

CITY OF MANDEVILLE



COMPLIANCE AUDIT
ISSUED AUGUST 8, 2008

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LOUISIANA LEGISLATIVE AUDITOR
STEVE J. THERIOT, CPA

August 8, 2008

**THE HONORABLE EDWARD J. PRICE III, MAYOR,
AND MEMBERS OF THE CITY COUNCIL
CITY OF MANDEVILLE**
Mandeville, Louisiana

We have audited certain transactions of the City of Mandeville. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the credibility of allegations we received from the Metropolitan Crime Commission concerning expenditures from the Mandeville Police Department's Citizen's Service Fund.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the City of Mandeville's financial statements or system of internal control nor assurance as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. Copies of this report have been delivered to the District Attorney for the Twenty Second Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Steve J. Theriot, CPA
Legislative Auditor

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Citizen's Service Fund

From January 2002 through December 2007, the City of Mandeville (City) Police Department (MPD) solicited and received donations totaling \$217,938 for the Citizen's Service Fund (CSF) suggesting the funds would be used for public and charitable purposes. Although these funds were solicited, received, processed, and expended by City employees on City time, the City council had not given the MPD authority to collect and expend these funds. As a result, CSF funds were not included in the City's budget or financial statements and thus were not subjected to public scrutiny or local and state laws. An analysis of the CSF and its expenditures revealed the following:

1. The CSF was not a separate legal entity from the City.
2. The CSF did not have status as a charitable organization exempt from taxation.
3. CSF funds appear to have been spent in a manner inconsistent with the purpose for which they were raised.

City Credit Card Usage

The City issued credit cards to the mayor, all department heads, and numerous other City employees. Several of these credit cards are consolidated into one account and are summarized on one monthly statement by cardholder. In addition, Mayor Edward Price, III and Milton Stiebing, finance director, each has separate credit cards. From September 2003 through March 2008, Mayor Price made 620 credit card transactions totaling \$56,733 and Mr. Stiebing made 119 transactions totaling \$17,210. Of the amounts charged, we noted 65 personal charges by Mayor Price totaling \$8,845; 356 charges for meals totaling \$36,103 that lacked proper documentation; and 15 charges relating to parties and celebratory functions totaling \$6,143. By using a City issued credit card for personal use, Mayor Price may have violated state law.

Personal Use of City Vehicles and Fuelman Cards

The City provides vehicles to all department heads and certain employees including Mayor Price. In addition, the City provides insurance coverage, pays for maintenance, and provides each vehicle user with a Fuelman card to purchase fuel. During our review of vehicle and Fuelman usage, we noted (1) the City does not have a written policy on the use of City vehicles and Fuelman cards; (2) City employees, including Mayor Price routinely use City vehicles and Fuelman cards for personal purposes such as out-of-state vacations; (3) the City does not include the value of the personal use of the vehicles as income to these employees; and (4) the City does not mark all its vehicles in compliance with state law. By using public vehicles and Fuelman cards for personal use, these employees may have violated state law.

Improper Gifts

Louisiana Revised Statute (R.S.) 42:1115 provides, in part, that no public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or employee of any person who has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency. During a review of Mayor Price's e-mails, we noted several messages which indicated that people doing business with the City were providing things of value, including golf trips and hunting trips, to Mayor Price, Mr. Stiebing, and Councilman Gerard Coogan. We spoke with Mayor Price, Mr. Stiebing, and Councilman Coogan and some of these third parties and confirmed that Mayor Price, Mr. Stiebing, and Councilman Coogan may have received gifts.

Public Bid Law and Other State Law Violations

We reviewed purchases of supplies and a number of public works projects performed for the City during our audit period. According to the documentation available for these projects, we determined (1) the City failed to publicly advertise one public works project in accordance with the state bid law; (2) the City repeatedly purchased limestone and sand in violation of the state bid law; and (3) numerous public works projects were performed without written contracts and surety bonds and by contractors who were not licensed, as required by state law.

Campaign Golf Tournaments

During our review of City records, we noted that several City employees, both classified and exempt, appear to have used City time and resources assisting Mayor Price with his annual campaign golf tournaments.

Weak Business Practices

During our review, we noted areas in which the City either did not comply with its own policies or did not have adequate written policies. In addition, the City has repeatedly used public funds to defray the costs of Christmas parties and other office celebrations in possible violation of the Louisiana Constitution. Finally, the City has failed to maintain control over inventories and has financially supported a nonprofit organization that has failed to comply with the state audit law.

The City of Mandeville (City) is located in St. Tammany Parish and has a population of 10,489 (2000 Census). The City adopted its Home Rule Charter under the provisions of Article VI, Section 5 of the Louisiana Constitution of 1974. The City operates under a Mayor-Council form of government with five elected council members who serve four-year terms. The mayor is elected at-large for a four-year term. The City provides the following services as authorized by its charter: public safety, highways and streets, sanitation and utilities, health and social services, culture and recreation, public improvements, planning and zoning, and general administrative services.

The Mandeville Police Department (MPD) functions as a unit under the jurisdiction of the City with a police chief selected by the mayor. In 1980, the Mandeville Police Association established the local Toys-for-Tots Program to provide toys for disadvantaged children during Christmas. The program was later expanded to provide emergency assistance for travelers, the homeless and victims of disasters, senior citizen visits, employee recognition programs, assistance to residents during temporary financial distress, and emergency care for animals. In 1994, Chief of Police Thomas Buell requested that the program's bank account be maintained by the City's accounting department following a theft of those funds by a former City police officer. The program was then moved to a new bank and renamed the Citizen's Service Fund (CSF).

Each November, the MPD circulates a flyer to residents requesting donations for the annual Toys-for-Tots campaign. According to the flyer, toys and/or donations can be delivered or mailed to the MPD. The flyer further states that all monies will be processed through the City's bookkeeping department.

Expenditures for purchases made with CSF funds are initiated through the MPD using the City's check voucher system. Approved vouchers are submitted to the City's accounting department for payment. According to practice, each transaction (check) is processed for approval and then presented with the appropriate supporting voucher to Milton Stiebing, director of finance; Marlaine Peachey, executive assistant; and/or Mayor Edward Price, III.

The Louisiana Legislative Auditor (LLA) received an allegation from the Metropolitan Crime Commission regarding improper expenditures from the CSF. As a result, LLA reviewed available CSF records as well as selected records from the City to determine the credibility of the allegation.

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Citizen's Service Fund

From January 2002 through December 2007, the City of Mandeville (City) Police Department (MPD) solicited and received donations totaling \$217,938 for the Citizen's Service Fund (CSF) suggesting the funds would be used for public and charitable purposes. Although these funds were solicited, received, processed, and expended by City employees on City time, the City council had not given the MPD authority to collect and expend these funds. As a result, CSF funds were not included in the City's budget or financial statements and thus were not subjected to public scrutiny or local and state laws. An analysis of the CSF and its expenditures revealed the following:

1. The CSF was not a separate legal entity from the City.
2. The CSF did not have status as a charitable organization exempt from taxation.
3. CSF funds appear to have been spent in a manner inconsistent with the purpose for which they were raised.

Citizen's Service Fund Was Not a Separate Legal Entity

Mayor Edward Price, III; Chief of Police Thomas Buell; and Milton Stiebing, director of finance, asserted that the CSF was a private fund and not a city account. Mayor Price added that the City was not fiscally responsible for CSF. Mr. Stiebing stated that the City's external auditor advised him that the fund did not need to be included in the City's budget and financial statements. During our review of the CSF, we noted that the CSF is simply a bank account opened by City officials using the City's tax identification number. The account's signature card lists Mayor Price; his executive assistant, Marlaine Peachey; and Mr. Stiebing as the authorized signatories. Although the card indicated that the CSF is a nonprofit corporation, the CSF has no bylaws or articles of incorporation and is not registered with the Louisiana Secretary of State as a nonprofit corporation.

In addition to the CSF not having a legal status separate from the City, all operations pertaining to the CSF were carried out in the name of the City by City employees. According to a November 2006 written solicitation for funds sent to residents on City letterhead, toys and monetary donations could be delivered or mailed to the MPD. The flyer further stated that all monies collected would be processed through the City's bookkeeping department.

In a letter to one of his police officers dated January 8, 2004, Chief Buell indicated that participation in the CSF Program was a mandatory part of their jobs. He further indicated that ". . . While the Toys-for-Tots Program is funded by donations, the operation and management of the program is done as a police employee project on City time . . ." According to practice, donations to the CSF are received through employees of the MPD who forward the funds to the police chief's secretary. Once accounted for within the police department, the funds are sent to a City accounting clerk who manages the CSF by making deposits, processing checks, and reconciling the account.

Expenditures from the CSF are initiated by MPD personnel using the City's voucher system. Vouchers approved by Chief Buell are sent to the City's accounting clerk to be processed for payment. Once processed, each check requires two signatures from the approved signors which include Mr. Stiebing, Ms. Peachey, and Mayor Price. Although most CSF expenditures were made by issuing checks, we noted several instances in which purchases for the CSF were made using City credit cards. By using City credit cards for these purchases, the CSF did not have to pay sales taxes. Once the purchases on the City credit card statements were received, a check was written from the CSF to reimburse the City.

CSF Was Not a Tax Exempt Organization

The United States Internal Revenue Code [26 U.S.C. Sec. 501(c)] exempts certain charitable organizations from some federal income taxes and provides a deduction, for federal income tax purposes, for some donors who make charitable contributions to 501(c) organizations. To obtain 501(c) status, an organization must be exclusively organized for purposes described in the section, have an employer identification number, and file an application for recognition with the Internal Revenue Service (IRS). Once recognized, exempt organizations are then required to file annual returns and refrain from certain prohibited activities which depending on the organization could include political and/or lobbying activity.

Neither Mayor Price, Chief Buell, nor Mr. Stiebing could provide documents to indicate that the CSF had ever applied to the IRS for status as a 501(c) organization. As a result, the fund may be subject to federal income taxes and donations made to the fund may not be eligible as charitable deductions against federal income taxes for the donors. In addition, individuals who received gifts from the CSF may be subject to income taxes for amounts received.

Expenditure of CSF Funds

In a November 2006 written solicitation for funds distributed to residents on City letterhead, the MPD explains that the CSF "finances many programs, such as Toys-for-Tots, emergency help for victims of disasters (Example: fire, flood), senior citizen visits, aid for travelers (Example: food and fuel), overnight accommodations for persons needing immediate help, employee recognition programs, citizens of 4th Ward who need temporary help in bad times and emergency care for animals."

According to CSF records, from January 2002 to December 2007, monetary donations totaling \$217,938 were received and deposited and expenditures totaling \$203,464 were made. During our analysis, we determined that only 28% of the expenditures (\$56,773) were made to support activities such as the Toys-for-Tots Program and helping residents in need. Furthermore, expenditures totaling \$146,329 (72%) were made for gifts, food, celebrations, and sponsorships. Finally, expenditures totaling \$362 did not have adequate documentation to determine the purpose.

Toys-for-Tots and Citizen Support

During the period of January 2002 to December 2007, CSF funds totaling \$56,773 were used to purchase toys and to provide support for residents in need. Our examination of the expenditures indicates that of this amount, \$16,492 was used to purchase actual toy items, wrapping paper, and storage shed for toys. Funds totaling \$26,055 were used to purchase, produce, and distribute correspondence promoting the CSF program. Finally, funds totaling \$14,226 were used to provide assistance to disadvantage residents such as meals, overnight lodging, utilities, medical care, and travel assistance. Apart from the CSF toy drive, the Times Picayune Doll and Toy Fund contributed 5,653 toys and backpacks costing \$51,537 to the MPD during the same period.

Gifts, Food, Donations, Sponsorships, and Flowers

From January 2002 through December 2007, CSF funds totaling \$146,329 were used to pay for gifts for the mayor and other City employees, food and celebrations for City employees, various donations, sponsorships to civic and/or other agencies within the City, and flowers for employees and their relatives and friends.

Gifts Purchased for Mayor Price and Other City Employees

From January 2002 to January 2007, CSF funds totaling \$15,775 were used to purchase Wal-Mart gift cards for residents and City employees including Mayor Price. Of this amount, gift cards totaling \$8,035 were distributed to City employees and cards totaling \$1,845 were distributed to residents during the Christmas holidays. The remaining cards totaling \$5,895 were distributed but not supported by documentation to determine who received the cards.

According to CSF records, Mayor Price received gift cards totaling \$1,300 in these years. In addition, CSF and City records indicate that additional gifts totaling \$1,607 were purchased for Mayor Price. These gifts included a gift certificate to Perlis Clothing; a blower purchased from Home Depot; a gun cabinet; a crossbow; and other undocumented gifts totaling \$386. Mayor Price stated that accepting the gifts was the wrong thing to do; however, when he was given the gifts, he did not know or ask where the funds came from. It should be noted that Mayor Price signed the check issued in the amount of \$310 for one of the gifts. The memo section of the check indicated "Mayor's Gift."

Mayor Price stated that he routinely signs every document that comes across his desk without reviewing the supporting documentation. He explained that before signing, he believed the documents had already been approved by Chief Buell or Mr. Stiebing. He added there was never any intent on his part to take money from the CSF. On March 5, 2008, Mayor Price issued a personal check in the amount of \$2,300 to reimburse the CSF for the cost of gifts he had received. This does not represent full reimbursement for amounts received from the CSF. In addition, funds totaling \$1,460

have been reimbursed to the CSF by four of the City employees who received gift cards. Of this amount, \$840 was reimbursed by a resident on behalf of a City employee.

Chief Buell indicated that he determined who received the Wal-Mart gift cards and stated that they were given to employees who were in need financially. He also stated that he decided to use CSF funds to pay for the mayor's gifts so that City employees would not be burdened with those costs. Chief Buell added that Mayor Price probably did not know where the funds to purchase the gifts came from.

Employee Parties and Socials and Other Food Purchases

In addition to using CSF funds to purchase gifts for City employees, funds totaling \$70,218 were used to pay for celebrations, holiday parties, and crawfish boils for City employees. This amount included \$29,139 for Christmas parties and crawfish boils; \$23,537 for candy and fruit baskets given away during holidays; \$13,989 in food purchases, restaurant charges for meetings, and other office celebrations; and \$3,553 for food purchases made during Mandeville seafood festivals. It should be noted that a total of \$3,956 was spent on alcoholic beverages during these events. Examples of these expenditures are detailed below:

- In 2003, CSF funds totaling \$2,658, which included amounts for food, alcohol, a band, and one bartender, were used to pay for a Christmas party for City employees.
- In December 2006, funds totaling \$1,230 were used to pay for candy given out during the Christmas holiday.
- In 2006 and 2007, two individuals were paid \$3,400 and \$2,300, respectively, to provide crawfish boils. Neither individual was issued an IRS Form 1099 (misc. income) for his/her services.
- In May 2007, funds totaling \$1,100 were used to pay for a prayer breakfast at a local restaurant.

Sponsorships and Other Donations

CSF records indicate that funds totaling \$58,729 were used for various other donations which included the following:

- \$34,783 for sponsorships to various local school clubs, civic organizations, religious organizations, and other charities
- \$18,942 for memorials, awards, news advertisements, and organizational dues
- \$5,004 to purchase flowers for employees, employee family members, and other residents

Although City officials maintain that the CSF is private and therefore not subject to public scrutiny or local and state laws, they have demonstrated through their actions and with City records that the CSF may be public in nature.

We recommend the following:

1. Should the City continue to conduct CSF operations in the manner described above, the City should obtain an attorney general opinion to determine whether or not CSF funds should be subject to local and/or state laws regarding public funds.
2. The City should establish policies and procedures to ensure that all cash accounts bearing the City's Federal Employer Identification Number are included in the City's budget and financial statements. These policies and procedures should also ensure that all transactions are handled within the guidelines of the City's policies and procedures and state laws and regulations.
3. Should the City continue its program of public service outside of the City's authority, the City should locate a legally established nonprofit entity with 501(c) status to help carry out these activities. Furthermore, the two parties should enter into a written cooperative endeavor agreement to define the public purpose of the activities as well as the public benefit to the City.

City Credit Card Usage

The City issued credit cards to the mayor, all department heads, and numerous other City employees. Several of these credit cards are consolidated into one account and are summarized by cardholder on one monthly statement. In addition, Mayor Price and Mr. Stiebing each has separate credit cards.

In Opinion 92-597,¹ the attorney general opined that the use of a public credit card for personal expenses is only permissible if the official or employee is in extraordinary circumstances, is given authority by the public entity, and reimburses the public entity as soon as possible after the charges are made and before the receipt of the bill. Routine use of a public entity's credit card is not permissible.

From September 2003 through March 2008, Mayor Price made 620 credit card transactions totaling \$56,733 and Mr. Stiebing made 119 transactions totaling \$17,210. Of the amounts charged, we noted 65 personal charges by Mayor Price totaling \$8,845; 356 charges for meals totaling \$36,103 that lacked proper documentation; and 15 charges totaling \$6,143 relating to parties and celebratory functions for public employees.

¹ **AG Opinion 92-597** provides, in part, "It would not be a violation . . . to allow for a public official or employee to use a credit card issued to a public entity in making a personal charge in cases of extraordinary emergency if that official or employee promptly remits payment to the public entity as soon as possible after the charges are made and prior to receipt of the bill for payment from the public entity. If this is done the credit of the public entity would not be extended for personal use. Public officers and employees should not routinely use a public entity's credit card for personal purchases."

Personal Charges Made by Mayor Price

Based on our review of documentation and interviews with Mayor Price, we identified purchases totaling \$8,845 that appear to have been personal in nature and for which no business purpose was provided. These purchases included the following:

- From February 3, 2007, to February 10, 2007, Mayor Price incurred charges totaling \$2,972 while on a cruise to Mexico.
- From September 4, 2006, to September 9, 2006, Mayor Price incurred charges totaling \$623 for lodging, meals, and parking while in Northern California.
- From April 4, 2006, to April 6, 2006, Mayor Price incurred food and gas charges totaling \$260 during a trip to Augusta, Georgia.
- From July 21, 2004, to July 25, 2004, Mayor Price incurred charges totaling \$566 for a rental car, gas, parking, and food while in Nevada and northern California.

According to City records, Mayor Price has only made reimbursements totaling \$3,575 of which \$2,931 was for charges made while on a cruise to Mexico. Mayor Price reimbursed the City for his cruise to Mexico approximately two months after his return. Mayor Price stated that the City has no written policy pertaining to credit card usage. He initially stated that he does not make personal charges using his credit card. After showing Mayor Price a number of the out-of-town charges (see above), he indicated that he is on duty twenty-four hours per day, seven days per week and takes note of architecture and other things that provide a benefit to the City while he is on vacation. Mayor Price indicated that he used his City credit card for the cruise because he did not have his personal credit card with him at the time. Mayor Price's use of his public credit card for personal purposes may violate Louisiana law.²

Purchases Lacking Documentation

The credit card statement alone is not adequate documentation as it does not provide enough detail to support the business purpose for the charges. For charges other than for gasoline, the credit card charge tickets are not adequate documentation as they do not provide enough detail to support the charges. For example, credit card charge tickets for meals do not allow for verification of the number of meals purchased and the business purpose for the charges. Therefore, the detailed meal receipt should be submitted for supporting documentation.

From September 2003 to March 2008, Mayor Price made 512 transactions totaling \$42,549 for meals and Mr. Steibing made 92 transactions totaling \$12,986 for meals. The City was missing itemized receipts for 341 (56%) of the 604 transactions totaling \$34,703 and had no documentation for 15 of Mayor Price's transactions totaling \$1,400. In addition, these charges included \$953 in charges for alcoholic beverages. Because the City was either missing or did not maintain adequate documentation for all meals, we could not determine the total amount of charges for alcoholic beverages. Examples of these charges include the following:

² R.S. 14:67 provides, in part, that theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.

- From October 2004 to January 2007, Mayor Price charged eight separate meals totaling \$4,125 at Nuvolari's restaurant for the Planning and Zoning council. There were no itemized receipts for these charges and names of the attendees were documented on only five occasions.
- From April 2004 to March 2007, Mr. Stiebing charged six separate meals totaling \$1,669 at local restaurants for "pre or post audit finance department dinners." There was an itemized receipt for only one transaction and the attendees were documented on only one occasion.

Mayor Price stated that he uses the City's credit card for City business, taking the council, city engineer, contractors, planning and zoning people, and anyone else doing business with the City to lunch. He stated the City council is aware of this practice; that is why they gave him an allowance account. He feels it is appropriate to purchase alcohol on the City credit card when entertaining clients for the City. He also feels it is appropriate to purchase meals for clients (vendors) because he is negotiating business deals with them for the City.

According to Mr. Stiebing, the mayor's allowance account was approved by the council and is considered an entertainment account. Most of the mayor's expenses are charged to this account. He added that if during their travel the mayor purchases meals for City clients (vendors), he (Stiebing) will normally pay for the meals using his City credit card but will charge the expense to the mayor's allowance. When asked why the mayor purchased meals for City vendors, Mr. Stiebing stated that because vendors are always purchasing meals for the mayor, the mayor feels that he should occasionally purchase their meals.

Former Councilman Denis Bechac stated that the mayor's credit card should not have been used for personal purchases. Council members Coogan and Zella Walker stated that the mayor's credit card was to be used to entertain potential and current City vendors by purchasing meals. Council member Trilby Lenfant indicated that she felt it was inappropriate for Mayor Price to purchase meals for employees. Council member Walker indicated that she believed it was inappropriate for Mayor Price to purchase meals for City employees when no vendor was present.

Charges for Celebratory Functions

In Opinion 03-0387, the attorney general opined that in general, the payment of or reimbursement for food, drink, or other expenses associated with luncheons, banquets, parties or other similar functions, from public funds is improper under state law. During our review of Mayor Price's and Mr. Stiebing's credit card charges, we noted charges totaling \$6,143 for retirement dinners, secretary's day lunches, and employee appreciation dinners. Of this amount, charges totaling \$4,798 were made by Mr. Stiebing which included the following:

- On July 27, 2005, Mr. Stiebing incurred a \$2,194 charge at Nuvolari's restaurant for the Joe Mistich (former employee) appreciation dinner.
- From April 7, 2004, to April 25, 2007, charges totaling \$2,604 were incurred at local restaurants for eight separate secretary's day lunches.

In addition, from February 2004 to September 2007, Mayor Price purchased seven meals totaling \$1,538 which were attended by a majority of City council members. City council members Lenfant and Coogan stated that the meetings were not business-related and would not violate open meetings law. However, if the meals were social in nature with no public purpose, the purchase of these meals with public funds may have violated Article 7, Section 14 of the Louisiana Constitution.³

Since City management did not maintain documentation to support all credit card purchases, we could not determine the business purpose, necessity, or reasonableness of the purchases or if the purchases benefited the City. Purchases with no business purpose that are not necessary to the operations of the City or that are made at an unreasonable price may be a violation of the Louisiana Constitution, which prohibits the donation of public funds. In addition, the attorney general⁴ has opined that the purchase of alcohol with public funds is prohibited by the Louisiana Constitution.

We recommend the City adopt detailed policies and purchasing procedures for the use of credit cards. These policies should provide guidance for the business use of the credit cards and the supporting documentation expected to be maintained. Neither the credit card charge authorization receipt nor the credit card statement alone is adequate documentation, as it does not provide sufficient detail to support the propriety of charges. This policy should require:

- (1) documentation of the business purpose for the expenditure;
- (2) itemized receipts for meals, as well as a list of people attending the meals;
- (3) timely submission of original receipts--submission should occur before the monthly statement arrives and in time to adequately review the propriety of the expenditure; and
- (4) disciplinary action for noncompliance.

Personal Use of City Vehicles and Fuelman Cards

The City provides vehicles to all department heads and certain employees including Mayor Price. In addition, the City provides insurance coverage, pays for maintenance, and provides each vehicle user with a Fuelman card to purchase fuel. During our review of vehicle and Fuelman usage, we noted (1) the City does not have a written policy on the use of City vehicles and Fuelman cards; (2) City employees including Mayor Price routinely use City vehicles and Fuelman cards for personal purposes such as out-of-state vacations; (3) the City does not include the value of the personal use of the vehicles as income to these employees; and

³ **Article 7, Section 14 of the Louisiana Constitution** provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private

⁴ **AG Opinion 99-358** provides, in part, "It is the opinion of this office that the Commission can use its funds to host a luncheon for the dignitaries enumerated above under the following conditions . . . public funds are not used for the purchase of alcohol."

(4) the City does not mark all its vehicles in compliance with state law.⁵ By using public vehicles and Fuelman cards for personal use (vacations), several City employees may have violated state law.⁶

Lack of Written Policies

The City has no written policies regarding the proper usage of vehicles and Fuelman cards. Neither logs nor Fuelman receipts are maintained to document the business purpose of vehicle usage and fuel purchases. In practice, employees key in their vehicle's mileage upon using the Fuelman card. Each month, the finance department receives a Fuelman report indicating the charges incurred by each employee, location of the purchase, and the average fuel consumption based on the mileage between fill ups.

Personal Use of Vehicles and Fuelman Cards

From April 2005 to December 2007, City Fuelman records indicate that City employees including several directors and Mayor Price made 39 out-of-state fuel purchases totaling \$1,768 using Fuelman cards. Although the director of finance reviews the Fuelman reports monthly, and makes notations deemed necessary, there is no documentation to indicate any actions were taken to prevent personal use of public assets by department heads. These charges included the following:

- Mayor Price - 11 purchases totaling \$567
- Louisette Kidd, director of planning - 19 purchases totaling \$712
- David Cressey, city attorney - four purchases totaling \$129

Mayor Price incurred 11 different out-of-state charges totaling \$567 during this period including \$89 while in Augusta, Georgia (1,200 miles roundtrip) in April 2006. Mayor Price stated that he traveled in his City vehicle to watch the Masters golf tournament. He explained that he takes his vehicle on trips because he is on call 24 hours per day, seven days per week. Mayor Price stated that other employees use City vehicles in the same manner in case they have to return early for City business. He further stated that the City council members were aware that he used his City vehicle as a personal vehicle. City council members who served during this period, excluding Mr. Coogan and Ms. Adelaide Boettner, stated that Mayor Price should not use the City vehicle or Fuelman card for personal purposes. Mr. Coogan stated that Mayor Price's vehicle usage was acceptable as long as it was included in his compensation package. Mr. Coogan also stated that Mayor Price could use the City vehicle for personal use since he is mayor 24 hours a day, seven days a week.

⁵ **R.S. 49:121 A.(1)** Every boat, watercraft, aircraft, automobile, truck, or other vehicle belonging to the state or to any of its political subdivisions, or to any department, board, commission, or agency of any of its political subdivisions shall, if required by law to bear a Louisiana license plate, bear a public license plate, and each such vehicle also shall have inscribed, painted, decaled, or stenciled conspicuously thereon..the name of the agency.

⁶ **R.S. 14:67** provides, in part, that theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.

Ms. Kidd, director of planning, incurred 19 out-of-state fuel purchases totaling \$712 including eight separate trips to Destin, Florida, and one trip to Charleston, South Carolina (1,554 miles roundtrip). Ms. Kidd stated she uses her Fuelman card to purchase fuel and tires and for repairs and general maintenance. She explained that she has purchased gas with her Fuelman card while on personal vacations. Ms. Kidd added that Mayor Price and Mr. Stiebing were aware of these purchases and that she has never been asked to reimburse these amounts.

We performed an analysis of the Fuelman records for department heads to determine the extent of usage of City vehicles. Mileage readings entered by the department heads while purchasing fuel were used to determine the total mileage driven during the period January 2005 to March 2008 (39 months). Total mileage driven and total fuel purchases were then converted to monthly amounts. It should be noted that total mileage driven could not be determined for Mayor Price because before December 2007, he did not enter his vehicle mileage when he purchased fuel but began doing so when we brought it to his attention. Fuelman records were used to determine Mayor Price’s average monthly fuel cost which was \$298 per month.

Vehicle and Fuel Usage by Department Head

Name	Total Mileage	Miles/Month⁷	Total Fuel Purchased (gallons)⁸	Total Fuel Cost	Average Monthly Fuel Cost
Louisette Kidd - Planning Director	93,055	2,386	4,821	\$12,139	\$311.25
Edward Price, III - Mayor	4,001	1,334	4,541	11,640	298.46
David Cressy - City Attorney	64,030	1,642	3,642	9,182	235.43
David Degeneres - DPW Director	26,625	832	2,373	6,065	189.53
Milton Steibing - Finance Director	39,065	1,002	2,405	5,852	150.05

From January 2005 to March 2008, Ms. Kidd used two different City vehicles including a 2001 Dodge Caravan and a 2007 Dodge Caravan. An analysis of Ms. Kidd’s Fuelman activity during this period indicates that she drove a total of 93,055 miles, an average of 2,386 miles per month. These records also indicate that Ms. Kidd purchased a total of 4,821 gallons of fuel which averages out to 19.3 miles per gallon. Because the Dodge Caravans driven by Ms. Kidd average approximately 19 miles per gallon, it appears that the 4,821 gallons of fuel were purchased not only for City purposes but also for Ms. Kidd’s personal purposes.

Ms. Kidd stated she was issued a city vehicle before Mayor Price’s administration and added that she uses the vehicle all the time including personal use and personal vacations. Ms. Kidd explained that because her work overlaps with her personal life, it would be difficult to use separate vehicles. In addition, we spoke with Mr. Cressy, city attorney, and David Degeneres, director of public works, who both indicated that they use their City vehicles for personal purposes such as out-of-town trips. Mr. Degeneres added that Mayor Price informed him that he could use his vehicle for personal purposes. In Opinion 90-504, which is germane to

⁷ Mayor Price’s mileage driven per month was calculated over a three-month period and Mr. Degeneres’ mileage driven per month was calculated over a 32-month period.

⁸ Mayor Price’s total fuel and average monthly fuel costs were calculated over a 39-month period. Mr. Degeneres’ total fuel and average monthly fuel costs were calculated over a 32-month period.

the City's vehicle use practices, the attorney general opined that the out-of-state use of a hospital vehicle for a private vacation was without lawful authority and was a breach of fiduciary duty.

Personal Use of Vehicles Not Included in Employees' Income

In Opinion 01-0198, the attorney general opined that public vehicles must be used for a public purpose. "A public vehicle cannot be used personally because such would be tantamount to a donation of public funds which is prohibited by our constitution. There are instances when a public employee, as part of his employment contract, may be provided a vehicle to use in furtherance of his public duties." In addition, Internal Revenue Code § 61; Treasury Regulation § 1.61-21 states that if an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages.

Although none of the department heads have written employment contracts with the City, Mr. Stiebing indicated that vehicles are provided to department heads as part of their compensation. Mr. Stiebing added that the City does not have a written policy regarding use of the vehicles and stated that the value of using the vehicles for personal purposes are not added to these employees' incomes or reported to the IRS.

City Vehicles Not Marked in Accordance With State Law

Louisiana law requires any vehicle belonging to the state or to any of its political subdivisions to bear a Louisiana public license plate, and that each such vehicle also shall have inscribed, painted, decaled, or stenciled conspicuously thereon, the name of the agency. In addition, R.S. 49:121 (D) indicates that the individual whose responsibility it is to place the purchase order for any vehicle shall be personally responsible for seeing that the agency name is placed thereon within ten days after the delivery of such vehicle. During our review of vehicle usage, we noted that of the six directors (including Mayor Price), none of their vehicles were marked "City of Mandeville" and only Ms. Kidd's vehicle had a public license plate. It should be noted that Chief Buell's vehicle would be exempt under R.S. 49:121 (E) as it is used in crime prevention and detection.

Although R.S. 49:121 (E) does not appear to exempt the mayor or city prosecutor, Mr. Stiebing indicated that he believed that most of the vehicles in question were exempt from the law. He explained that the mayor is exempt as the CEO of the City and that the City attorney is exempt as he is the prosecutor for mayor's court. Mr. Stiebing added that decals were purchased for the planning and public works departments, but those decals have not yet been placed on Ms. Kidd and Mr. Degeneres' vehicles. It should be noted that Ms. Kidd's and Mr. Degeneres' current vehicles were both purchased in 2007.

Because the City does not have written policies and procedures for vehicle and Fuelman usage and allowed employees to use these assets for personal purposes, the City (1) increased its transportation costs; (2) inflated the cost of governmental operations reported to the public; and (3) caused public funds to not be available to the public for public purposes. In addition, by using public assets for personal purposes, City employees may have violated state law.

We recommend that the City adopt detailed policies and procedures for the use of City vehicles to ensure that public vehicles are only used for public purposes. These policies and procedures should include (1) written criteria detailing the possible need for personal assignment and/or home storage and (2) a written agreement with each employee detailing the necessity for assignment or home storage, description of vehicle (make, model, license, etc.), address where the vehicle will be stored, address of the employee's official domicile, distance between home address and official domicile, language indicating that the vehicle shall not be used for personal purposes, language indicating that the employee is liable for all requirements which may be imposed by the IRS, and signed approval by an appropriate supervisor.

In addition, the City should adopt detailed policies and procedures for the use of Fuelman cards. These policies and procedures should require that:

- (1) each cardholder maintains a vehicle mileage log;
- (2) the driver enter the correct odometer reading when fueling his/her vehicle;
- (3) the card only be used for the assigned vehicle,
- (4) management review the card statements to ensure that the number of gallons received, miles traveled, and miles per gallon are reasonable; and
- (5) management compares the vehicle mileage logs with the Fuelman card monthly statements.

Improper Gifts

R.S. 42:1115 provides, in part, that no public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or employee of any person who has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency. During a review of Mayor Price's e-mails, we noted several messages which indicated that people/vendors doing business with the City were providing things of value to Mayor Price, Mr. Stiebing, and Councilman Coogan including golf and/or hunting trips. We spoke with Mayor Price, Mr. Stiebing, and Councilman Coogan, and some of these third parties and confirmed that Mayor Price, Mr. Stiebing, and Councilman Coogan received gifts. Examples of these gifts and their sources are detailed as follows:

Meyer Engineers and Don McMath

Meyer Engineers, owned by Rick Meyer, has been the City's engineering firm since 1993. The City has a professional services contract with Meyer Engineers by which Meyer receives a monthly retainer of \$500 and bills for services. Since August 1998, Meyer Engineers has billed a total of \$7,089,931 in engineering fees to the City. Mayor Price indicated that he has taken numerous hunting and/or golf trips with Mr. Meyer and Mr. Don McMath, a local real estate developer.

Mr. Meyer stated that he and Mayor Price have traveled on his private plane to go golfing including a trip to Pebble Beach, California. Mr. Meyer explained that on one occasion, he, Mayor Price, and Mr. McMath flew on Mr. McMath's plane to Pebble Beach, California, to play in a golf tournament. According to Mr. Meyer, he paid for a portion of Mayor Price's expenses and Mr. McMath paid the remaining portion of the expenses. Mr. Meyer also indicated that he and Mayor Price traveled in his plane to Aspen, Colorado.

In addition, Mr. Meyer indicated that Mr. Stiebing traveled on his private plane on a trip to Cancun, Mexico. Mr. Stiebing stated that he and his wife traveled on Mr. Meyer's plane to Cancun, Mexico, for a two-night trip in 2006. Mr. Stiebing added that he paid for his own lodging expenses and that meals were split amongst all attendees.

City records indicate that since 2004, the City has annexed several of Mr. McMath's properties into the corporate limits. Mr. McMath stated that he has known Mayor Price all his life and that he has taken Mayor Price and Mr. Meyer on trips using his private plane. Mr. McMath stated that he has taken Mayor Price to play in the golf tournament in Pebble Beach, California, in every year since 2003, and pays for all Mayor Price's expenses. The entry fee for the 2007 golf tournament was \$7,300 per person. Mr. McMath did state that while on these trips, everyone takes turns paying for the meals. He added that he also took Mayor Price goose hunting in Canada in 2007.

Mayor Price stated that he has had vendors, such as Meyer Engineering, pay for his golf fees. He explained that from time to time Meyer Engineers paid for plane tickets for him to travel to Denver, Colorado and California. When he (mayor) traveled to Pebble Beach, California, in November 2003, he flew with his personal friend, Mr. McMath, on Mr. McMath's private airplane. Mayor Price added that although he goes to Pebble Beach to play golf, he also considers it to be a business trip because he is observing architecture and public facilities and attending local council meetings (indicating that this is a benefit to the city).

Tesco Controls

The City purchases computerized control panels for its water and sewer systems from Tesco Controls. Mayor Price stated that on three occasions, he has traveled to Lake Tahoe, Nevada, to see Tesco Controls' products. He characterized these trips as personal and business and added that Tesco Controls paid for his lodging, travel, and airfare. On one of the trips, Mayor Price indicated that he participated in a golf tournament organized by Tesco Controls.

Franklin Kyle - Kyle and Associates Landscape Design

Since at least 2001, Kyle and Associates has had an annual professional services contract with the City to provide landscape design services. Mayor Price indicated that on one occasion Mr. Kyle paid for him and Councilman Coogan to go on a fishing trip to Shell Beach, Louisiana.

Blue Williams, LLP

Since at least 2007, Blue Williams, LLP has had a professional services contract with the City to provide legal services in reference to Federal Emergency Management Agency (FEMA) issues arising from the 2005 hurricanes. Mayor Price and Councilman Coogan indicated that in 2005 and 2006, Mr. C. T. Williams of Blue Williams, LLP paid for a hunting trip to Lucedale, Mississippi. According to Councilman Coogan, he and Mayor Price were also taken hunting in Brander, Mississippi, by Mr. C. T. Williams in 2007. He stated that Mr. Williams paid for the meals and lodging on this hunting trip.

Louisiana Coca-Cola Bottling Company (Coca-Cola)

In 2005, Councilman Coogan and Mr. Stiebing indicated that they received a fishing trip from Tony Cash, a sales representative for Coca-Cola to CoCo Marina in Grand Isle, Louisiana. This trip included fishing, lodging, and meals provided by Coca-Cola. Mr. Stiebing stated that Coca-Cola was a client of Councilman Coogan and that he went on the trip as Coogan's guest. It should be noted that on January 31, 2005, the City's exclusive contract with PepsiAmericas expired and was not renewed. In 2006, Mayor Price signed a partnership agreement on behalf of the City with Mr. Cash designating Coca-Cola as the official soft drink of the City of Mandeville and to allow Coca-Cola to be the exclusive vendor for all City controlled properties until 2009.

We recommend that the City implement a policy prohibiting employees and City officials from receiving gifts or gratuities or anything of economic value from vendors or contractors that do business or are seeking business with the City.

Public Bid Law and Other State Law Violations

We reviewed purchases of supplies and a number of public works projects performed for the City during our audit period. According to the documentation available for these expenditures, we determined (1) the City failed to publicly advertise one public works project in accordance with the state bid law; (2) the City repeatedly purchased limestone and sand in violation of the state bid law; and (3) numerous public works projects were performed without written contracts and surety bonds and by contractors who were not licensed, as required by state law.

Failure to Apply State Bid Law (Public Works Project)

According to the public bid law (R.S. 38:2212), public works projects exceeding \$100,000 shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised. In addition, the public bid law [R.S. 38:2212 (H)] specifically prohibits division or separation of any public work project into smaller projects which would have the effect of avoiding the requirements of the public bid law. Finally, R.S. 37:2150.1 (4)(a) requires the use of state-licensed contractors and subcontractors for public works projects exceeding \$50,000.

From December 2004 to August 2005, the City made six disbursements totaling \$116,458 to LP Enterprises referencing work performed on Venus Drive. The invoices submitted by LP Enterprises only referenced installation of catch basins and culverts on Venus Street. The City could not provide a written description of the work performed, a contract, or any evidence that bids or quotes were obtained. When asked what work was performed, Mayor Price indicated that it was a drainage project performed in increments as money was available. He stated he was not aware that the work should have been viewed as one project and added he was unaware of the bid law requirement. Mr. Lassider Porte, owner of LP Enterprises, indicated that he does not have a Louisiana contractor's license as is required for contractors that bid, contract, or perform construction work in excess of \$50,000.

Failure to Apply State Bid Law (Materials and Supplies)

R.S. 38:2212.1 (public bid law) requires that all purchases of any materials or supplies exceeding the sum of twenty thousand dollars to be paid out of public funds shall be advertised and let by contract to the lowest responsible bidder who has met the specifications as advertised. From 2003 to 2007, the City purchased limestone from LP Enterprises, Inc., in excess of \$20,000 annually without following the public bid law. In addition, in 2003, 2004 and 2005, the City purchased sand from LP Enterprises, Inc., in excess of \$20,000 annually without following the public bid law.

From 2003 through 2007, the City purchased limestone from LP Enterprises totaling \$362,247. During each of these fiscal years, the City purchased limestone in amounts ranging from \$21,872 to \$124,244. In 2003, 2004, and 2005, the City purchased sand totaling \$38,944; \$44,010; and \$49,516, respectively. The City could not provide any documentation to indicate

that any of these purchases were let for bid in accordance with R.S. 38:2212.1 nor was there documentation to indicate that any type of competitive process was used.

Violations of Other State Laws

State law⁹ requires that all public works contracts in excess of \$5,000 must be reduced to writing and that all public works contracts of \$25,000 or more require a surety bond from the contractor in a sum not less than fifty percent of the contract price which shall be recorded in the official mortgage records of the clerk of court. Mr. Degeneres stated that once vendors are selected for public works projects, he submits a requisition to the purchasing department. He added that if the City requires the vendor to submit a written contract, then that is the finance department and the city attorney's responsibility.

He further stated that he is not sure at what point a vendor is required to be bonded. He stated that he does not check vendors to determine if they have a certificate of insurance, whether they are bonded, or whether they have entered into a contract with the City. He believes Mr. Stiebing's and Ms. Cathy Williams' (purchasing agent) jobs are to handle these things and they should guide him on the purchasing laws and requirements.

Listed below are examples of public works projects for which there were no written contracts:

- From June 2007 to December 2007, the City paid Southern Trace Investment, Inc., (Southern Trace) a total of \$67,580 to build a fence around a park. Before awarding this contract, requests for bids were sent to vendors by public works employee, Cliff Siverd, Jr. In addition to providing services for Southern Trace, Mr. Siverd, Jr.'s father, Cliff Siverd, Sr., owns the company. According to City records, Mr. Siverd, Jr., received bids from two other contractors before receiving the low bid from Southern Trace. The City could not provide a written contract or evidence of a surety bond for this project.

According to Mr. Degeneres, the original contractor selected for the project did not have adequate insurance coverage. Mr. Degeneres stated that Mr. Siverd, Jr., informed him that his father was willing to underwrite this contractor and provide the appropriate insurance requirements. As a result, Mr. Degeneres stated that he informed Mr. Siverd, Jr., to obtain two additional bids for the job. He stated that once all bids were received, he reviewed them and awarded the job to Southern Trace because it submitted the lower bid. Southern Trace subsequently sub-contracted the job to the original contractor.

⁹ **R.S. 38:2241 A.** (1) provides, in part, whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties. (2) For each contract in excess of twenty-five thousand dollars per project, the public entity shall require of the contractor a bond with good, solvent, and sufficient surety in a sum of not less than fifty percent of the contract price for the payment by the contractor or subcontractor to claimants.

- From June 2003 to January 2008, LP Enterprises performed nine different public works projects totaling \$368,481. Although each project exceeded \$5,000, none had written contracts. In addition, six of the projects exceeded \$25,000 and the City could not provide documentation to indicate that surety bonds were obtained and recorded with the clerk of court. The cost of at least one of the nine projects was in excess of \$50,000. One particular bid proposal, for the storm-damaged sidewalks project, was received by public works 28 days after the bid closing date; it was the lowest and winning bid.
- From December 2006 to January 2007, the City paid Mystic Porte, Inc., \$76,860 to install culverts and catch basins. The City could not provide evidence of a written contract or a surety bond.

The Public Bid Law, when followed, is designed to promote competition for goods and services purchased by public agencies. However, the City's practice of purchasing limestone and sand without any type of competitive process may have prevented the City from receiving competitive prices and may have violated the Public Bid Law. Because Mr. Siverd, Jr., wrote the specifications and sent a request for proposals to a company that he has provided services for and is owned by his father, he may have violated R. S. 42:1112.¹⁰

We recommend that the City comply with the provisions of the Public Bid Law and its own purchasing policies and procedures.

Campaign Golf Tournaments

According to Section 13 of the City's civil service manual, covered employees, in general, are prohibited from engaging in any type of political and/or campaign activities. The manual describes 21 examples of prohibited activities including working at campaign headquarters or otherwise assisting in a political campaign. During our review of City records, we noted that several City employees, both classified and exempt, appear to have used City time and resources assisting Mayor Price with his annual campaign golf tournaments.

City records indicate that numerous City employees including all of the department heads have spent City time and resources assisting with Mayor Price's annual campaign golf tournament. These records include income statements, prize lists, contact lists, sponsorship lists, team lists, and brochures. Some documents were saved to the City's computer system while others were attachments e-mailed to and from different City employees. These documents indicate they were created, accessed, and/or transmitted during regular working hours.

Several department heads indicated that they solicited contributions, sponsorships, and players for the mayor's golf tournament. Mr. Stiebing created tournament income statements and stored them on the City computer system. Ms. Peachy used her City computer to design invitations for the golf tournaments which she also mailed. Ms. Kidd indicated that she would

¹⁰ R.S. 42:1112 provides, in part, that no public servant, except as provided by R.S. 42:1120, shall participate in a transaction involving the governmental entity, in which, to his actual knowledge, any person of which he is an officer, director, trustee, partner, or employee has a substantial economic interest.

solicit gift certificates from local businesses to be handed out as door prizes. According to e-mails residing on the City's server, former and current public works directors, Joseph Mistich and Mr. Degeneres, respectively, organized the food for the tournaments. Finally, several City employees including the department heads worked at the golf tournaments which were always held on Mondays. From 2001 to 2007, at least six City employees, including three department heads, worked at the mayor's golf tournament and each failed to submit leave sheets on at least one occasion.

Weak Business Practices

Violations of City Purchasing Policies

The City has general purchasing policies based on a purchase order system for all purchases of materials, supplies, property, services, and repair work. Under this system, purchases are initiated through a requisition approved by the appropriate department head. Once approved, the requisition is forwarded to the finance department for approval by the director of finance and issuance of a purchase order. Although City policy requires no competitive bidding for purchases less than \$250:

- (1) purchases greater than \$250 but not exceeding \$10,000 require at least three telephone bids and an approved requisition;
- (2) purchases greater than \$10,000 but not exceeding \$20,000 require written solicitations from at least three bona fide prospective bidders and an approved requisition; and
- (3) purchases exceeding \$20,000 require sealed bids and public notice.

During the period of 2003 to 2008, we examined vendor invoices from LP Enterprises, Casertas Land Clearing, and Mystic Porte totaling \$490,421 and compared the purchases to the City's purchasing policy. We noted the following:

- On 84 occasions totaling \$197,120, the City failed to obtain and/or document at least three telephone bids and/or issue an approved purchase order or requisition for purchases greater than \$250 but less than \$10,000 as is required by its policy.
- For purchases greater than \$10,000 but not exceeding \$20,000, City records indicate that on three occasions totaling \$40,995, the City did not obtain written solicitations from at least three bona fide prospective bidders and/or issue an approved purchase order or requisition.
- For purchases exceeding \$20,000, sealed bids were not obtained nor were public notices provided for five public works projects involving LP Enterprises and Mystic Porte totaling \$252,306 in accordance with City policy.

Mr. Degeneres stated that he was familiar with the City's purchasing policy, although it is not uncommon for his staff to make a purchase and not submit a requisition or obtain a purchase order. He stated that for example, when a purchase has to be made during an emergency situation involving water and sewer work, they may not have submitted a requisition or obtained a purchase order. However, when asked to explain purchases from LP Enterprises made during nonemergency situations such as catch basins, bands, and culverts that were made without submitting a requisition, Mr. Degeneres could not provide an explanation.

The City's purchasing policy, when followed, appears to promote competition for goods and services purchased by the City. However, the City's practice of purchasing goods and services was performed in a manner that may not have promoted competition and therefore may not have resulted in the City receiving the best possible competitive prices.

Purchases Made in Possible Violation of Louisiana Laws

The attorney general has historically opined that using public funds to defray the costs of Christmas parties, office celebrations, and alcohol is prohibited by Article 7, Section 14 of the Louisiana State Constitution.¹¹ To determine if an expenditure of public funds is in accordance with Article 7, Section 14 of the Louisiana Constitution, the attorney general in Opinion 07-0134 outlines a three-prong test. It requires:

- (1) a public purpose for the expenditure or transfer;
- (2) the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and
- (3) evidence demonstrating that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

It has been the City's practice to use public funds to pay for office celebrations including Christmas parties. As indicated in a prior finding, City funds (purchased on City credit card) totaling \$6,143 were used to pay for employee parties and celebratory functions. In addition to credit card purchases, from 2003 to 2007, the City used public funds totaling \$13,753 to pay for various office celebrations including:

- (1) Christmas parties totaling \$5,829 from 2003 to 2007;
- (2) mayor's inauguration totaling \$5,156 during 2004;
- (3) retirement parties and gifts totaling \$1,308 during 2003, 2005, and 2007;
- (4) crawfish boils totaling \$755 during 2006 and 2007; and
- (5) mayor's prayer breakfasts totaling \$705 from 2003 to 2007.

¹¹ AG Opinion 91-589A states, in part, "district funds were used to defray the cost of Christmas parties . . . you ask if this is permitted. . . .Again, in our opinion, such a private use of public funds would be prohibited by Art. 7 Sec. 14, La. Const. 1974."

Mr. Stiebing stated that the annual Christmas party the city holds each year is an appreciation event for City and police department employees. He stated that each year, he takes \$1,000 from the general fund and \$300 from the enterprise fund (public works) and uses it for the employee Christmas party. Mayor Price stated that there is no public purpose for the City's Christmas parties other than to thank City employees for their hard work throughout the year. He stated that he is not knowledgeable of the state constitution and/or attorney general opinions regarding the spending of public funds for parties and that there was no intent on his part to violate state law. Because these purchases were celebratory in nature and there was no benefit or value equivalent to the amount expended, the City may have violated the Louisiana Constitution.

We recommend City management cease using public funds to pay for employee celebrations and gifts and the mayor's prayer breakfasts. We further recommend that the City implement a policy outlining guidelines and limitations for spending public funds.

Lack of Controls Over Inventory

The City has not established adequate controls over its inventory of materials and supplies and certain equipment.

Materials and Supplies

During our review, we noted that the City purchases large quantities of limestone, sand, and gravel which are stock piled at the City's Public Works location. Deliveries of sand, gravel, and limestone are noted when received by office secretaries who sign vendor dump tickets but do not verify the quantity delivered. The vendor is then allowed to enter the yard, dump the materials, and leave without observation or verification of the quantity delivered. Furthermore, public works does not maintain inventory records of materials stocked or amounts removed from stock to complete projects. As a result, public works is forced to make frequent purchases to maintain inventory.

We recommend the City require that the actual quantities of materials delivered and dumped by vendors are verified and recorded at the time of the delivery to ensure the City has received the quantity it paid for. In addition, we recommend that the City establish and maintain perpetual inventory records necessary to reconcile and maintain proper control over its inventory of limestone, sand, and gravel.

Unrecorded Inventory

In 2005, after hurricanes Katrina and Rita, the City received a donation of 100 generators and an undetermined number of portable air conditioning units. The City currently stores the generators and air conditioning units at its Public Works location and police department. However, the City has not maintained records to track these assets.

We recommend that the City establish and maintain permanent inventory records of its generators and portable air conditioning units containing necessary information such as the number of generators/air conditioning units in inventory, date of acquisition,

model and serial numbers, useful life, and other depreciation related information. The lack of permanent recordation of its generators/air conditioning units could result in the City's inventory being misappropriated.

Travel

Although the City's civil service manual addresses reimbursement for travel expenses to classified employees, it does not provide guidance in several areas including specific guidance as to what is allowable relating to business, conference, and seminar travel. The policy only includes one rate for meals and has no rates for lodging expenses.

During our examination, we also noted that the City has not established a written travel policy for nonclassified employees that include the mayor and other department heads. Mr. Stiebing stated that he determines travel reimbursements on a case-by-case basis for the mayor and other department heads. He stated that the mayor and other department heads are provided City credit cards to pay for travel expenses which include actual hotel costs. Mr. Stiebing stated that he determines per diem amounts for meals for the mayor and other department heads. The per diems are not set amounts but rather adjusted based on travel to high cost areas. To document his approval of business and estimated travel costs, he makes handwritten notes on the employee's check request vouchers to record per diem amounts and then signs the voucher approving the travel.

We recommend that the City establish a travel authorization form to document management approval of business travel and estimated travel costs. The form should be completed before travel and include department head approval. We further recommend that the City establish an expense report to be used by all employees and submitted at the completion of travel. The report should include a detailed listing of all expenses including expenditures incurred using a public credit card. In addition, each expense report should include the territory traveled as well as the dates and hours of departure and return to the traveler's domicile. The report should be signed and certified by the person claiming reimbursement and approved by that individual's immediate supervisor.

In addition, we recommend that the Council adopt a detailed travel policy using the state travel policy as a guide for all employees. The policy should include, at a minimum, the following:

1. Definition of allowable travel
2. Provisions for employee reimbursement whether by actual expenses or per diem
3. Per diem rates for meals and hotels in and out of state
4. Mileage reimbursement rates
5. Guidelines for overnight travel
6. Documentation required to substantiate reimbursement
7. Provisions for disciplinary action for noncompliance

Violation of State Laws (Mandeville Trailhead and City)

The Mandeville Trailhead (Trailhead) is facility owned and maintained by the City and used for community events, cultural exhibits, and a community market. The Mandeville Trailhead Foundation (Foundation) is a 501-c-3, nonprofit corporation established in 2001 and is overseen by a volunteer board of directors that currently includes five City employees. The Foundation is responsible for programming of events as well as ticket sales, marketing, publicity and public relations. In addition, the Foundation raises funds to support these programs while keeping ticket prices free or affordable.

Louisiana audit law (R.S. 24:513-24:523) identifies a quasi-public agency as any not-for-profit organization that receives and/or expends in excess of twenty-five thousand dollars in local and/or state assistance in any fiscal year. Because the Foundation has received financial support from the City in excess of \$25,000 over each of the past four years, the Foundation should be considered a quasi-public agency in accordance with the state audit law. Records indicate that the majority of the funds received were used to pay the salaries of Trailhead employees.

The audit law further provides that the legislative auditor shall have the authority to compile financial statements and to examine, audit, or review the books and accounts of all public agencies within the state including quasi-public agencies. In lieu of examinations of the records and accounts of any office subject to audit or review by the legislative auditor, the legislative auditor may, at his discretion, accept an audit or review prepared by a licensed certified public accountant (CPA) provided that the legislative auditor has approved the engagement letter in accordance with this Section. Records indicate that for at least each year since December 2003, the Trailhead received a review report by a CPA. However, the City, Foundation board, and CPA failed to obtain an approved engagement agreement from the legislative auditor.

Submission of the engagement agreement to the legislative auditor for approval is the joint responsibility of the City, Trailhead board, and CPA. As a result of not obtaining an approved engagement agreement, the City, Foundation board, and CPA may have violated R.S. 24-513(5)(a)(i) which requires approval from the legislative auditor for engagements with public and quasi-public agencies.

We recommend that the City formalize, in writing, all agreements with the Foundation for which public funds are received to ensure that (1) there is a public purpose for the expenditure or transfer to the Trailhead; (2) the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (3) there is evidence demonstrating that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred. We further recommend that the Foundation, as a quasi-public entity, comply with all provisions of the Louisiana audit law.

The City of Mandeville (City) is located in St. Tammany Parish and has a population of 10,489 (2000 Census). The City adopted its Home Rule Charter under the provisions of Article VI, Section 5 of the Louisiana Constitution of 1974. The City operates under a Mayor-Council form of government with five elected council members who serve four-year terms. The mayor is elected at-large for a four-year term. The City provides the following services as authorized by its charter: public safety, highways and streets, sanitation and utilities, health and social services, culture and recreation, public improvements, planning and zoning, and general administrative services.

The Louisiana Legislative Auditor (LLA) received an allegation from the Metropolitan Crime Commission concerning expenditures from the Mandeville Police Department's Citizen Service Fund (CSF). As a result, LLA reviewed available CSF records as well as selected records from the City to determine the credibility of the allegation.

The procedures performed during this examination consisted of:

- (1) interviewing employees and management of the City and other persons as appropriate;
- (2) examining selected City documents and records;
- (3) obtaining documents from various external parties;
- (4) reviewing City policies; and
- (5) reviewing applicable laws and regulations.

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Management's Response

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August 7, 2008

VIA FAX: 339-3870
Mr. Steve Theriot, CPA
Legislative Auditor
Compliance Audit Division
1600 North Third Street
Baton Rouge LA 70802

Re: City of Mandeville's response to
Auditor's "Revised Mandeville
Report"

Dear Mr. Theriot:

The City of Mandeville (hereinafter referred to as "the City") presents the following response to the Louisiana Legislative Auditor's Report:

At the outset, it is noteworthy that the audit report is replete with errors and mistakes. Before addressing the substantive provisions of the report, the City of Mandeville would like the record to reflect the fact that – in light of these inaccuracies contained in the report – requests for changes to the report were made. Although most of these requested changes were denied by the Auditor, it is important that the City point out these errors once again. This list of requested changes below should be prefaced by stating that the City has received several drafts of the Auditor's report containing varying page numbers. We have been told that page numbers may again change once the report "goes to print". As such, the City has not been afforded an opportunity to review the finalized report. Accordingly, the references below represent the City's best effort to track the Auditor's page numbers as shown on the copy of the report provided to the City.

The City has previously and continues to urge the Auditor to immediately correct the following manifest inaccuracies:

1. In many instances, the employees of the City are listed by name in the report. I have reviewed several similar reports on your website which refer to the employee's position instead of the name. We request that the employee's name be substituted with their position. We request the same consideration be made for Members of the City Council as well as private individuals and private corporations.
2. The City is bound by State law, not AG Opinions - We request that all comments where State law is not mentioned be eliminated.
3. In many instances, statements from either the Mayor or the director of finance in response to a finding or question is included in the report. We believe that these statements would be better reported in the corrective

action plan, and hereby request that these statements be eliminated from the body of the report. For instance:

- a. Page 6, fourth full paragraph.
 - b. Page 10, first and second full paragraphs.
 - c. Page 12, last paragraph
 - d. Page 14, fourth full paragraph
 - e. Page 17, first three paragraphs.
 - f. Page 19, first and third paragraphs.
 - g. Page 20, Campaign Golf Tournaments.
4. Page 3, Citizen's Service Fund (CSF) - The City's position has always been that the CSF was a bank account that was considered private funds and not public funds. The City's independent auditor was always aware of the CSF and agreed with the private fund conclusion. In discussions with the Auditor's staff they indicated that they thought the designation could go either way. We request that the Auditor consider the CSF as private funds and modify this entire section of the report accordingly. The City also requested that the Auditor delete the statement that neither the Mayor nor the Director of Finance could provide tax status documentation regarding the CSF to the Auditor. Neither these individuals nor the City had any responsibility, authority or action with respect to this or any other aspect of the CSF. As such, these individuals are not the proper party to provide this documentation.
5. Page 10, third full paragraph - Councilwoman Lenfant has stated her disagreement with statements. The statements, as written, would lead one to believe that Councilwoman Lenfant believes the primary purpose of the Mayor's city credit card is to entertain potential and current city vendors. This is an improper interpretation of Councilwoman Lenfant's comments. Councilwoman Lenfant did not make a statement that could possibly be interpreted as set forth above.
6. Page 11, first paragraph reads in part:
"City Council members Lenfant and Coogan stated that the meetings were not business related and would not violate open meetings law. However, if the meals were social in nature with no public purpose, then the purchase of these meals with public funds may have violated Article VII Section 14 of the Louisiana State Constitution."
Issue is taken with this statement. The seven occasions cited during the three year period were not official "meetings" and no deliberations took place on any specific issues. However, this does not mean that the occasions did not serve a public purpose. General discussions on happenings, other activities, or current events within the City of Mandeville, which discussions would constitute a "public purpose",

always took place. Issue is taken with the Auditor's interpretation of "public purpose" as it relates to this statement.

7. Page 10, third full paragraph - We submit that the quotes from the City Council are not relevant to the finding and request that they be omitted.
8. Page 12, third full paragraph – The first sentence states that "mayor Price incurred 11 difference out-of-state charges...", The City maintains that the reference to out-of-state should be changed to out-of-town and request that the Auditor consider modifying the report accordingly.
9. Page 14, second paragraph - The City asserts that 1) written employment contracts are not required but the use of them may be an impediment to the operations of the City, and 2) the City has a verbal binding contract with employees. We request that references to the lack of written employment contracts should be eliminated from the draft report.
10. Page 15, second paragraph – The City requested that, since it already has a policy in regards to Fuelman cards, the allegations that one does not exist and needs to be implemented should have been removed. Also, it was recommended that each cardholder maintain a vehicle log. In fact, cards are not assigned to officials. Instead, the card is assigned to a vehicle. We requested that this sentence be so modified. Also, we submit that a daily log may be too onerous and inefficient.
11. Page 16, second full paragraph, reads in pertinent part as follows:
"Mr. Meyer also stated that he purchases drinks and meals for city council members and City employees after Council meetings on a regular basis."
The Louisiana Code of Governmental Ethics provides an exception to the definition of "thing of economic value" as follows: "(2) food, drink, or refreshments....consumed while the personal guest of some person." The statement in the report, as written, intimates that there was some ethical misconduct by the Council despite the above stated provisions in the ethics code. The statement is misleading in this regard and should be deleted from the report.
12. Page 17, re: Coca-Cola Bottling Company - There was never a partnership between the City and Coca-Cola. The director of finance insists that he had no knowledge of the future Coca-Cola contract at the time of the trip. LBS 42:115 states "a public servant knows or reasonably should have known". We request that this paragraph be removed from the report.
13. Page 18, second and third full paragraphs - The Mayor indicated that the drainage project mentioned was performed in several separate contracts as the extent of work was realized. There was never any intent to divide or separate the project into smaller projects in order to circumvent the public bid law. We request that this portion be eliminated from the report.

14. Page 18, last paragraph - Violations of Other State Laws, first full paragraph - The City requires purchase orders for larger public works projects. The City's purchasing officer receives training from the National Institute of Governmental Purchasing, Inc. Page 49 of the Certified Professional Public Buyer Guide states "a purchase order is a legal document that reflects the contract between the purchasing department and the seller". All purchase orders are in writing and therefore constitute written contracts. Accordingly, we request that the finding omit violations related to LRS 38:2241A(1). We also request that examples which have a purchase order be removed.
15. Pages 21-22, re: "Purchases" - The City's purchasing policies are more restrictive than the Public Bid Law. This appears to be duplicative of the comments on page 18 and is "piling-on". We request that this section be eliminated and, where appropriate, include these violations of policy in the finding that relates to possible violations of the Public Bid Law on page 18. We also submit that it may not be necessary to include examples and to include the quotation from the superintendent of public works. We submit that many of these instances were already identified in the sections entitled City Credit Card Use and Citizens Service Fund and repeating them is another instance of "piling-on". Would it be possible to omit this finding and include a reference in the earlier findings regarding possible violations of Article 7, Section 14 of the Louisiana Constitution?
16. Pages 23, re: "Inventory" - The donated items did not exceed the City's capitalization threshold as recommended by the Auditor. Furthermore, this instance occurred in the aftermath of Hurricane Katrina when the administration of the City was singularly focused on the City's recovery and the safety of its citizens. We request that this item be removed from the report.

The City will further address the substantive findings by the Auditor as follows. At the outset, it is noteworthy that in addition to the carefully enumerated audit errors as set forth above the audit report is replete with unfair generalizations, impermissible reliance on subjective opinions of the Attorneys General, factual mistakes and unsupported innuendos and implications.

AUDITOR'S DISCUSSION OF CITIZEN'S SERVICE FUND

City's Position

The City maintains that the Citizen's Service Fund (CSF) was a separate entity from the City. As such, the City did not consider the CSF "City funds" and therefore they were not included in the City's budget or in financial statements. In addition, the City was not aware that the bank account for the CSF was listed under the city's tax identification number.

Indeed, the City's independent audit firm has historically advised the City that the CSF was in fact a separate entity, not a public agency and therefore excluded from the City's annual audit protocol.

Many years ago a theft was discovered in the CSF. At that time, the CSF asked the Director of Finance, the Mayor, and the Mayor's secretary to sign CSF checks. It was the CSF's intention to avoid any future theft by segregating the check signing function. Although administration officials would sign checks, they relied on the Chief of Police to approve invoices as a checks and balances. The signatories on the checks received only vouchers that were signed by the Chief of Police. This shows that the CSF was not subject to the City's internal controls. The City also was not aware that the Chief of Police indicated to his officers that participation in the CSF program was a mandatory part of their jobs.

City's Corrective Action

Responsible Party – Legal Staff

Corrective Action Implementation Date: Completed

Yet, the City agrees with the recommendations in the report with regard to the CSF to the extent set for hereinafter. In fact, the City initiated corrective action prior to this report being issued.

The City continues to maintain that the CSF was a separate non-governmental entity whose expenditures were entirely dedicated to charitable, public service and civic purposes.

The CSF is now a non-profit Louisiana corporation, renamed The Greater Mandeville Police Foundation, Inc., which is governed by board members who are not employees or officials of the City. The non-profit corporation operates completely independent of City oversight, responsibility or funding. The Greater Mandeville Police Foundation, Inc. is currently awaiting approval from the Internal Revenue Service regarding its 501 c 3 nonprofit entity status. The City has ceased making any disbursements from the CSF. This new entity has assumed all assets, liabilities and equities of the Citizens Service Fund bank account.

No City staff member has been involved with any bank transaction of the CSF since March, 2008.

The new entity was formed in order to not be a related party of the City, not be a Component Unit of the City, and whose financials not be reported with the City financial statements pursuant to Generally Accepted Accounting Principles (GAAP).

The City will also review all potential component units and ensure that the City financial statements are in compliance with GAAP prior to the issuance of the City financial statements as of August 31, 2008.

AUDITOR'S CHALLENGE TO CITY CREDIT CARD USAGE

City's Position

All purchases by City employees using City-issued credit cards followed the general purchasing rules and regulations of the City. The City is not aware – nor has the Auditor called to the City's attention – any particular credit card purchase that is purely for a personal use. All purchases were for City business and were for a public purpose.

It is difficult, if not impossible, for the City to defend against the charge by the Auditor that credit card expenditures in the amount of \$8,845 “appear” to have been made for a personal purpose. The Auditor has refused to provide the schedule of these charges to the City, and the Mayor has assured the City that to his knowledge credit card purchases were for a public purpose. In fact, throughout his years of service, the Mayor has always reimbursed the City for any clearly identified personal credit card charges.

The audit addresses the issue of the Mayor incurring charges on a City credit card while on a cruise. As indicated in the audit report, the Mayor had mistakenly forgotten his personal credit cards at home. AG opinion 92-597 allows for use of a City credit card in an otherwise prohibited situation if an emergency, such as this. Additionally, all charges were reimbursed by the Mayor to the City.

The City procedure for support of entertainment charges is as follows: the credit card receipt should be marked to identify the attendees and the purpose of the expenditure. In the past, the City did not require an itemized ticket to support the expenditure; however, the City presently requires such an itemized ticket. The City believes that expenditures for meals and some celebrations achieve a public purpose as it promotes communication among staff members, members of the Planning and Zoning Board, vendors of the City, and the City Council.

City's Corrective Action

Person Responsible- Director of Finance

Corrective Action Implementation Date: September 30, 2008

Based on the limited information disclosed by the Auditor, the City continues to maintain that all or substantially all of the unidentified credit card expenditures, challenged by the Auditor, appear to be either 1) for a public purpose or 2) subsequently reimbursed.

Yet, the City agrees with the recommendations in the report and will adopt and enforce a written policy concerning Credit Card Usage which will provide guidance for the business use of credit card transactions.

Additionally, the City will ensure that the policy will require proper detailed documentation to be maintained and submitted timely. The policy will detail the maintenance procedures and supporting documentation required, to include the listing of all people attending any meals.

The written policy will describe disciplinary action for noncompliance and will be strictly enforced.

The policy will be approved by the City Council by means of an approved resolution.

AUDITOR'S ALLEGATIONS REGARDING "PERSONAL" USE OF CITY VEHICLES AND FUELMAN CARDS

City's Position

The City asserts that it does have a *written* review process for the use of Fuelman cards. The director of finance reviews the Fuelman reports monthly and makes notations as deemed necessary.

The City mistakenly believed that City vehicles being driven by public officials were exempt from the provisions of LSA-R.S. 49:121. The City acknowledges that vehicles not otherwise used in law enforcement should be marked with decals and public plates as required by the statute.

It was recommended that each cardholder maintain a vehicle log. In fact, cards are not assigned to officials. Instead, the card is assigned to a vehicle. Also, we submit that a daily log may be too onerous and inefficient.

In addition to all department heads and the Mayor, the City provided vehicles to all police officers and public works superintendents and assistant superintendents.

It has been the City's practice to allow department heads and the Mayor to use City vehicles for personal use. The City asserts that this is reasonable as all department heads and the Mayor are on call 24 hours a day, 7 days a week.

It is not in the City's best interest to have written employee contracts. The City does have verbal contracts with the employees who are allowed to use vehicles for personal use. It is not practical for every driver to maintain a vehicle mileage log. The City has adequate control by the review of the monthly Fuelman report.

City's Corrective Action

Person Responsible- Director of Finance

Corrective Action Implementation Date: December 31, 2008

The City will adopt and enforce a written policy as suggested by the Auditor regarding City vehicle use.

The City will adopt and enforce a comprehensive fleet policy regarding vehicle usage, to include personal staff usage and Fuelman Cards, with the following provisions:

The City will incorporate the current Fuelman Card policy into the new comprehensive policy.

The policy will, in writing, incorporate the past City practice of the Finance Director reviewing monthly Fuelman billings, considering average mileage, total mileage reported for the month, number of gallons received, considering the reasonableness of all of this, and requiring department directors to investigate and report back any unusual amounts noted.

The policy will address:

- 1) The description of the vehicle including make, model, and license;
- 2) The distance between the home address and the official domicile for purposes of calculating personal use reporting to the IRS;
- 3) Language indicating that the employee is responsible for all requirements which may be imposed by the IRS; and
- 4) Signed approval by an appropriate supervisor.

The policy will describe that the computer generated Fuelman monthly reports will constitute a vehicle mileage log.

The policy will require that the driver enter the correct odometer reading when fueling the vehicle.

The policy will require that the Fuelman card only be used for the assigned vehicle.

The City will require that vehicles not otherwise used in law enforcement be marked with decals and public plates as required by the statute.

AUDITOR'S ALLEGATIONS OF "IMPROPER" GIFTS

City's Position

There is nothing illegal with Mr. Stiebing traveling on a plane furnished by Mr. Meyer. Mr. Stiebing's "agency" (see LSA-R.S. 42:1102(2)a) was the Department of Finance, an agency different from the unit of government with which Mr. Meyer contracted. Moreover, Mr. Stiebing makes no decisions and has nothing to do with Mr. Meyer's contract with the City. Mr. Meyer did not incur any additional expense as a result of Mr. Stiebing riding on his plane. Therefore, the gratuitous plane ride was not a "thing of economic value" (see LSA-R.S. 42:1102(22)(a)). Mr. Stiebing paid for his own lodging and meals.

In regard to Don McMath, it is noteworthy that Mr. McMath is not a contractor to the City and therefore does not appear to be a prohibited source of gifts to the Mayor.

As to the purchase by Meyers of "drinks and meals", it is the position of the City that the provision of "food, drink or refreshments" is exempt from the restriction against receiving gifts (see LSA RS 42:1102(22)(a)).

As to Kyle & Associates, the audit report incorrectly records the Mayor and Councilman Coogan having received a gift of sporting trips. The City maintains that the trips were not provided by Kyle & Associates and in any event did not elevate to the level of a "thing of economic value". The trip was provided by Cajun Constructors, which was not a prohibited source of gifts. The City also maintains that, to its knowledge, Kyle & Associates is not a subsidiary of Cajun Constructors.

In regard to Coca-Cola, neither the Mayor, nor Councilman Coogan, nor the Director of Finance had knowledge of the future City contract with Coca-Cola at the time of the trip. Indeed, the City did not engage in any "partnership" with Coca-Cola. The Mayor and the Director of Finance were invited on the trip by Councilman Coogan who may have had a business relationship with Coca-Cola. LSA-R.S. 42:1115 prohibits gifts only from persons who the public servant "knows or reasonably should know" will become a governmental contractor. These public servants did not know, nor should they have reasonably known, that the City would later contract with Coca-Cola.

City's Corrective Action

Person Responsible- Director of Finance

Corrective Action Implementation Date: Immediately

The City defends the actions of the Mayor and the Director of Finance as they were unaware of the future contractual relationship at the time of the Coca-Cola fishing trip.

Yet, in the future, the City will ensure that no public servant – including the Mayor – will knowingly accept any gifts from any person or employee of any person who has or is seeking to obtain contractual or other business or financial relationships with the City.

AUDITOR'S COMMENTS REGARDING ALLEGED VIOLATION OF PUBLIC PROCUREMENT LAWS

City's Position

The report identified possibly questionable expenditures from 2003 through 2007 in the amount of \$991,626. During the period 2003 through 2007 the City paid vendors the total amount of \$57,601,243. The report is identifying as possibly questionable 1.7% of the total paid to vendors. The audit report focuses on an inconsequential portion of these expenditures, substantially all of which comported with applicable provisions of law. Nevertheless, the City is dedicated to ensuring in the future that all such expenditures carefully conform to procurement rules.

The City views its practices as controlled by state law. The Auditor unfairly focuses on discretionary "opinions" of the Attorney General which are not controlling.

The City acknowledges that it's made six disbursements totaling \$116,458 to LP Enterprises for work performed on Venus Drive. The City most certainly did not attempt to avoid compliance with the public bid law. Rather, this began as a small drainage project and the initial procurement of services from LP Enterprises was significantly less than the statutory limit for public bids. Because of reasonably unforeseen events and other public works considerations the extent of work expanded over a period of nine months through separate contracts and ultimately totaled \$116,458. The City could not have reasonably anticipated the additional scope of work that ultimately led to expenditures in excess of \$100,000.

The City acknowledges purchasing limestone and sand from LP Enterprises in excess of \$20,000 annually from 2003 to 2007. However, this was unintentional; as a result of unforeseen construction circumstances including weather, scheduling and storms, the City could not have reasonably estimated that the ultimate expenditure would exceed the statutory amount. Currently, in 2008 the City will not exceed \$20,000 in the purchase of sand and limestone.

The Auditor unfairly criticizes the City for using written purchase orders, arguing that these written purchase orders do not constitute a "written contract". This is not correct. The City requires purchase orders for all public works projects. The National Institute of Governmental Purchasing, *Certified Professional Public Buyer Guide*, states "a purchase order is a legal document that reflects the contract between the purchasing department and the seller." The City's purchasing officer receives training from the National Institute of Governmental Purchasing, Inc. Page 49 of the *Certified Professional Public Buyer Guide* states "a purchase order is a legal document that reflects the contract between the purchasing department and the seller". As noted above, all of the City's purchase orders are in writing.

City's Corrective Action

Person Responsible- Director of Finance

Corrective Action Implementation Date: September 30, 2008

The City will comply with all provisions of the Public Bid Law and all other applicable laws. The City will ensure the provision of surety bonds where required by law. In addition, the City will carefully monitor its construction needs to minimize those instances where, through necessary change orders, contract values exceed the statutory amounts.

AUDITOR'S UNFAIR CRITICISM OF CAMPAIGN GOLF TOURNAMENTS

City's Position

The legislative Auditor has failed to identify any City classified employee who "appears" to have assisted in the Mayor's annual golf tournament. Unclassified employees who did help volunteered to participate and assist in the tournament. Their involvement was not required and did not diminish or impede their attention to governmental work. There was no loss to the City or untoward gain by the Mayor to the participation by these department heads in the tournament.

City's Corrective Action

Person Responsible -- Personnel Director

Corrective Action Implementation Date: Immediately

The City will continue to ensure that classified employees will not participate in any political or fundraising activities that are proscribed by applicable City Civil Service regulations. The City will make certain that unclassified employees engage only in voluntary actions and will monitor leave and attendance records in order to ensure that any such activities are not conducted during compensated work hours.

AUDITOR'S INACCURATE CATEGORIZATION OF "WEAK" BUSINESS PRACTICES

Auditor's Allegations of "Violations of City Purchasing Policies"

City's Position

The City's purchasing policies, which will be carefully monitored for compliance in the future, are more restrictive than the Public Bid Law.

The Auditor repeats allegations addressed by the City previously. Moreover, it is noteworthy that the Auditor concedes that the City's purchase policy "promotes

competition for goods and services purchased by the City". As set forth above, the City will dedicate additional resources to continue to ensure that all of its procurement practices are in compliance with applicable provisions of law.

The Auditor states that on 84 occasions the City failed to obtain and/or document at least 3 telephone bids for purchases greater than \$250 but less than \$10,000 as is required by its policy. The Auditor refused to provide documentation regarding these alleged non-conforming occurrences. The Auditor would not provide the City with a list of these 84 occasions, but it is the assumption of the City, lacking of cooperation from the Auditor, that the vast majority of these events involved "tree cutting" activities of minimal expense to the City. These are frequently of an "emergency" basis and under circumstances such that seldom was it practicable to obtain "three competitive bids". It is noteworthy that, as a result of the emergency nature of these undertakings, strict compliance with the Auditor's interpretation of the procurement code could lead to endangerment of citizens and property.

The Auditor has criticized the City for not obtaining three bids for public works projects greater than \$10,000 but not exceeding \$20,000. State law does not require government to obtain 3 bids. The City's procurement practices were in complete compliance with law. The City's contracting requirements were also in compliance with applicable law as to public works projects exceeding \$20,000 but less than \$100,000.

City's Corrective Action

Person Responsible - Director of Finance

Corrective Action Implementation Date: Immediately

As previously stated, the City will continue to carefully monitor its acquisition of construction services in order to completely comply with all applicable procurement rules and regulations

Purchases Made in "Possible Violation of Louisiana Laws"

City's Position

Representatives of the City have always been mindful of Article VII, Section 14 of the Louisiana Constitution and give proper consideration to the corresponding opinions of the Attorney General. However, the City maintains that modest holiday and special occasion parties for recognition of faithful service by its employees are indeed for a legitimate "public purpose". And, these holiday and special occasion office parties are widely accepted at all levels of government.

Annually, the City expends \$1,300 for a Christmas lunch for City employees. Each department has their own luncheon at their respective buildings. The City maintains this promotes a public purpose because of the increased morale and productivity that is

gained from this simple and inexpensive event. The City's cost for this special occasion events is less than \$10 per employee.

The "Mayor's inauguration" in 2004 was, in fact, for both the Mayor and the newly elected members of the City Council. It was held at the Community Center, and the public was invited.

The City has historically provided retirement luncheons for employees entering the City's retirement system. The City also presents the retiree with a gift under \$100. This recognition of the City's long-term faithful employees has had a highly positive effect on the morale, dedication and longevity of the City's workforce, has promoted public efficiency and has always been reasonably viewed as for a demonstratively public purpose.

For these same reasons, in 2006 and 2007 the City expended \$755 on 2 crawfish boils for National Police week and National Public Works week. Again, these events were broadly applauded as supporting law enforcement principals, public safety in general and the overall welfare of our citizenship.

City's Corrective Action

Person Responsible - Director of Finance

Corrective Action Implementation Date: N/A

The City is in sharp disagreement with the Auditor over whether or not these employee recognition events advance a legitimate public purpose. To the contrary as set forth above the City maintains that these modest expenditures encourage public support for essential governmental functions, underscore recognition of valued employees and promote dedication and determination among the City's workforce.

Allegations of "Lack of Controls Over Inventory"

City's Position

The City's Capital Budget Policy requires recordation of any equipment "purchases" over \$5,000 if the item purchased has a lifespan of more than 3 years. The Auditor unfairly criticizes the City for its acquisition of emergency generators (valued at \$450 each) used in the aftermath of Hurricanes Katrina and Rita. These generators were not purchased by the City; rather, they were donated to the City by an altruistic citizen. The Auditor's criticism is misplaced. In any event, half of the generators were provided to the City of Slidell for its emergency effort.

The donated items did not exceed the City's capitalization threshold as recommended by the Auditor. Furthermore, this instance occurred in the aftermath of Hurricane Katrina

when the administration of the City was singularly focused on the City's recovery and the safety of its citizens.

City's Corrective Action

Person Responsible - Director of Finance

Corrective Action Implementation Date: September 30, 2008

The City will continue to administer its written inventory policy to comply with GAAP and to include the following provisions:

The City will record all assets purchased and/or donated that individually or in the aggregate total more than \$5,000 in the asset section of the general ledger.

The City will ensure that quantities of sand and limestone delivered to the City's public works department will be inventoried, verified and recorded.

The City will continue to maintain a manual or computerized asset listing.

The City will continue, as required by law, to conduct a physical inventory of such assets and adjust the City general ledger to the amount documented by the physical inventory.

The City will continually modify its accounting policies to agree with GAAP on all issue.

Travel

City's Position

Government travel by City employees is infrequent, inexpensive and represents less than 0.2 % of the City's annual budget. The City's unambiguous travel policy has been enforced. The Auditor's criticism of the policy "not being in writing" ignores the consideration that travel expenditures have been in compliance with regulations.

City's Corrective Action

Person Responsible - Director of Finance

Corrective Action Implementation Date: December 31, 2008

The City will enact a written travel policy for all employees – classified and unclassified - including the following provisions:

The definition of allowable travel

Develop and distribute a travel authorization form and will require its completion and execution prior to any such travel. The City will develop and distribute an expense report detailing all expenditures from public credit cards. The expenditure report will detail the territory travel and the commencement and end date. The report will be signed and certified by the person claiming reimbursement and approved by supervision.

The City will develop a detailed travel policy based on the State Division of Administration travel manual including at least the following:

- 1) Definition of allowable travel;
- 2) Provisions for employee reimbursement whether by actual expenses or per diem;
- 3) Per diem rates for meals and hotels in and out of state;
- 4) Mileage reimbursement rates;
- 5) Guidelines for overnight travel;
- 6) Documentation required to substantiate reimbursement; and
- 7) Provisions for disciplinary action for non-compliance.

Auditor's Concerns Over the "Violation of State Laws (Mandeville Trailhead Foundation and City)"

City's Position

The Auditor makes no allegation of intended wrongdoing on the part of either the Foundation or the City. Rather, the Auditor "suggests" that perhaps the Foundation's financial statements should have been incorporated into the City's financial statements

The City accepts the Auditor's recommendation that the Foundation should be subject to public audit; accordingly, the City will recommend the inclusion of the financial affairs of the Foundation in the City's audited financial statements.

City's Corrective Action

Person Responsible - Director of Finance

Corrective Action Implementation Date: Undetermined; as soon as practicable

As noted above, the City will recommend that the financial affairs of the Foundation be audited for inclusion in the City's annual audited financial statements.

The City will also execute a "cooperative endeavor" agreement with the Foundation, thus demonstrating that:

- 1) There is a public purpose for the expenditures made;

- 2) The expenditure or transfer, taken as a whole, does not appear to gratuitous:
and
- 3) That there is evidence that the City has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

In closing, - as previously discussed - it is regrettable that the Auditor has:

- 1) Refused to provide requested details of certain allegations;
- 2) Has failed to provide copies of its work papers;
- 3) Has declined to return the City's original (and legible) public records; and
- 4) Has refused to grant the City sufficient time in which to fully respond to the Auditor's grave allegations and misstatements.

A more cooperative relationship certainly would have advanced the public's interest.

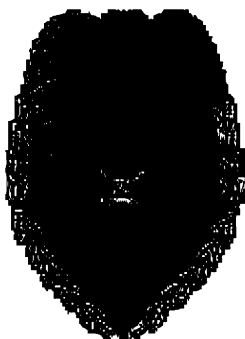
Yours truly,

R. Gray Sexton



cc: City of Mandeville

Mandeville Police Department



1870 U.S. Hwy 190
Mandeville, LA 70448
Ofc. (985) 624-3120
Fax (985) 624-3125

Fax Transmittal

Date: Friday, August 08, 2008

Attention: Mr. Dan Daigle

Contact Number: 225.339.3800

Fax Number: 225.339.3987

From: Mandeville Police Department – Chief Buell/Heidi Kinlaw

Reference: Response to Audit

No. of Pages (incl. coversheet): 3

Message

Mr. Daigle,

Please accept this as my response to the CSF Audit.

A handwritten signature in cursive script that reads "Thomas H. Buell".

Thomas H. Buell
Chief of Police

Mandeville Police Chief Tom Buell's Response to the Legislative Audit Report on the Citizen Service Fund

This response is only to clarify, in my opinion, certain sections of the audit.

At no time did I consider the Citizen Service Fund (CSF) as part of the city operating budget, or a city fund. However, the fund was being handled by the city's bookkeeping department. I had verified on two occasions with the city's auditors the CSF did not need to be included in the city audit, as the fund was not a city account.

The solicitation letter sent to citizens identifies many areas funds can be used to include Toys for Tots, emergency help for victims of disaster, senior citizen visits, aid for travelers, overnight accommodations for persons needing immediate help, employee recognition programs, citizens of 4th Ward who need temporary help in bad times, and emergency care for animals.

The Toys for Tots Program was supported by solicitation mail outs, which provided us with donations of money and a large amount of toys. We provide at least five toys per child and distribute each year to between 300 and 600 needy children. We receive between 3,500 and 4,500 toys, in addition to, those from The Times-Picayune's Doll and Toy Fund.

After discussion with Mr. Stiebing, City Finance Director, it was decided the account would be maintained by the city bookkeeping department as a separate account. We are unable to comment on the January 08, 2004, letter, as we are unable to review a copy of the letter and do not recall the letter. I believe the purpose would be to authorize an officer to be included in a job function duty of working within the Toys for Tots function.

The sponsorship we paid for covers a wide range of programs from football teams to organizations which work with our youth. We also have sponsored charitable golf tournament holes.

We purchase candy and fruit at Christmas which is distributed at many events where we receive toys in return for a box of chocolate candy. We deliver fruit and candy to six nursing homes and fruit baskets to friends of the police department.

The CSF sponsored one crawfish boil each year for city employees and a Christmas party or Christmas lunch.

Flowers were purchased when an employee or an associate of the police department or family member was hospitalized or passed away.

The gift card program at Christmas was distributed to citizens and employees who had needs at Christmas. The needs ranged from spouses who were ill, to employees who were raising another family member's children and needed help. Each year, the list was reviewed and the employees could change each year depending on the need. At no time did every employee receive gift cards.

The cards were also distributed immediately before Christmas to needy people who missed the toy giveaway and were identified to us; thus the lack of supporting documentation on some cards.

The Mandeville Seafood Festival food purchase fed the working police officers and sheriff's deputies at the command post during the festival.

The CSF sponsored the candy for the Christmas Parade in Mandeville.

The CSF sponsored the Annual Police Awards Program each year honoring police officers for their service to the community. The police monument at the Trace and U.S. 190 tunnel was a CSF project with money collected separately through the CSF for the memorial. CSF is, at the end, a sound financial program.

The CSF has been closed and the new Mandeville Police Foundation established and administered by a citizen board chartered as a corporation by the state applying for non profit status.