendors and outside organizations and whether any conflicts of interest exist.

Mosiman recommended the City ensure all disbursements are approved by the City Council prior to payment, are permissible by Article III, Section 31 of the Iowa Constitution, provide a public benefit, and are in the best interest of the City. Also, the City should comply with the *Code of Iowa* and ensure all business transactions are disclosed in accordance with Chapter 362.5(j) of the *Code of Iowa*.

A copy of the reaudit report is available for review in the City Administrator's Office, on the Auditor of State's website at <https://auditor.iowa.gov/reports/audit-reports/>, and in the Office of Auditor of State.

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CITY OF DUBUQUE
AUDITOR OF STATE'S REPORT ON REAUDIT
FOR THE PERIOD
JULY 1, 2015 THROUGH JUNE 30, 2016

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City of Dubuque

(Before January 2016)

| <u>Name</u> | <u>Title</u> | <u>Term Expires</u> |
|-------------------------|------------------|---------------------|
| Roy D. Buol | Mayor | Jan 2018 |
| Karla A. Braig | Council Member | Jan 2016 |
| David T. Resnick | Council Member | Jan 2016 |
| Lynn V. Sutton | Council Member | Jan 2016 |
| Joyce E. Connors | Council Member | Jan 2018 |
| Ric W. Jones | Council Member | Jan 2018 |
| Kevin J. Lynch | Council Member | Jan 2018 |
| Michael C. Van Milligen | City Manager | Indefinite |
| Kenneth J. TeKippe | Finance Director | (Retired Jan 2016) |
| Kevin S. Firnstahl | City Clerk | Indefinite |
| Barry A. Lindahl | City Attorney | Indefinite |

(After January 2016)

| <u>Name</u> | <u>Title</u> | <u>Term Expires</u> |
|---------------------------------------|------------------|---------------------|
| Roy D. Buol | Mayor | Jan 2018 |
| Joyce E. Connors | Council Member | Jan 2018 |
| Ric W. Jones | Council Member | Jan 2018 |
| Kevin J. Lynch | Council Member | Jan 2018 |
| Luis Del Toro | Council Member | Jan 2020 |
| David T. Resnick | Council Member | Jan 2020 |
| Jake A. Rios | Council Member | Jan 2020 |
| Michael C. Van Milligen | City Manager | Indefinite |
| Jean M. Nachtman (Appointed Jan 2016) | Finance Director | Indefinite |
| Kevin S. Firnstahl | City Clerk | Indefinite |
| Barry A. Lindahl | City Attorney | Indefinite |

City of Dubuque



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Telephone (515) 281-5834 Facsimile (515) 242-6134

Auditor of State's Report on Reaudit

To the Honorable Mayor and
Members of the City Council:

We received a request to perform a reaudit of the City of Dubuque in accordance with Section 11.6(4)(a)(3) of the *Code of Iowa*. As a result, we performed a review of the audit report for the year ended June 30, 2016 and the workpapers prepared by the City's Certified Public Accounting firm to determine whether the CPA firm addressed any or all of the specific issues identified in the request for reaudit during the annual audit of the City. Based on this review and our review of the preliminary information available, we determined a partial reaudit was necessary to further investigate specific issues identified in the request for reaudit. Accordingly, we have applied certain tests and procedures to selected accounting records and related information of the City for the period July 1, 2015 through June 30, 2016. In addition, we have applied certain tests and procedures to selected prior and current fiscal year transactions, as deemed necessary.

Based on a review of relevant information and discussions with City officials and personnel, we performed the following procedures:

1. Obtained agreements between the City and Dubuque Initiatives to determine the relationship between the City and Dubuque Initiatives.
2. Reviewed disbursements to Dubuque Initiatives for propriety.
3. Reviewed the relationship between the City and the Community Foundation of Greater Dubuque (CFGD) for potential conflicts of interest.
4. Reviewed disbursements to CFGD for appropriateness and public purpose.
5. Reviewed disbursements to Gronen Restoration or John Gronen for propriety.
6. Reviewed the sale of the 18th Street Engine House to Dubuque Bank & Trust Community Development Corporation for propriety and compliance with section 364.7 of the *Code of Iowa*.

Based on the performance of these procedures, we have developed various recommendations for the City. Our recommendations and the instances of non-compliance are described in the Detailed Findings of this report. Unless reported in the Detailed Findings, items of non-compliance were not identified during the performance of the specific procedures listed above.

The procedures described above do not constitute an audit of financial statements conducted in accordance with U.S. generally accepted auditing standards. Had we performed additional procedures, or had we performed an audit of the City, additional matters might have come to our attention that would have been reported to you.

We would like to acknowledge the assistance extended to us by officials and personnel of the City during the course of the reaudit.


MARY MOSIMAN, CPA
Auditor of State

July 24, 2018

City of Dubuque

City of Dubuque

July 1, 2015 through June 30, 2016

Background Information

We received a citizens' petition to conduct a reaudit of the City of Dubuque for fiscal year 2016. The request detailed specific concerns, including:

1. Audit of Dubuque Initiatives and the money trail between the City and Dubuque Initiatives.
2. For conflicts of interest, in particular between the City Manager and his wife's organization, Community Foundation of Greater Dubuque.
3. Conflicts of interest involving Gronen Restoration, aka John Gronen.
4. The sale of the 18th Street Engine House for \$1.00 to Dubuque Bank and Trust.
5. The connection between Van Milligen and Dubuque Bank and Trust.
6. The City's total indebtedness for general obligation bonds, tax increment financing bonds, parking fund bonds, sewer bonds, water bonds, storm water bonds and Roshek Building indebtedness.
7. Movement of funds between departments without proper approval.
8. Dubuque's vehicle expenditures as compared to cities of comparable size.

As a result of the request, we performed a review of the City's audit report and workpapers prepared by the City's independent auditors to determine whether a complete or partial reaudit of the City should be performed. As a result of this review, we determined it was necessary to perform reaudit procedures for the first 5 concerns presented for the period July 1, 2015 through June 30, 2016. Items 6 and 7 were sufficiently reviewed by the City's independent auditors. In addition, item 8 was either outside the scope of the reaudit or was not considered to be an audit issue.

Except as included in this report, no additional findings were identified related to the specific concerns presented with the citizens' petition for reaudit. While the reaudit procedures performed addressed the concerns presented, additional procedures were not performed. Had we performed additional procedures, additional matters might have been identified and included in this report.

Detailed Findings

- (A) Payments to the Community Foundation of Greater Dubuque – The Community Foundation of Greater Dubuque (CFGD) is a nonprofit organization organized under Chapter 504A of the *Code of Iowa* and as described in Section 501(c)(3) of the Internal Revenue Code. The purpose of the CFGD is for the support of scientific, educational and charitable activities in the Greater Dubuque Metropolitan area, including Northwestern Illinois and Southwestern Wisconsin. According to its June 30, 2016 audited financial statements, the CFGD is supported through contributions from the general public and area organizations.

Between July 1, 2015 and June 30, 2016, \$232,500 was disbursed to CFGD from the City for various programs of the CFGD. We reviewed agreements and payments from July 1, 2015 through June 30, 2016. During this period, the City paid \$142,500 to CFGD for a program known as Inclusive Dubuque. The objectives of the program are to engage and coordinate a network of leadership from diverse communities within Dubuque in order to support a coordinated, collaborative approach to supporting a more inclusive community, facilitate an equity profile to help reveal the impact of changing demographics and determine strengths and opportunities related to equity/inclusion, engage community members in developing priorities from the information gathered in the equity profile, collect data and measure outcomes and facilitate funding to support Inclusive Dubuque for 3 years. A required monthly report to the Human Rights Director detailing activities related to the use of City funds was not received by the City, and the annual report to the City Council was not received as required.

For fiscal year 2016, the City paid CFGD \$67,500 for Project H.O.P.E. (Helping Our People Excel) in monthly installments of \$5,625. The objective of Project H.O.P.E. is to facilitate inter-agency collaboration systems and to make systems easier to access and navigate in order to connect disengaged youth and adults to education and employment opportunities. A required monthly report to the Economic Development Director detailing activities related to the use of City funds was not received, and the annual report to the City Council was not received as required.

For fiscal year 2016, \$22,500 was paid by the City to CFGD as fiscal agent for the Every Child Every Promise Agency (ECEP). The objectives of the program are to support a culture in which all families are supported and every child receives every promise. According to the agreement, ECEP encourages inter-agency collaboration and reducing policy/program barriers to service in order to ensure every child has access to caring adults, safe places, a healthy start, effective education, and opportunities to serve. Detailed objectives include coordinating and improving out-of-school activities, increased transportation access for youth, and ensuring grade level reading by 3rd grade. A required monthly report to the Housing and Community Development Director detailing activities related to the use of City funds was not received, and the annual report to the City Council was not received as required. Additionally, the agreement required ECEP to update the City Council with written reports quarterly and bi-annual presentations which were not received or presented.

The Constitution of the State of Iowa prohibits governmental bodies from making a gift to a private non-profit corporation. Article III, Section 31 states, in part, "... no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two thirds of the members elected to each branch of the General Assembly." Chapter 15A of the *Code of Iowa* states, "Economic development is a public purpose for which the state, a city, or a county may provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons." Except for mention of these projects in the City's Five Year Goals Plan, the public purpose served by these disbursements is not clearly documented or approved as part of an economic development plan under Chapter 15A of the *Code of Iowa*.

Recommendation – The City should obtain and review all reports required by these agreements to ensure funding by the City was spent appropriately. In the future, the City should ensure all agreements with private non-profits are for a public purpose under Chapter 15A of the *Code of Iowa*. The City should consult independent legal counsel to determine the appropriateness of the disbursements and whether any or all funds should be returned to the City.

Response – The City of Dubuque does ensure all agreements with private non-profits are for a public purpose. The City of Dubuque asserts that all the funding agreements with the Community Foundation of Greater Dubuque (CFGD) fall within the definition of public purpose. To expand upon the City's position, the agreements with the CFGD were for a public purpose, Iowa Code Chapter 15A outlines the regulations for use of public funds to aid

economic development. Pursuant to Chapter 15A, “Economic Development is a public purpose for which state, a city, or a county may provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of **private persons.**” (emphasis added). Additionally, economic development is defined as: “**private or joint public and private investment** involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost.” (emphasis added).

The City of Dubuque created the office of Director of Community and Economic Development on February 27, 1990. Economic Development reaches beyond just creating more jobs. Creating jobs may not mean the addition of new jobs, but creation of skilled workers to fill vacant jobs to retain businesses in the community and allow for growth opportunities.

One way to improve job quality and worker prosperity is to raise the value of the individual workers in the eyes of businesses and help businesses compete globally. Key components in doing this are education and workforce development systems. Both components focus on increasing the supply of the available skilled workers and help reduce the costs to employers of skills mismatch. Economic Development is not only educating employees, but also developing, attracting, and retaining skilled workers and in turn reducing turnover for the businesses. The Greater Dubuque Regional Skills Gap Analysis completed in Fall 2017 collaborated with both economic and workforce developers as well as educators to gather information on projected shortages (gaps) and identify strategies to mitigate these shortages. In 2016-2017, Greater Dubuque Development Corporation conducted 341 company visits with an impact of 36,943 employees in which they visited with management to discuss challenges they are facing. The results of the assessment included:

- 29% cited workforce as a top challenge within the community
- 60% of those citing recruitment being a challenge

The Community Foundation of Greater Dubuque previously established a number of initiatives in the community which align with the City of Dubuque Vision Statement, Mission Statement, and City of Dubuque Goals 2022. Partnering with the CFGD is consistent with the City efforts to minimize workforce gaps and challenges to promote and support Economic Development.

The specific programs cited in the audit included:

- Inclusive Dubuque
- Project H.O.P.E.
- Every Child Every Promise

Creation of a separate initiative by the City of Dubuque when the CFGD was already working in the subject areas is not the best use of City resources nor in the best interests of citizens. Multiple entities working on the same thing without partnership or coordination is inefficient, undermines the ability of each to accomplish its mission, and creates unnecessary competition. The City of Dubuque is open to putting initiatives out for bid when there are not existing opportunities for partnership, engagement, and synergy. The programs listed above are vital in promoting Dubuque’s Economic Development not only today, but in the future as well.

The funding provided to the CFGD initiatives was not a gift, but a partnership furthering the City’s economic development efforts. **“Economic development” means private or joint public and private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost.**”

Inclusive Dubuque helps engage and coordinate a network of partners dedicated to creating an informed, equitable and inclusive community where all people, regardless of race, age, culture, gender, ethnicity, religion, sexual orientation, class or disability are respected, valued, treated fairly, and engaged in the community. Amongst the many Inclusive Dubuque partners are the following businesses and business groups:

- 365 Ink
- 4 the People, Inc
- Alliant Energy
- Body and Soul
- Cartegraph
- Clarke University
- Department of Corrections
- Diamond Jo Casino
- Dupaco Community Credit Union
- Iowa State University Extension and Outreach
- John Deere Dubuque Works
- Loras College
- Medical Associates
- Mercy Medical Center
- Mystique Casino
- Northeast Iowa Community College
- Prudential
- TH Media
- UnityPoint Health Finley Hospital
- University of Dubuque
- University of Wisconsin-Platteville
- Wartburg Seminary

Inclusive Dubuque helps create a community where all people feel respected, valued and engaged. Not only do these factors help **businesses attract talent**, but it allows businesses to **retain talent** which is vital for economic development. Inclusive Dubuque has a wide-range of partners from non-profits, to for profit companies, to colleges, and other governmental entities demonstrating the community's dedication and collaborative effort to advancing equity and inclusion in the Dubuque community. Inclusive Dubuque designed its equity profile to be a process that discovers how diverse groups are affected by various systems in the community. For this summary, diverse groups include race, age/generation, culture, disability, gender, nationality, religion, sexual orientation, socioeconomic status, veteran status and more.

Launched in 2015, the equity profile sought to gather local data, along with feedback from community members in seven different focus areas:

1. Economic wellbeing
2. Housing
3. Education
4. Health
5. Safe neighborhoods
6. Transportation
7. Arts/culture

Economic wellbeing encompasses areas including workforce demographics, poverty rates, unemployment rates and more. This information provides insights to the changing demographics of Dubuque's workforce. Recent demographic projections indicate that the minority population is projected to become the numerical majority of the under age 18 population in 2018. The minority population is also projected to become the majority of total population in 2043. There is also a shift in the age distribution of the population:

- the 65+ age group increases by 8%
- the under 18 age group decreases by 3%
- the 18-64 age groups decreases by 6%

Inclusive Dubuque brings people and businesses together to create a dialogue to facilitate communication on how Dubuque can continue to support a diverse workforce including people of any age, gender, race/ethnicity, socioeconomic status and professional category; and how we connect more people (targeting those who are unemployed or underemployed) to programs in our community that provide education and job skills training, so they can increase their earnings and fill much needed gaps in the local workforce.

Project H.O.P.E. (Helping Our People Excel) is an initiative which increases access to economic opportunity for all community members by supporting networks driving system changes, expanding pathways to education and **employment**, and increasing access to financial institutions. Project HOPE began in 2008 and since that time has successfully built a network of partners to address barriers to economic opportunity in Dubuque. The partners include:

- City of Dubuque
- Greater Dubuque Development Corporation
- East Central Intergovernmental Agency
- IowaWorks
- Dubuque Community School District
- Northeast Iowa Community College (NICC)
- The Circles Initiative

Through the work of partners, successful initiatives have been launched that focus on high school dropout re-engagement, connecting individuals to job trainings and careers, and connecting families to financial services. Key accomplishments include Re-Engage Dubuque which has connected over 400 youth who did not complete high school to alternative

education options and post-secondary education. 126 have received their high school diploma or HSED. Opportunity Dubuque, which is a training/employment partnership targeting the unemployed and underemployed, has accepted 554 students, and 434 have graduated or are currently in training. 98% of contacted graduates have retained employment or are continuing their education. This program is key in responding to the needs of employers and workers in Dubuque by providing the necessary skills for today's jobs in advanced manufacturing, information technology, healthcare and logistics. Project HOPE also participates in two learning cohorts to learn best proactive strategies within the Dubuque community to be more inclusive through providing access to banks and credit unions and tools to help individuals and families grow their financial strength. Project HOPE continues to convene stakeholders for the Mental Health and Child care Needs Assessment to facilitate conversations around how partners can act on the recommendations. Both have been identified as common barriers in obtaining and retaining employment.

Every Child Every Promise (ECEP) is dedicated to helping all young people succeed in schools, **a career**, and in our community. ECEP has partnered with both local and national partners in carrying out the five ECEP promises: Caring Adults, Safe Places, Health Start, Effective Education, and Opportunities to Serve. Through these five promises, our youth become invested in their education and engaged in the community, ultimately **readying them for the workforce**. ECEP also has programs dedicated to grade-level reading which is a collaborative effort by funders, nonprofit partners, school, governmental agencies and parents to help ensure that more low-income children succeed in school and are prepared for college, **a career** and active citizenship. For the 2015 school year, Dubuque Schools saw a significant impact in reading scores for students participating in the reading program. 89% (416) students enrolled in the program improved reading scores and 92% (439) students attended school 90% of the time or more. Not only is the ECEP an investment in the youth but is an investment in **attracting talented workforce** to the community. When looking for employment, good schools are often a high priority on the job seekers list of things to look for. Having programs that engage and support the youth, ultimately reflect in better test scores, which is key in attracting, developing, and retaining a skilled workforce.

Each of the above programs and the City's partnership with CFGD shows not only a dedication towards Economic Development, but also a commitment towards the City Council Goals & Priorities as set in 2014 and 2015. The City's vision statement includes an 'inclusive community' and 'achieving goals through partnerships'. The City with its partnership with CFGD is working towards these goals. Other important factors to note in the Council's goals and priorities as top priorities, high priorities and Management in Progress are: Inclusive Dubuque Action Plan and the City's role as a partner in implementation of action plan, City Economic Development and the funding of those through partnerships, Project HOPE, Campaign for Grade Level Reading and partnering with AmeriCorps, Intercultural Competency Program and recruitment and retention, Intercultural Competency Program for the Dubuque Community, Bridges Out of Poverty Program, Police-Race Dialog. The City of Dubuque Vision Statement calls for Dubuque in 2032 to be a sustainable and resilient city and an inclusive and equitable community with a strong diverse economy. The City of Dubuque Mission Statement focuses on achieving goals through partnerships allowing for the delivery of excellent municipal services which support urban living, contribute to an equitable sustainable city, plan for the community's future, and facilitate access to critical human services. The City's five-year goals specifically call out:

- a Robust Local Economy: Diverse Businesses and jobs with Economic Prosperity
- Partnership for a Better Dubuque: Building Our Community that is Viable, Livable, and Equitable

The City, CFGD, and many other partners are active partners in these initiatives. Specific to the CFGD, staff meet monthly with the City department directors assigned to the initiatives at one-on-one meetings and at monthly steering committee meetings where routine written

reports are provided. There are also additional informational meetings throughout the year and presentations, including to City Council, on the plans and outcomes of this work. All the above priorities and goals have a direct relationship to the programs the City partners with CFGD on.

Workforce Development is not only a top priority for the City, but for State and Federal Government as well. Just recently in President Trump's visit to Dubuque, he held a roundtable discussion on this very issue. This visit brought together both business and political leaders throughout the state and community in which they all agreed a strong workforce is vital to the community and to economic development. Education and programs such as the ones Dubuque partners with CFGD on are such programs that work towards this common goal supporting economic development.

Future Ready Iowa is former Governor Branstad's and current Governor Reynolds' initiative started in 2014 to develop strategies to improve educational and training attainment of its citizens and the alignment of those degrees and credentials with employer demand. Much like Dubuque's partnership with CFGD, Future Ready Iowa is a collaborative approach to highlighting best practices, nurturing high-quality partnerships, and ensuring hard-working tax dollars are focused on those areas that will maximize progress toward the goal.

Going forward, the City of Dubuque will obtain and review all reports required by funding agreements to ensure funding provided was spent appropriately. The City will consult with independent legal counsel to determine the appropriateness of the past disbursements referenced for an evaluation of whether any or all funds should be returned to the City.

Conclusion – We concur with the City's response regarding obtaining and reviewing all required reports and to consult with independent legal counsel to determine the appropriateness of the referenced disbursements for an evaluation whether any or all funds should be returned to the City.

- (B) Business Transactions – The President and Chief Executive Officer (CEO) for CFGD is the City Manager's spouse. In addition to the \$232,500 discussed above in (A), the City paid CFGD \$5,400 on behalf of Faces and Voices, a community group that annually organizes a Martin Luther King, Jr. birthday celebration, \$3,000 for results based accountability training presented by Public Health of Madison and Dane County, and \$255 for tickets for City employees to attend the Greg Gumble speech in association with the Martin Luther King, Jr. birthday celebration.

Section 362.5(2) of the *Code of Iowa* states, "A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's City. A contract entered into in violation of this section is void." Chapter 362.5(3)(e) states, "The provisions of this section do not apply to contracts in which a city officer or employee has an interest solely by reason of employment... if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract."

Further, Chapter 15A.2 of the *Code of Iowa* states, "If a member of the governing body of a city or county or an employee of a state, city, or county board, agency, commission, or other governmental entity of the state, city, or county has an interest, either direct or indirect, in a private person for which grants, loans, guarantees, tax incentives, or other financial assistance may be provided by the governing board or governmental entity, the interest shall be disclosed to that governing body or governmental entity in writing. The member or employee having the interest shall not participate in the decision-making process with regard to the providing of such financial assistance to the private person."

The City provided us with an interpretation prepared by the City's Senior Legal Counsel stating Ms. Van Milligen is a salaried employee of CFGD and her salary is not based on any of the funds received by CFGD from the City. He further states she does not participate in the negotiation of the purchase of service agreement for CFGD. While it is true Ms. Van Milligen is a salaried employee of CFGD, her position as President and CEO makes her a significant decision making member for the Foundation. Also, her husband, Mr. Van Milligen, City Manager, recommended each of the service agreements discussed in (A) for approval by the City Council.

Also, in accordance with section 362.5(j) of the *Code of Iowa*, the above transactions may represent a conflict of interest since total transactions were more than \$1,500 during the fiscal year and the transactions were not competitively bid.

Recommendation – The City should consult independent legal counsel to resolve this matter. In the future, the City should ensure all potential conflicts of interest transactions, contracts, or agreements are competitively bid in accordance with section 362.5(i) of the *Code of Iowa* and maintain adequate documentation to evidence bids and decisions. Also the City should ensure there are no conflicts of interest when awarding grants, loans, guarantees, tax incentives, or other financial assistance in accordance with Chapter 15A.2 of the *Code of Iowa*.

Response – The City continues to assert there is no conflict of interest in the business transactions between the City of Dubuque and the Community Foundation of Greater Dubuque (CFGD).

The audit references the expenditures outlined in comment (A) above which will not be further expanded upon. Additionally, the audit evaluated the annual Faces and Voices MLK Day breakfast, a results-based accountability training, and tickets to a speech in association with the Faces and Voices MLK Day celebration.

The CFGD role in the Faces and Voices MLK Day breakfast is that of financial assistant. The CFGD processes payments for the breakfast for the Faces and Voices community group as the CFGD is better equipped to process, document, and handle the related financial transactions for the event. The planning group is not equipped to do so without a significant amount of work and hardship. This has been done since 2008. Prior to that, the payments were handled by Faces and Voices. The City has had attendees at the Faces and Voices MLK Day breakfast for over twenty (20) years. The same can be said for the tickets purchased for the speech associated with the event. There is no contract or state code implicated in sending city staff to attend community events. There is no opportunity for the City to competitively bid an event for which staff members attend.

As to the results-based accountability training, the CFGD was hosting the training presented by Public Health of Madison and Dane County and invited the public to participate. The City chose to send staff members to the community training to further efforts by staff to further the City's vision, mission statement, and goals. The training was not the City's contract nor agreement. The City paid the price for staff to attend the training as did other entities within the community. There is no opportunity for the City to competitively bid an event for which staff members simply attend for staff and community development.

Iowa Code Section 15A.2 outlines the provisions for conflicts of interest. Of note, the code requires an interest direct or indirect **IN A PRIVATE PERSON** for which grants, loans, guarantees, tax incentives, or other financial assistance may be provided. No City funding was provided to Nancy Van Milligen as **A PRIVATE PERSON** when funding supported on-going initiatives at the Community Foundation of Greater Dubuque or by the attendance of City staff at community events.

The audit references Mrs. Van Milligen's significant decision-making authority for the CFGD and the recommendations of Mr. Van Milligen in his role as City Manager. This conclusion is inconsistent with the following provisions of Iowa Code §15A.2:

- a. **Employment by a public body....shall not be deemed an indicia of an interest by the employee or of any ownership or control by the employee of interests of the employee's employer.**
- b. **The word "participate" or "participation" shall be deemed NOT to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.**

The City continues to assert the contracts are not prohibited as they fall within the exceptions outlined in Iowa Code §362.5. The provisions of §362.5 prohibiting an interest in public contracts do NOT apply:

"if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract."

Finally, the City has always disclosed the relationship between Mr. Van Milligen and Mrs. Van Milligen to its auditors, who also agreed that it does not meet the definition of related party or conflict of interest as defined by Iowa Code.

Going forward, the City of Dubuque will consult with independent legal counsel to further evaluate conflicts of interest. The City will use competitive bidding where required. The City will comply with Iowa Code §15A.2. Future contracts with CFGD will be recommended to the City Council by the City Attorney and not the City Manager.

Conclusion – Response acknowledged. Chapter 4.1(20) of the *Code of Iowa* states, "Unless otherwise provided by law, "person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust partnership or association, or any other legal entity." Also, Mrs. Van Milligen is not merely an employee of CFGD, but rather CEO and President which makes her a key decision maker for the Foundation. In addition, Mr. Van Milligen did not merely participate in discussions but rather made recommendation to the City Council to approve the contracts. In the future, the City should ensure there are no conflicts of interest when awarding grants, loans, guarantees, tax incentives, or other financial assistance in accordance with Chapter 15A.2 of the Code of Iowa.

- (C) Sale of the 18th Street Engine House – Per Section 364.7 of the *Code of Iowa*, a city may dispose of an interest in real property by resolution after holding a public hearing regarding the resolution and disposal. In June 2011, after holding a public hearing, the City approved the sale of the engine house to Engine House #1, LLC for \$1 and also approved a developer agreement with Engine House #1, LLC to renovate the property. The developer agreed to make a capital investment of not less than \$1,550,000.

In August 2011, the City approved the transfer of the developer agreement and purchase of the engine house to the Dubuque Bank & Trust Company Community Development Corporation (Development Corporation); however, a public hearing was not held before transferring the sale from Engine House #1, LLC to the Development Corporation. Also, the reason for the transfer from Engine House #1, LLC to the Development Corporation was not documented and City staff were unable to locate the purpose for the transfer.

Recommendation – The City should consult independent legal counsel to determine the legal propriety of the transaction. Also, the City should ensure future dispositions of real property are in compliance with the *Code of Iowa* and any subsequent revisions are documented in the City Council meeting minutes.

Response – The City of Dubuque continues to assert the transaction between Engine House #1, LLC and the City of Dubuque complied with the state code. The Development Agreement between the City and Engine House #1, LLC was approved at a public hearing on June 6, 2011, pursuant to notice published April 22, 2011 required by Iowa Code Sec. 403.8 for the disposal of the City's interest in the property. A resolution was adopted by the City Council at the June 6, 2011 meeting approving the Development Agreement and the sale to Engine House #1, LLC.

The City Council consented to and approved the assignment of the Development Agreement by Engine House #1, LLC to DB&T Community Development Corp. on August 15, 2011. No public hearing on the assignment was required either by Sec. 403.8 or 364.7 because the City Council had already disposed of its interest in the property when the sale was approved on June 6, 2011.

Originally, another local non-profit, Dubuque Initiatives (DI), was interested in the benefit of the tax credits generated by the project. However, after reviewing alternatives, DI determined it would have to form another entity to take advantage of the tax credits and may not have the resources to put cash into the deal if there were cost overruns. DI reached out to DB&T about its Community Development Corporation (CDC) taking over the project. After reviewing the alternatives, it made more sense to have the end-user of the credits, the DB&T CDC, own the property. The DB&T CDC gained both ownership of the building and the tax credits, rather than buying the credits from Engine House #1, LLC. This allowed the DB&T CDC to gain more community development credits for their banking certification over buying the credits.

The City of Dubuque will consult with independent legal counsel to determine the legal propriety of the transaction disposing of the 18th Street Engine House. The City will ensure dispositions of real property are in compliance with the Iowa Code and subsequent revisions are documented in City Council meeting minutes.

Conclusion – Response acknowledged. On June 6, 2011, the City agreed, by resolution, to dispose of the property to Engine House #1, LLC, not to DB&T Community Development Corporation. Chapter 364.7(2) states, “After the public hearing, the Council may make a final determination on the proposal by resolution.” Because the resolution agreed to in June 2011 was not the final determination, the City should have held a public hearing before the final resolution was agreed to in August 2011.

- (D) Disbursement Approval – A list of claims is not approved by the City Council prior to the disbursement. The City does not have a written disbursement policy allowing certain routine monthly bills and payroll items to be paid prior to City Council approval.

Recommendation – The City could adopt a written disbursement policy to allow payment of certain routine monthly bills and payroll prior to City Council approval. All disbursements should be approved by the City Council prior to disbursement, with the exception of those specifically allowed by the policy. Those bills paid prior to approval should be submitted to the City Council for review and approval at its next meeting following payment. The action of the City Council should be recorded in the minutes of the City Council.

Response – Effective July 1, 2018, the Council began approving accounts payable payments before checks are issued. Also, effective July 1, was Resolution 142-18 in which the Council gave authorization to the Finance Director to issue checks in payment of the following expenditures prior to City Council approval.

- Bonds and principal representing bonded indebtedness of the City, when said bonds and principal are due and presented for payment. All interest on bonded indebtedness of the City when the same is due and coupons are presented for payment, or when the contracted bond registrar requests payment.

- All other scheduled debt service principal and interest payments approved by previous council action.
- All sales tax due to the State of Iowa.
- All utility bills for water, electricity, gas, telecommunications, etc.
- All medical, dental, disability and life insurance premiums and medical claims from insurance provider.
- All annual premiums for the City's property, liability, and pollution policies.
- Salaries and wages of officers and employees at the rates authorized by City Council.
- Payment of federal and state withholding taxes, social security, Medicare, retirement fund, MFPRSI and IPERS contributions, and unemployment taxes as required.
- Contractual payments for items approved by previous Council actions.
- Reimbursements to employees for budgeted purchases (e.g. travel costs).
- Deposit refunds under facility rental contracts.
- Utility overpayment refunds.
- Payments made to take advantage of early payment discounts.

A listing of the checks issued for the exceptions above are provided to Council at the next council meeting for review.

Conclusion – Response accepted.

City of Dubuque

Staff

This reaudit was performed by:

Ernest H. Ruben, Jr., CPA, Manager

Jamie T. Reuter, Senior Auditor II

Handwritten signature of Tamera S. Kusian in black ink.

Tamera S. Kusian, CPA

Deputy Auditor of State