



**CITY OF BRANSON, MISSOURI
YEAR ENDED SEPTEMBER 30, 2002**

**From The Office Of State Auditor
Claire McCaskill**

**Report No. 2003-76
July 30, 2003
www.auditor.state.mo.us**

AUDIT REPORT



Office Of The
State Auditor Of Missouri
Claire McCaskill

July 2003

The following problems were discovered as a result of an audit conducted by our office of the City of Branson, Missouri.

The city has expended approximately \$29 million for the development of a waterfront project and a convention center on lakefront property in the downtown area. There has been extensive controversy over the development, and the city is currently involved in two pending lawsuits. Our review of the project noted work was performed on the development prior to entering into written contracts, some costs were questionable due to the lack of documentation, bids were not solicited for some services, and an independent feasibility study was not obtained prior to committing to the project.

The city has expended over \$1.7 million to subsidize the principal and interest payments on bonds for the Branson Meadows Development Project as of September 30, 2002. While in 1995 the city initially estimated a gain of approximately \$19 million, this project has fallen short of meeting original estimations and it appears unlikely that the city will break-even on the project.

The city does not adequately monitor tourism tax collections. Our review noted several business licenses were renewed even though delinquent tourism taxes were owed, and penalties and interest were not consistently applied to delinquent accounts. In addition, concerns were noted regarding the marketing portion of the city's tourism tax funds.

Large payments were made to city administrators and directors for "special leave", unused vacation and sick leave, and deferred compensation with no evidence of prior board approval. In addition, payments made during 2001 and 2002 to select city employees totaling \$56,733 for "special leave" appear to be in violation of the Missouri Constitution. Further, the City Administrator received \$19,263 for unused vacation and sick leave; however, leave records maintained by the city were unreliable.

Financial information prepared by the city to inform city residents and the Board of Aldermen of the city's financial position was often incomplete, inaccurate and lacked adequate detail. For instance, \$4 million in reserve funds were not reflected in the city's budget, and a \$1.3 million transfer was omitted from the city's Tourism Tax Fund budget. In addition, there was a \$2.8 million difference between the ending and beginning fund balance reported in the city's published financial statements.

YELLOW SHEET

The city pays for approximately seventy-seven cellular phone plans for various city departments and employees. Cellular phone expenditures totaled approximately \$21,800 for the year ending September 30, 2002. The city has not established a written policy regarding cellular phones, and confusion exists among city employees as to whether personal calls are allowed and should be reimbursed to the city.

Several weaknesses were noted with the Board of Aldermen's procedures for closed meetings. Open meeting minutes were not always maintained or signed attesting to their accuracy. In addition, it is not evident if the city is complying with the Sunshine law regarding public requests for information.

The audit also includes some matters related to city vehicles and contractual agreements.

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CITY OF BRANSON, MISSOURI

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STATE AUDITOR'S REPORT



CLAIRE C. McCASKILL
Missouri State Auditor

To the Honorable Mayor
and
Members of the Board of Aldermen
Branson, Missouri

The State Auditor was petitioned under Section 29.230, RSMo, to audit the city of Branson, Missouri. The scope of our audit of the city included, but was not necessarily limited to, the year ended September 30, 2002. The objectives of this audit were to:

1. Perform procedures to evaluate the petitioners' concerns.
2. Review compliance with certain legal provisions.
3. Review certain management practices which we believe could be improved.

Our audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such procedures as we considered necessary in the circumstances. In this regard, we reviewed minutes of meetings, written policies, financial records, and other pertinent documents and interviewed various personnel of the city.

Our audit was limited to the specific matters described above and was based on selective tests and procedures considered appropriate in the circumstances. Had we performed additional procedures, other information might have come to our attention that would have been included in this report.

The accompanying History, Organization, and Statistical Information is presented for informational purposes. This information was obtained from the city's management and was not subjected to the procedures applied in the audit of the city.

The accompanying Management Advisory Report presents our findings arising from our audit of the city of Branson, Missouri.



Claire McCaskill
State Auditor

March 19, 2003 (fieldwork completion date)

The following auditors participated in the preparation of this report:

| | |
|---------------------|---------------------------------------|
| Director of Audits: | Thomas J. Kremer, CPA |
| Audit Manager: | Donna Christian, CPA, CGFM |
| In-Charge Auditor: | Sharon Eagleburger |
| Audit Staff: | Ted Fugitt, CPA Saundra Ohern, CPA |

MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

CITY OF BRANSON, MISSOURI
MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

1. Branson Landing Development Project

The city has expended approximately \$29 million for the development of a waterfront project and a convention center on lakefront property in the downtown area. There has been extensive controversy over the development, and the city is currently involved in two pending lawsuits. Our review of the project noted work was performed on the development prior to entering into written contracts, some costs were questionable due to the lack of documentation, bids were not solicited for some services, and an independent feasibility study was not obtained prior to committing to the project.

On August 17, 2001, the City of Branson entered into a predevelopment agreement with Branson Landing LLC (BLLLC), to "develop a convention center development on its Lake Taneycomo waterfront." The predevelopment agreement indicated BLLLC assembled and would acquire the lakefront property for development, and should the project be terminated, the city would be liable for \$3 to \$5 million of BLLLC's project costs. Closed meeting minutes of the Board of Aldermen for November 13, 2001, indicate that it was the consensus of the board to proceed with the acquisition of the lakefront property with or without the development of the convention center. On November 29, 2001, the city entered into a sale and assignment agreement with BLLLC to terminate the project as defined in the predevelopment agreement and subsequently paid BLLLC \$5 million for their work product and the options to purchase the assembled lakefront property. In December 2001 the city exercised the real estate options, and paid \$19.8 million for approximately 26 acres of lakefront property. According to the sale and assignment agreement if the city proceeds with the project, BLLLC maintains the first and last opportunity to contract with the city to manage the convention center.

Subsequent to the city terminating the project, BLLLC filed a lawsuit against the city in federal court alleging they are still the developer of the lakefront project. In March 2003 BLLLC filed a second suit in state court requesting an injunction to prevent the city from proceeding with the lakefront development. These cases are still pending.

Prior to entering into the predevelopment agreement with BLLLC and committing the city to \$3 to \$5 million, the city did not have an independent study analyzing the feasibility of a convention center in the lakefront area. Without such a study city officials had no independent professional analysis to determine if a convention center was feasible. The city subsequently entered into an agreement with a company to conduct a feasibility study and received some preliminary results in October 2001 (approximately two months after signing the predevelopment agreement). However, the final report of this study was not presented to the board until August 2002.

According to city officials, since the Board of Aldermen decided to concentrate the development on the lakefront property controlled by BLLLC, bids or proposals were not solicited from developers prior to signing the predevelopment agreement. Subsequent to terminating the agreement with BLLLC and acquiring the lakefront property, the city solicited proposals from developers to continue the project.

According to terms of the real estate options exercised by the city for the lakefront properties, "development fees" up to approximately seven percent were paid to an individual responsible for negotiating the real estate option contracts. While most of the option contracts specified that the property owner pay the development fee, two option contracts required that the buyer (the city) pay the development fees. Litigation, not involving the city, has been filed by a former property owner regarding the legality of the development fees. The litigation is currently pending. The city paid \$264,050 in development fees, and in June 2002 paid \$1.5 million for 5.6 acres of additional property in the lakefront area which was owned by the same individual who received the development fees.

On November 27, 2001, the board passed an ordinance authorizing the borrowing of \$32.5 million through bond anticipation notes. On February 25, 2002, the city passed an ordinance refinancing the \$32.5 million bond anticipation notes at an amount not to exceed \$33.5 million. These funds were used to purchase the lakefront property, pay BLLLC the \$5 million, purchase additional property, and provide funding for demolition and the work of consultants. City records indicate that as of April 28, 2003, approximately \$4.5 million remained on hand, and approximately \$29 million had been expended on the lakefront development project.

Branson Landing Development Cost

| Type | Amount |
|------------------------------------|------------------------|
| Land purchase | \$21,337,960 |
| BLLLC | 5,000,000 ¹ |
| Demolition and asbestos removal | 769,973 |
| Bond issuance cost | 397,005 |
| Legal fees | 281,470 |
| Bond interest | 270,906 |
| Architect | 254,843 |
| Program development | 155,862 |
| Governmental relations attorney | 111,447 |
| Development fees | 100,000 |
| Feasibility study | 93,882 |
| Legal fees for BLLLC litigation | 50,917 |
| Consulting fees | 30,000 |
| Postage, publication, and printing | 27,965 |
| Appraisal | 25,046 |
| Study tour | 18,245 |
| Permit fees | 3,053 |
| Total | \$28,928,574 |

Source: City financial records

¹ Included in this amount are option fees totaling approximately \$500,000 paid to land owners at the time option agreements were negotiated. Information provided to the city indicates BLLLC also incurred costs totaling approximately \$6 million for legal, architectural, consulting, and financial advising services on the Branson Landing project.

In January 2003 the city approved the issuance of \$56 million in 30-year permanent bond financing for the purpose of paying off the \$33.5 million in temporary bonds, as well as to pay off three other bond issues for unrelated projects. According to city ordinance, these permanent bonds did not require voter approval and are not considered an indebtedness of the city within the meaning of any provision of the constitution or laws of the State of Missouri. The bonds are secured by an assignment of a leasehold interest in leased property, which includes the city hall and fire station.

During our review of the expenditures related to the project, the following concerns were noted:

- A. On November 21, 2001, the City Administrator signed a contract with Integra Realty Resources for \$23,000 plus expenses to conduct an appraisal of the lakefront property. There was no documentation that the city solicited bids or proposals for the appraisal. The appraisal document shows an effective date of November 20, 2001 (1 day prior to entering into the contract), and indicates that company representatives inspected the property on various dates in October and November 2001. It is not clear why the effective date of the appraisal and inspections of the property were performed prior to the date of the contract.

Further, the Board of Aldermen minutes recognize the need for an appraisal of the lakefront property as early as October 8, 2001. In a January 16, 2002, memo to

the Board of Aldermen, the City Administrator indicated a contract was entered into with Integra Realty Resources through the city's emergency purchase code which is not subject to the city's normal bidding policy or prior approval by the Board of Aldermen. Considering the board's acknowledgement of the need for an appraisal, it is unclear how this constituted an emergency purchase.

The properties purchased by the city were appraised on an assembled basis at approximately \$22.3 million. (The total appraised value of this property, plus lakefront property already owned by the city was approximately \$25.4 million.) The city received preliminary results of the appraisal via fax on November 28, 2001, one day after the Board of Aldermen approved an ordinance to borrow \$32.5 million. While the appraisal did not appraise each property separately, the amount the city paid to property owners ranged from \$180,000 to \$4.7 million.

In addition, the city had no documentation to support \$2,046 of expenses reimbursed to Integra Realty Resources. The city should obtain adequate documentation to ensure expenditures are reasonable and necessary.

- B. On December 12, 2001 the City Administrator signed an engagement letter with CORE Program Development, Inc. for \$125 per hour plus out-of-pocket costs to review documents pertaining to the Branson Landing Project. According to invoices, CORE began providing services to the city as early as November 27, 2001. Again, the City Administrator reported to the Board of Aldermen on January 16, 2002, that this was an emergency purchase which is not subject to the city's normal bidding policy or prior approval by the Board of Aldermen. On February 20, 2002, the Board of Aldermen signed another agreement with CORE to be a consultant on the Branson Landing Project. No bids or proposals were solicited for either of these services and the reasons for not soliciting proposals was not documented.

In addition, neither agreement with CORE established a maximum amount to be paid for services and expenses. According to city records as of April 28, 2003, \$155,862 has been paid to CORE. During our review of one invoice paid by the city, we noted charges for alcoholic beverages of \$33. Additionally, amounts as high as \$946 for a round trip flight from Dallas to Springfield were incurred while some flights cost less. Given that the contracts did not establish a maximum amount to be paid, the city has no assurance the amount paid for the service is reasonable. Further, the city cannot adequately control expense reimbursements to ensure they are reasonable and necessary. The city should ensure maximum amounts are included in all hourly rate agreements to help control and monitor the costs.

- C. On January 28, 2002, the city approved an agreement with Crawford Architects for \$102,900 plus out-of-pocket costs not to exceed \$14,500. A change order dated May 16, 2002, increased the contract by \$5,275. Based upon invoices of work performed by the architect, services were provided as early as January 14,

2002, (14 days prior to the date of the contract). While the City Administrator reported to the Board of Aldermen on January 16, 2002, that an agreement had been entered into with Crawford Architects as an emergency purchase which is not subject to the city's normal bidding policy or prior approval by the Board of Aldermen, there is no documentation of a written agreement prior to January 28, 2002. In addition, bids or proposals were not solicited for these services. See MAR No. 6.

- D. In September 2001 a group of citizens and six city representatives went on an 8-day tour of various waterfront attractions and convention centers across the country. The purpose of this tour was to study developments similar to the one being considered by the city. The tour included visits of developments in Dallas, Orlando, Baltimore, Philadelphia, Seattle, San Diego and San Antonio. The city paid \$18,245 for the expenses of three board members and three employees.

Of the \$18,245 in tour related expenses paid by the city, \$14,297 was paid as a reimbursement to BLLLC who planned the trip. The city did not have adequate supporting documentation to ensure the \$14,297 reimbursed to BLLLC was accurate and consisted solely of allowable expenditures. In addition, the payment was only approved by the Finance Director; however, city policy requires all expenditures over \$5,000 to also be approved by the City Administrator. The remaining \$3,948 represented trip expenses paid using a city credit card. The city did not have adequate supporting documentation to substantiate some city credit card expenditures to ensure these consisted of reasonable and necessary expenditures.

- E. In May 2002 the city solicited proposals for the development of the lakefront property as well as a convention center. While the original agreement with BLLLC and the appraisal of the lakefront property indicate the lakefront was to be the site of the convention center, the request for proposals did not require the convention center to be located on the city's lakefront property. In December 2002 the city entered into a technical service contract with HCW Development Company to proceed with the convention center and lakefront development. Upon execution of this agreement, the city paid HCW Development Company a \$100,000 deposit on the \$500,000 encumbered for development fees. The developer will be paid four percent of the costs related to designing and constructing the development.

The technical services agreement and the redevelopment contract with HCW Development Company provide for a maximum of \$7,500 per month be paid to Graf Consulting, and specifies they will be treated as an unrelated third-party. (Graf Consulting also provided consulting services through the city's original developer, BLLLC with whom litigation is currently pending.) As of April 30, 2003, the city has paid \$30,000 to HCW Development Company for services provided by Graf Consulting during January through April 2003. Invoices to support the \$30,000 were not adequately detailed, only including a brief

description of the work performed. In addition, it appears the invoices for January and February were identical as were invoices for March and April. Also, based upon the dates of the invoices, payments were made in advance of services performed. The agreement indicates that a detailed invoice must be presented for reimbursement by the city.

The technical service agreement also required HCW Development Company to obtain retail commitments no later than June 1, 2003. In February 2003 the city entered into a restated technical services contract and a redevelopment contract with the developer and extended the deadline to obtain retail commitments until January 1, 2004.

The city has invested \$21.3 million in lakefront property and is now planning on acquiring additional property west of the lakefront property for the convention center. The current contract with the developer allows the option of obtaining additional land for the convention center by eminent domain, and the option for the developer to negotiate the purchase of additional property on behalf of the city. If the developer negotiates the purchase of land, the latest contract with HCW Development Company indicates the cost of the land shall not exceed the fair market value of the land at an assembled basis. In addition, the city has agreed to pay the developer a fee of four percent of the purchase price for assembling the property.

According to city estimates, the lakefront development project is anticipated to cost approximately \$484 million (\$307 in development costs, and \$177 in interest and financing costs). The city's share of the development costs will be approximately \$150 million, including the \$33.5 million in bond financing discussed earlier, and approximately \$116.5 million the city plans to obtain through additional bond financing.

Approximately 208 acres in the Branson lakefront area has been declared blighted, and application was made to the Missouri Department of Economic Development for the area to be approved as a tax increment financing (TIF) project pursuant to Section 99.800 to 99.865 RSMo. According to the city's TIF proposal, payments in lieu of taxes (PILOTS); which are incremental increases in property taxes on real estate in the TIF area, and 50 percent of the incremental increase in the economic activity taxes (EATs); which are sales taxes generated in the TIF area will be pledged as security for the bonds.

The city's January 2003 TIF proposal anticipates collecting approximately \$336 million from the economic activity taxes (EATS) and payments in lieu of taxes (PILOTS) during the 23 year term of the TIF plan. (This estimate includes 50 percent of the incremental increases in state and county sales taxes, and 100 percent of the incremental increase in city sales tax, as well as amounts collected from the city's tourism tax and food and beverage tax. The estimate further assumes the creation of a Transportation Development District with all of the one-percent assessment available. Further, income estimations are based upon sales of over \$170 million during 2004 increasing by as much as 15 percent in 2005 upon project completion, and increasing from 2 to 7 percent each subsequent year until 2025.)

In addition to the city's share of the development costs (\$150 million), the city estimates interest and financing costs to total \$177 million making the city responsible for a total of \$327 million. The city previously used similar financing on the Branson Meadows development project, see MAR No. 2.

In June 2003 the state's participation in the Branson Landing TIF was approved at approximately \$54.6 million for 19 years. The city's TIF proposal estimated the state's participation to be approximately \$60.4 million for 23 years. The city is currently compiling new project cost and revenue estimations.

Considering the handling of some of the contracts, the lack of documentation surrounding the project, and that significant costs are projected for years to come, the board needs to review past transactions as well as project estimates to ensure the city's resources will not be exposed to unnecessary risk.

WE RECOMMEND the Board of Aldermen review the transactions for the Branson Landing development for propriety, adequate documentation, and compliance with the city's bidding and purchasing policies. In addition, the Board of Aldermen should continue to review the proposed project, including the TIF revenue projections, to ensure the city's resources will not be exposed to unnecessary risk.

AUDITEE'S RESPONSE

The Board of Aldermen strongly disagrees with the Auditor's opinions in MAR 1. Before taking any action, the Board of Aldermen retained the services of professional consultants in various fields, including law, investment banking, and accounting. A primary reason for retaining those professionals was to insure that the Board acted properly at all times under state and local law. In addition to obtaining professional input, the Board sought the collective input of the citizens of Branson through numerous public meetings. The Board's actions throughout this project, as demonstrated by the auditor's lack of any findings that the Board violated any laws, illustrate that the Board's course of action throughout this project ensured that the project met or exceeded the requirements of all state and local laws. At its essence, MAR 1 is nothing more than the auditor's personal opinion – an opinion that simply differs from the collective judgment of the duly elected governing body of the City of Branson. Throughout this process all expenditures have been reviewed by the Board and the Board's consultants, and were subject to the Board's judgment of whether the expenditures are a prudent use of taxpayer funds. The auditors should not substitute their opinion in place of those of the duly elected local authority.

Prior to specifically itemizing issues in MAR 1, A through F, the auditors made statements in the opening paragraphs of MAR 1 that must each be addressed. These issues are as follow:

- *The auditors stated that the City should have acquired an independent study on the feasibility of a convention center on the waterfront. The City, prior to entering into a predevelopment agreement with BLLLC, was given access to four separate reports by convention center authorities that concluded that a convention center was feasible anywhere in Branson. Furthermore, prior to*

signing the Branson Landing Predevelopment Agreement, the City obtained the opinion of Convention Sports & Leisure, Inc., that the lakefront was the most desirable location for a convention center.

- *The auditors stated that bids or proposals were not solicited from developers prior to signing the predevelopment agreement with BLLLC because the Board had decided to concentrate the development on the BLLLC lakefront property. The implication from this comment by the auditor seems to be that the city was only willing to deal with BLLLC to the exclusion of other developers. The City notes that the following accurately denotes the sequence of events leading up to the actual selection of a developer. First, the City did not select a developer for what eventually became the City's lakefront property until 2002 when HCW was selected. Instead, in 2001 at the inception of the lakefront project, both the City and County, after public hearings, selected the lakefront location only for the City's convention center. Second, only then did the City begin to deal with the owner of the land, BLLLC, to purchase and develop the City's convention center site. And, third, concurrent with the development of the convention center site, the City planned, through the use of Tax Increment Financing, to encourage the private redevelopment of the lakefront to generate TIF dollars to finance the convention center. Only at that point did the City enter into a predevelopment agreement. BLLLC was the owner of all the assembled real estate (via land option contracts) and there was no rational basis, and certainly no legal requirement, to solicit bids or proposals for the predevelopment agreement. It would be illogical to impose such a requirement because BLLLC was the only entity that could respond to a bid or proposal. To require the City to conduct a Request For Proposal (RFP) process at that point would be similar to requiring the City to take bids or proposals when it needs to acquire a certain piece of road right-of-way. The location selection process is thoroughly documented in minutes of joint meetings of the Board of Aldermen and the Taney County Commission. The City, once again, encourages the auditors to review the minutes that clearly document the events stated above.*
- *The City also takes issue with the auditor's inclusion in this report of litigation surrounding development fees. The fact is that the mentioned pending litigation in no way involves the City. This information serves no purpose other than to obscure the facts surrounding the lakefront development and to confuse the public.*

- A. *The Board of Aldermen disagrees with the Auditor's opinion regarding the Integra contract. Documentation demonstrating that proposals were solicited and received has been provided to the auditors. Additionally, not only did the City follow all state laws and city code, it exceeded those requirements by obtaining and documenting proposals when proposals were not even required by law. The auditor's comments regarding the effective date of the execution of the contract with Integra are irrelevant. The City was not bound to any contract until both the City and Integra executed it. The fact that*

Integra was performing services prior to executing the contract was a risk borne entirely by Integra.

The expense reimbursement to Integra was reviewed for reasonableness by city staff prior to being authorized. There is no requirement that expenses be itemized or documented unless specifically stated in the individual contract. The Board of Aldermen will review the City's current practice.

- B. *The Board of Aldermen disagrees with the Auditor's opinion regarding the CORE Program Development, Inc., contract. Like Integra, CORE began working prior to signing a contract. Again, this action by CORE was immaterial to the City since the City bore no risk until the parties executed an agreement. In addition, the City's retention of professional services is not required to go through a Request For Proposal process. This method of engaging professional services is consistent with all state and local laws.*

The auditor's mention that City did not place a maximum dollar limit on the CORE contract fails to understand the purpose of hourly contracts. As the auditors should be aware, when parties cannot, in advance, define the scope of services or the length of time required to perform those services, they enter into an hourly contract. Attorneys, engineers, architects, accountants, etc., often use this type of contract. It is especially ironic that state law creates what amounts to a contractual relationship between municipalities and the state auditor that allows the auditor to charge the actual cost (an hourly rate) to the citizens of Branson. There is no maximum dollar limit on what the auditor can charge, and as of the date of this response, the auditor has exceeded the cost estimate given to the citizens by at least fifty percent.

The City accepts the auditor's finding that a vendor, as part of a \$7,300 invoice, submitted an expenditure of \$19.50 for alcohol. This expenditure, while inadvertently submitted by the vendor, has been reimbursed to the city.

- C. *The Board of Aldermen found that the auditor's claim that there is no documentation of a written agreement prior to January 28, 2002 for architectural services provided by Crawford Architects to be false and that the City complied with all state laws and City Codes. The Board of Aldermen believe that the auditors fail to recognize the following:*

1. *The Board of Aldermen, after November 30, 2001, was no longer working with BLLLC as the owner of the property. The City had, at that time, become the owner of the waterfront property. The decision by the Board of Aldermen to purchase the property materially changed the complete nature of the waterfront project and required the City to take certain immediate steps as the new owner to protect the City's interests that included certain emergency purchases.*
2. *An agreement was signed on December 27, 2001, with Crawford Architects pursuant to City Code 160.140.*

3. *The Aldermen were aware of this agreement. However, the City of Branson held only one Business meeting in December 2001. Because of the necessity to continue the 404 Process with the Corps of Engineers, it was critical to have Crawford Architects continue working. A thirty-day delay was not acceptable to the Board of Aldermen and the only way to continue was through the emergency purchase provision of the City Code.*
4. *Since there was only one business meeting in December 2001, and since there had been three emergency purchases in the interim, the Board of Aldermen took the additional and non-required step of presenting those purchases at its regularly scheduled January 28, 2002 meeting. Although not required by law to do so, the Board of Aldermen chose to go beyond what is required to ensure that the public was informed of those agreements. Anyone disagreeing with those purchases could have done so at the January 28, 2002 meeting. The minutes reflect that no members of the audience objected to those agreements.*

The Board of Aldermen disagree with the auditor's reasoning as to why the Crawford Architect agreement is an issue and even included in this report. The Board not only complied with all laws, they also went above and beyond all legal requirements to insure that the public was informed. The auditor also fails to account for the fact that Crawford had been retained by BLLLC when the BLLLC was still working on the project. Further, under the Sale and Assignment Agreement executed by the City and BLLLC, the City had acquired the entire work product generated by Crawford. Since Crawford was already the architect working on the project, it would have been financially unwise for the City to seek other architects. If the City had advertised for and selected another architect, the City would have paid twice for work that Crawford had already performed. In addition, the City would have suffered an unavoidable delay in the project while the new architect became familiar with the project and performed the same work previously completed by Crawford. By retaining Crawford, the City was able to utilize the services of a professional architect familiar with the project. This decision also allowed the Board of Aldermen to keep the project moving forward.

- D. *The Board of Aldermen disagrees with the auditor's opinion that the City did not have adequate supporting documentation for an expenditure of \$18,245 for an eight-day inspection trip to examine other waterfront development projects. The Board of Aldermen also disagrees with the auditor's assertion that those expenditures had to be approved by the City Administrator. The Board of Aldermen made the decision to take the trip and incur the expense. Because the purpose of the City's Purchasing Code is to ensure that the Board of Aldermen are aware of payments to vendors, and since the Board knowingly created and directed this expense, any approvals by any city staff member would have been meaningless. Moreover, the Board approved all of these expenses at their November 12, 2001 business meeting. Additionally, the funds used to pay for these expenditures were derived from a temporary bond issue of which the proceeds had to be placed, by law, into a trust account under the independent control of a trustee bank. The trustee bank was legally responsible to the bondholders to thoroughly review all expenditures, the details and documentation of those expenditures and the*

appropriateness of those expenditures before releasing funds. The trustee bank reviewed and approved the documentation presented by the City, the same documentation that, in the auditor's opinion, is inadequate.

- E. *The Board of Aldermen disagrees with the auditor claims that invoices submitted by Graf Consulting do not provide adequate details. Invoices submitted by Graf contain descriptions of services rendered by the vendor. These descriptions adequately detail the activities undertaken by Graf and they are sufficient to allow the City to determine the nature of scope and services rendered during the previous month. Given the scope of services rendered by Graf and the length of time required to perform such services in a project of this size, it is not uncommon for details of services rendered to be similar to services rendered in prior invoices. The Board will, however, take the auditor's recommendation into consideration.*

In summary, the Board of Aldermen has reviewed the auditor's opinions in MAR 1, and has determined that these opinions are unfounded. The Board strongly believes that the transactions for the Branson Landing Project have met or exceeded all legal requirements. The Board of Aldermen has always taken every reasonable action to safeguard the City's resources from unnecessary risks and to keep the public fully informed about this project, and will continue to do so.

AUDITOR'S COMMENT

- A. The city did not solicit proposals for an appraisal. The documentation provided to the auditors were proposals solicited by BLLLC prior to terminating the predevelopment agreement.
- C. The only agreement provided by the city was dated January 28, 2002.
- D. The Board of Aldermen should not rely on the trustee bank to fulfill fiduciary duties they have been elected to perform.
- E. The invoices did not include details of work performed such as phone calls made, meetings attended and letters written. Further, the number of hours worked and rate charged was also not included. While the contract with Graf Consulting provides for compensation of a maximum of \$7,500 per month, it is unclear how the Board of Aldermen will determine when a lesser amount should be paid without these details.

It is apparent by the Board of Aldermen's responses that they believe all transactions involved in this project were handled appropriately; however given the issues discussed, it is disappointing that they have not acknowledged that the handling of some transactions could have been improved, and they believe as a duly elected local authority they are not subject to public scrutiny.

The city has expended about \$1.7 million to subsidize the principal and interest payments on bonds for the Branson Meadows Development Project as of September 30, 2002.

In 1995, the city approved the Branson Meadows Development Project and in August of that year issued \$8 million in tax increment allocation bonds to pay a portion of the costs of the infrastructure improvements needed for that development. The 340-acre development project was approved as a tax increment financing (TIF) project pursuant to Section 99.800 to 99.865, RSMo. The city established the project with the intent to repay the bonds using a portion of the incremental increase in the economic activity taxes (EATs); which are sales taxes generated within the TIF area. Although the payments in lieu of taxes (PILOTS), which are the incremental increases in property taxes on real estate in the area, were pledged as security for the bonds, the city did not plan on using the PILOTS to help retire the TIF debt. Supplemental agreements were entered into with the various taxing authorities that these monies would be distributed to those taxing authorities. The city's original projections indicated that the city expected TIF revenues totaling \$32 million to cover the total bond debt service of \$13 million, for a projected gain of \$19 million. However, an analysis prepared by the city indicates that significant increases in EATs must occur within the next several years for the city to recover any funds.

While a theme park, theatres, and several restaurants and hotels were planned, only one of the original proposed projects (the factory outlet mall) was completed, as the other proposed businesses decided against locating in the project area. The 1995 project plans estimated that the EATs generated from the factory outlet mall would be sufficient to pay the annual debt service of the bonds. There has been minimal additional commercial retailers develop within the project area since the factory outlet mall, and the EATs generated in the project area have never met the debt service requirements. In addition, the City Engineer indicated that, although the land owners are still attempting to sell the available land to interested developers, there is no additional planned development within the project area at this time.

The city entered into an agreement stating the project developers will be reimbursed from TIF funds, for roadway improvements made in accordance with plans approved by the city. However, the agreement indicated that the developers will only be reimbursed from EATs that are left over after the bond principal and interest related to Branson Meadows are fully paid, and after the city is reimbursed for general fund revenues used to pay the debt service payments not covered by the EATs. At September 30, 2002, the amount of the developer's reimbursable costs for roadway improvements, including interest, was approximately \$6.9 million.

In 1997 the city refinanced the bonds pledging revenues generated by the Branson Meadows TIF as well as revenues generated by the city-wide TIF. The city-wide TIF only captures revenue from the city's transportation tax and the city's property tax. All

other tax revenues (PILOTS and EATS) are returned to the taxing districts. This refinancing allowed the city to subsidize the Branson Meadows principal and interest payments with city transportation tax funds generated outside of the Branson Meadows area.

To form the Branson Landing TIF, the city decided to dissolve the city-wide TIF which resulted in the city again refinancing the Branson Meadows bonds. These bonds were included in the \$56 million permanent bond refinancing discussed in MAR No. 1.

Through September 2002 the city has subsidized about \$1.7 million of the Branson Meadows debt service payments. Based upon an analysis prepared by the City Finance Director, the city will not start recovering any monies until 2013 after the bonds are retired and will only breakeven by the completion of the TIF. However, the City Finance Director's analysis shown in the chart below used an annual increase in EATs ranging from five to fourteen percent annually. Actual EATs in this area appear to have been very unstable and have been declining since 2000.

Branson Meadows TIF Analysis

| Year Ending September 30 | TIF Income and Interest | Debt Service Payment | Deficit Absorbed by City |
|-----------------------------|----------------------------|-------------------------|-----------------------------|
| 1996 | \$226,645 ¹ | \$429,481 | (\$202,836) |
| 1997 | \$369,087 ¹ | \$748,540 | (\$582,289) |
| 1998 | \$348,523 ¹ | \$868,837 | (\$1,102,603) |
| 1999 | \$447,557 ¹ | \$374,552 ² | (\$1,029,598) |
| 2000 | \$525,692 ¹ | \$374,552 ² | (\$878,458) |
| 2001 | \$428,238 ¹ | \$824,611 | (\$1,274,831) |
| 2002 | \$351,436 ¹ | \$820,695 | (\$1,744,090) |
| 2003 | \$388,240 ³ | \$820,078 | (\$2,175,928) |
| 2004 | \$433,950 ⁴ | \$822,995 | (\$2,564,973) |
| 2005 | \$488,563 ⁵ | \$819,405 | (\$2,895,815) |
| 2006 | \$511,023 ⁶ | \$818,130 | (\$3,202,922) |
| 2007 | \$534,607 ⁶ | \$819,130 | (\$3,487,445) |
| 2008 | \$559,370 ⁶ | \$813,755 | (\$3,741,830) |
| 2009 | \$585,371 ⁶ | \$817,535 | (\$3,973,994) |
| 2010 | \$612,672 ⁶ | \$815,033 | (\$4,176,355) |
| 2011 | \$641,338 ⁶ | \$815,250 | (\$4,350,267) |
| 2012 | \$671,437 ⁶ | \$813,375 | (\$4,492,205) |
| 2013 | \$1,450,692 ^{6,7} | \$809,750 | (\$3,851,263) |
| 2014 | \$696,876 ⁸ | \$0 | (\$3,154,387) |
| 2015 | \$731,720 ⁸ | \$0 | (\$2,422,667) |
| 2016 | \$768,306 ⁸ | \$0 | (\$1,654,361) |
| 2017 | \$806,721 ⁸ | \$0 | (\$847,640) |
| 2018 | \$847,057 ⁸ | \$0 | (\$583) |

Source: City Finance Director

¹ Actual data.

² Includes interest payment only, bonds were refinanced.

³ Assumes 5 percent increase in EATs plus interest on reserved funds totaling \$29,513.

⁴ Assumes 10 percent increase in EATs plus interest on reserved funds totaling \$39,350.

⁵ Assumes 14 percent increase in EATs plus interest on reserved funds totaling \$39,350.

⁶ Assumes 5 percent increase in EATs plus interest on reserved funds totaling \$39,350.

⁷ Includes \$787,000 from bond reserve available for final bond payment.

⁸ Assumes 5 percent increase in EATs with no interest revenue.

The city's analysis includes large increases during 2004 and 2005 with a steady growth of five percent after that to arrive at a break-even point. However, there has been a lack of stability in the TIF income since 1996, and there are no plans for current development in that area. For comparison purposes we computed a constant five percent growth in TIF income for 2003 through 2018. Under those projections, the city will be unable to recover about \$1 million of the debt service paid for these bonds and the developer will not be reimbursed. In addition, the city has not considered interest revenue that could have been earned on the city funds in their analysis.

While the city initially estimated a gain of approximately \$19 million, this project has fallen short of meeting original estimations and it appears unlikely that the city will breakeven on the project.

Our prior report, dated September 18, 1997, recommended that the city perform and document thorough reviews of any future proposed development projects prior to authorizing the city's participation. Currently, the city is working to develop the Branson Landing area at an estimated cost of \$150 million to the city. See MAR No. 1.

WE RECOMMEND the Board of Aldermen review the current status of the Branson Meadows project and determine the appropriate course of action to minimize the amount of city subsidies required to liquidate the debt service requirements of this project. In addition, ensure future undertakings of a similar nature incorporate assurance or other safeguards to avoid exposing the city's financial resources to risk.

AUDITEE'S RESPONSE

This is a project that began in 1993 and was finalized in 1995. Past Board of Aldermen have already addressed the concerns raised by this audit.

However, while it appears that the auditors are attempting to show that the Branson Meadows TIF is a failure, it can be clearly shown that it is not. The City did, in 1995, give up the right to capture certain revenue streams that were allowed by law, which had they been kept, would have easily provided more than enough revenue to service the Branson Meadows Bonds. However, the auditors have refused to acknowledge that the amount of dollars captured by the City specifically to service the bonded debt is only a fraction of the dollars that the Branson Meadows TIF Project generates. The City, County, school district, the state of Missouri and other local taxing jurisdictions retain these revenues. These are dollars that would not exist but for the Branson Meadows TIF Project. From 1996 through 2002, this project generated gross tax revenues of over \$13.5 million. After paying debt service (including interest), the Branson Meadows project has generated a net direct tax benefit in excess of \$8.9 million of new revenue for these jurisdictions. The total economic impact to the area created by new revenues, the multiplier effect, new jobs, etc., far exceeds the direct tax benefit mentioned above. Additionally, all of these new revenues and benefits will continue long after the bonded debt service is paid in full.

The City continues to take every reasonable action to ensure the success of the Meadows Project and will continue to work with the landowner to do the same in the future.

AUDITOR'S COMMENT

Information identified in the City's response (other than actual amounts) was also known when their projections included a \$19 million gain in 1995.

3.

Tourism Tax

The city does not adequately monitor tourism tax collections. Several business licenses were renewed even though delinquent tourism taxes were owed, and penalties and interest were not consistently applied to delinquent accounts. In addition, concerns were noted regarding the marketing portion of the city's tourism tax funds.

In November 1997 the city's voters approved a tourism tax proposal pursuant to Sections 94.802 and 94.805, RSMo. This proposal provided for the collection of a four percent tax on private tourist attractions and hotel and motel charges, and a one-half of one percent (.05%) tax on food and drinks sold in restaurants and other establishments. Section 94.815, RSMo requires 75 percent of the tourism tax monies to be used for constructing and maintaining infrastructure improvements, and 25 percent of the tourism tax monies to be used for tourism marketing and promotional purposes. The city collected approximately \$10.9 million in tourism taxes during the fiscal year ended September 30, 2002. We noted the following concerns:

A. The city is not properly monitoring tourism tax collections. Local businesses are responsible for calculating the amount of tourism tax owed to the city, and submitting monthly tourism tax reports indicating their total receipts and tourism tax amount due with their payment. If a business has not sent in the report by the monthly due date, the city sends a letter to the business notifying them that the information and payment was not received. If payment is not received after ninety days, city ordinance allows the city to revoke the business license. According to city records as of March 3, 2003, approximately \$260,000 in delinquent tourism tax has been reported by businesses. The amount owed by businesses that have not filed their monthly reports is unknown. The city does not have adequate controls over the collection of tourism taxes as follows.

- We noted numerous instances (7 out of 13 businesses selected) where the city renewed the business license for businesses that owed delinquent tourism taxes. In some cases, the city knew the amount of delinquent tourism taxes and the business did not have a current payment plan approved by the city. In other cases, the city did not know the amount of delinquent tourism taxes since the business failed to turn in one or more tourism tax reports. In these cases, the city indicated the license should not have been renewed, or could provide no explanation as to why the license was renewed.
- We noted one business that had been operating without a business license since 1999 and had stopped paying tourism taxes in June 1999. This business was not identified by the city as unlicensed with delinquent tourism taxes until June 2002. The city indicated the business had been charging the tourism taxes to customers, but failed to remit the taxes to the city. The business owed about \$42,000, and is now on an installment payment plan.
- The city is not following up on delinquent businesses in a timely manner. We noted several businesses that were sent a letter on January 6, 2003, indicating the business license would be revoked if payment was not received within fifteen days. However, as of March 19, 2003, five of these businesses had not contacted the city to make payment arrangements and no action had been taken to revoke the licenses.
-

- The city is not consistently charging penalties and interest on delinquent tourism taxes. City officials indicated that prior to January 2003 the computer system was not set up to automatically apply interest and penalties and these charges were manually applied only to businesses the city considered seriously delinquent.
- The city periodically contracts with an outside CPA firm to review compliance with tourism tax statutes by performing audits of local businesses. The city selects the businesses to be audited, but has no policies or procedures in place to determine which businesses to select and the city does not document its selection process.

To help ensure prompt collection of tourism taxes, prevent the loss of tax revenue, and ensure equitable treatment of local businesses, the city should establish controls to adequately monitor and enforce the collection of tourism taxes.

- B. The city allocates 2 percent of the marketing portion of the tourism tax monies to a contingency fund. The city indicated the marketing contingency monies are used for marketing related expenditures for special or unanticipated events not handled through the city's contracted marketing services provider. During the year ended September 30, 2002, the city allocated approximately \$55,000 to the contingency fund, and used \$15,000 for a mural that was placed on the back of a local privately owned business. It is unclear how this expenditure meets the intent of the tourism tax marketing monies.

WE RECOMMEND the Board of Aldermen:

- A. Establish controls to adequately monitor and enforce the collection of tourism taxes.
- B. Ensure all tourism tax marketing monies are used for their intended purpose.

AUDITEE'S RESPONSE

The Board of Aldermen disagrees that the City does not adequately monitor tourism tax collections. In particular, the Board makes the following responses:

- A.1. *The auditor asserts that "numerous" instances were found where the City renewed business licenses when delinquent tourism taxes were due. The Board of Aldermen disagrees with this characterization. During the audit period of 2002, the city issued 1495 business licenses. The City has reviewed all 1495 licenses issued in 2002 and found that of those licenses issued, 520 were businesses collecting tourism taxes. Of those 520, only seven businesses were issued licenses when the business owed outstanding tourism taxes or the business failed to file required monthly tourism tax reports. Three of those seven businesses were identified as being in a balance due status when a business license was issued in 2002. However, what the auditors fail to mention is that those three*

businesses have payment disputes pending and were issued licenses at the direction of the City's legal counsel pending the resolution of those disputes.

The other four businesses were in a non-reporting status. These businesses were not identified as non-reporting until 2002 because they had valid business licenses in 2001. In 2001 they had failed to file one monthly report. Two of those four businesses were closed during the month that the report was not filed and did not file a report because no tourism taxes were collected or due. The other two had not filed a report for the month of November and should not have been issued a business license without more complete documentation.

The Board of Aldermen recognizes that the Branson economy is seasonal and continues to encourage staff to work with businesses to keep them open and operating rather than work against them. The Board believes that the auditor's comments show a significant lack of understanding regarding the tourism economy of Branson, its seasonal nature and the practicalities of dealing with seasonal tourism businesses.

- 2. The auditor comments that a business operated from 1999 to 2002 without a business license. The report also states that the same business had stopped paying tourism taxes in 1999. The fact is that the business mentioned by the auditors as operating up to 1999 was an altogether separate company from the business that failed to remit tourism taxes from 1999 to 2002. The new company, that failed to remit tourism taxes from 1999 until 2002, failed to identify itself to the City. In the collection of tourism and sales taxes, neither the City nor the state has a mechanism to automatically identify a newly opened business. The City continues to use existing resources to identify and prosecute violators. It should be noted that the auditors did acknowledge that the business mentioned had been identified by the City and is paying the City for back taxes, penalties and interest.*
- 3. The auditors state that the City did not follow up on business license revocation notices sent in January 2003. That statement is correct. However, during that time, the City was without a City Attorney and had to retain outside legal counsel at an hourly rate. Five businesses had been sent notices. Due to the high cost of outside legal counsel, it was determined that it was not best use of City dollars to pursue collection until the vacant city attorney position was filled. The City lost no revenue through the short delay, and saved considerable dollars by not using outside legal counsel.*
- 4. The City attempts to work with seasonal businesses in an effort to resolve delinquency issues. The revocation of a business' license is, by the City's choice, a last resort. Consequently, the city, in applying penalties, looked at the circumstances of each individual occurrence. What the auditors noted as inconsistencies were, in fact, individual determinations based on each business' circumstances and the Board of Aldermen, after reviewing this issue, disagrees that the application of penalties was inconsistent. However, it should be noted that prior to the state audit, the City had already begun the process to modify its tax collection software to automatically apply penalties and interest to past due tourism tax balances. All taxpayers were notified in November 2002 and the process was implemented in January 2003.*

5. *The audit report states that the City has no policies or procedures in place to determine which businesses are selected to be reviewed for compliance with tourism tax ordinances. The Board will review the auditor's recommendation to see if a policy can be created that is both feasible and practical to implement.*

- B. *The Board of Aldermen disagrees with the auditor's opinion that it is unclear how an expenditure of \$15,000 for the American Highrise Project meets the intent of the tourism tax marketing monies. In 2001, a study was performed by the Harrison Price Company to identify and recommend future actions that could be taken by the City and/or the Chamber of Commerce, CVB or the private sector to increase tourism to Branson. One of the recommendations by Harrison Price was to beautify the city with quality mural programs to draw tourists. The Price study stated that a murals program should generate about 500,000 new visitors annually. The American Highrise Project was determined by the Board of Aldermen to be an initial step in implementing the murals program. Both the written minutes and the audiotapes of the council meetings amply document the appropriateness of the proposal and the council's deliberations on the propriety of the City's participation.*

AUDITOR'S COMMENT

- A.1. The city provided no documentation substantiating the claim that licenses were issued at the direction of the city's legal counsel.

| | |
|-----------|------------------------------|
| 4. | Payroll and Personnel |
|-----------|------------------------------|

Large payments were made to city administrators and directors for “special leave”, unused vacation and sick leave, and deferred compensation with no evidence of prior board approval. In addition, the payments made to select city employees for “special leave” appear to be in violation of the Missouri Constitution. Also, leave records maintained for city directors and administrators were unreliable.

- A. Payments totaling \$26,281 and \$30,452 were paid to the City Administrator, Assistant City Administrator, and thirteen directors in October 2001 and 2002, respectively, for 7½ days of “special leave”. The city's personnel policy indicates that the City Administrator may approve up to 15 days per year of “special leave” for unclassified employees, and up to 50% of any unused portion of this leave may be compensated to specific employees as designated by the City Administrator. While the City Administrator approved the payments made to all directors, there is no documentation that the payments made to the City Administrator and Assistant City Administrator were approved.

In addition, each month approximately six employees are selected to receive a half-day off with pay as a reward for wearing a city pin.

Awarding additional leave to specific employees on a discretionary basis appears to represent additional compensation for services previously rendered and violates Article III, Section 39 of the Missouri Constitution. Attorney General's Opinion No. 72, 1955 to Pray, states, "...a government agency deriving its power and authority from the Constitution and laws of the state would be prohibited from granting extra compensation in the form of bonuses to public officers after the service has been rendered."

B. While most city employee leave records are maintained by a city staff accountant, annual leave and sick leave records for city directors, the City Administrator and the Assistant City Administrator are maintained by the Finance Director. Our review noted several concerns:

- Three payments totaling \$19,263 were made to the City Administrator for 60 hours of unused vacation and 329 hours of unused sick leave during the year ended September 30, 2002. While the employment contract with the City Administrator allows payment for unused vacation and sick leave with no limitation on the accrual balance, the leave balance records provided to us for the City Administrator were not accurate. These leave records included numerous calculation errors and the leave accrual rate earned did not agree to the rate indicated in his contract. Upon bringing these differences to the attention of the City Finance Director, a second report was prepared and the City Administrator's vacation leave balance as of September 30, 2002, was reduced from 728 to 279 available hours. The City Finance Director indicated that she believed the errors were the result of a computer software problem. While errors were noted in the sick leave accrual records, no revisions were made.
- Records showing vacation and sick leave earned, taken, and the accumulated balances for city directors were also unreliable. The City Finance Director provided us with two leave reports for directors (one showing activity by day and one showing activity by pay period); however these two reports were not in agreement. The accumulated balance on the report by pay period contained calculation errors, and could be adjusted manually in the computer by employees with access to the system. In addition, leave used did not always agree between the two reports.
- City employees (including city directors, the City Administrator and Assistant City Administrator) are required to prepare leave requests when using vacation and sick leave; however, we noted that amounts reported on leave requests did not always agree with the leave records maintained by the City Finance Director. In several instances, a director or administrator did not prepare or have a leave request on file. Since directors and administrators also do not prepare time sheets, the overall accuracy of the leave records is questionable.

Without accurate leave records, the city cannot ensure that payments made for unused leave are correctly calculated and that leave time used is not in excess of time accumulated. Given the amount of accrued leave paid to the City Administrator, accurate leave records are imperative. In addition, payroll records such as time sheets and leave requests are necessary to document hours worked and leave used, to substantiate payroll expenditures and to provide the board with a method to monitor payroll. Accrual amounts for vacation and sick leave should agree to the City Administrator's contract and the city should make necessary adjustments to reflect the correct amount of leave time earned by the City Administrator. Additionally, leave records for all employees should be reviewed and corrected as applicable.

- C. The city made payments of \$12,450, \$12,450, and \$2,264 to or on behalf of the City Administrator, Assistant City Administrator, and City Finance Director, respectively, in January 2002. These payments represent contributions of \$11,000 to the deferred compensation plans of the City Administrator and Assistant City Administrator and \$2,000 to the City Finance Director's deferred compensation plan, with the remaining balance of each payment representing the employees' share of payroll taxes and retirement.

The Assistant City Administrator's letter of employment indicates that the City Administrator will authorize a payment to a deferred compensation plan, but it does not specify any amount. While the City Administrator's employment contract and the letter of employment for the City Finance Director specify amounts to be contributed by the city to the employees' deferred compensation plan, these documents are silent as to the employees' share of payroll taxes and retirement.

Deferred compensation contributions made by the city to the Assistant City Administrator and Finance Director should be documented in an employment contract and the employees' share of payroll taxes and retirement should be addressed in all employment contracts.

Because payroll transactions are not reviewed and approved by the Board of Aldermen and the city's budget does not adequately detail payroll amounts (see MAR No.5), there is no evidence how the Board of Aldermen is made aware of transactions like those noted in parts A-C.

- D. The city has not adopted an ordinance to establish the duties and compensation of the City Clerk. The Board of Aldermen removed the section of the city code pertaining to the City Clerk in 1995 and has not taken any action to reestablish the City Clerk's duties or compensation by ordinance. Sections 79.270 and 79.290, RSMo 2000, require the duties and compensation of city officials to be set by ordinance.

WE RECOMMEND the Board of Aldermen:

- A. Discontinue the practice of granting additional compensation to employees.
- B. Ensure accurate leave records are maintained for all employees and leave requests and/or time sheets are completed by all employees.
- C. Ensure all details regarding deferred compensation contributions are included in employment contracts.
- D. Establish the compensation and duties of the City Clerk by ordinance as required by statute.

AUDITEE'S RESPONSE

- A.1. *The Board of Aldermen disagrees with the auditor's opinion that the City's special leave policy violates Article III, Section 39 of the Missouri Constitution. Article III, Section 39 states "a government agency . . . would be prohibited from granting extra compensation in the form of bonuses to public officers after the service has been rendered." The only guidance on this provision is an Attorney General's Opinion interpreting whether a city's proposal to pay yearend bonuses to employees would violate the Missouri Constitution. While the Board agrees that "bonuses" would be extra compensation paid after services are rendered, the City's special leave policy is not a bonus, but rather a negotiated part of a full-time, unclassified, at-will employee's compensation package agreed to in advance of services rendered each year.*
- 2. *The Boards awarding of a half-day off is part of the City's Values Program that is a focus toward providing quality customer service to the citizens of Branson. The City will continue to provide incentive awards as a management tool when those awards contribute to better and more effective service by city employees to Branson visitors and citizens.*
- B.1. *The Board of Aldermen disagree with the auditor's assertion that leave accrual records for the City Administrator and directors were not accurate. The Board's review found that the City's accrual records, as used by the Finance Department were accurate. Documentation has been provided that clearly shows that the City's data was correct and that the discrepancies mentioned by the auditors were the result of software errors affecting only historical reports not used by the City. The Board of Aldermen does not understand why the auditors continue to raise this issue when they have been provided complete documentation from the software vendor that refutes the auditor's comments. As the auditors know, the City's Finance Department operates a primarily paperless payroll operation. As part of their audit, the auditors requested hard copy reports of employee accrual information never used by the City. The Employee Accrual History Report provided by the software system and provided the auditors, were reports not used by the City or necessary for the payroll operations of the City. When those reports were activated for the auditors just after the end of the calendar year, calculation errors were*

found in all department heads' accrual histories when compared with the live system. The City contacted the software vendor and the vendor advised that they had just found a programming error in their software program that was causing errors in the history reports after leave accruals were rolled forward at yearend. The vendor subsequently issued a letter to the City acknowledging the programming error and that the error would be corrected. However, it is critical to note that the software vendor has verified, in writing, that the data on the live system used by the City were not in error and that no employee received any leave or leave pay above their actual accrual.

- 2. The Board takes specific exception to the discussion regarding the City Administrator's accrued leave hours and again does not understand why the auditors persist in this allegation when they have been provided documentation by the software vendor to the contrary. The auditors allege that the City Administrator's accrued vacation hours were reduced from 728 to 279 after the differences were brought to the attention of the Finance Director. This is a totally incorrect statement. Upon seeing the Employee Accrual History Reports mentioned above, the Finance Director saw that ALL of the department heads' accruals were not consistent with the data on the live system and contacted the software vendor. The software vendor subsequently remotely accessed the program, acknowledged the software errors and made corrections to the Employee Accrual History Report. These corrections were noted by the software vendor in the program and appear on the Employee Accrual History Report that was provided to the auditors. It is important to note that the Finance Director never made, nor had any reason to make, any adjustments or corrections to any employee's leave accrual hours on the City's computer system. As documented by the software vendor, the system data was never in error.*
- 3. The auditors also commented that reports showing accruals by pay period contained calculation errors and could be changed by employees with access to the system. Again, the report to which the auditors are referring comes from the same erroneous report already discussed above. While it is correct that employees can make manual changes to the system, the auditors fail to mention three important facts. First, they fail to mention that there must be access to the system by certain authorized employees when data entry corrections are necessary. Second, they fail to mention that there are only two specific employees that can and must access leave accrual data for maintenance purposes. Finally, the auditors fail to mention that when the system is accessed, or if any changes are made, these instances create an electronic log showing that the system has been accessed. No city employee has the ability to override or delete the electronic log and consequently no changes can be made to system data without a permanent record being created.*
- 4. Contrary to the auditor's assertion, there are no discrepancies in department head system leave records. Department heads are unclassified employees and consequently their time is accounted for on the payroll system on a system exception basis. Accordingly, leave is usually entered into the system after the pay period in which the leave was taken. An additional reason that the auditors believed that the leave records were not accurate is because, as mentioned above, the auditors insist on continuing to*

use the erroneous Employee Accrual History Reports. It is important to note again that leave accrual records for all employees were accurate on the payroll system and that no employee received leave accruals beyond what they were entitled.

C.1. The Board agrees that the deferred compensation agreement provided as a condition of employment to the Assistant City Administrator did not denote the amount. This issue will be corrected by an addendum to the Assistant City Administrator's letter of employment.

D.1. The Board of Aldermen believes it complied with Section 79.320 RSMo when the Board of Aldermen elected the current City Clerk to office on January 8, 1990. The City Clerk's term of office, as set forth in the City's ordinances, was at the pleasure of the Board of Aldermen. The Board is reviewing whether it would be more appropriate to specify a definite term of office. Additionally, the City Clerk's duties were established by the Board of Aldermen in accordance with 79.320 RSMo through the adoption of the City's Personnel Ordinance that created the City's classification system and class specifications. The Board is also in the process of setting forth the City Clerk's duties by a separate ordinance.

AUDITOR'S COMMENT

B. It is encouraging to see that since our review the city has been working to fix this problem, however; it is still concerning that in May 2003 the city now has records showing the City Administrator's leave balance was 419 hours at September 2002.

5.

Financial Monitoring

Financial information prepared by the city to inform city residents and the Board of Aldermen of the city's financial position was often incomplete, inaccurate and lacked adequate detail.

A. The city's 2003 budget is not sufficiently detailed and prior year financial information included in the budget did not always agree with financial information included in the city's annual audit report or the city's semi-annual published financial statements.

- The city's budget included significant expenditure amounts budgeted in broad categories with no detail provided. For instance, the city's water and sewer fund budget included expenditures totaling about \$6.4 million divided among five broad categories (personal services, contractual service, commodities, debt service, and non-cash expenditures). In another part of the city's budget the same \$6.4 million was divided among five different categories (water, sewer, administrative, depreciation, and interest/bond costs). The budget document does not clearly show the relationship among these various categories and no other detail is provided. In addition, the amounts reflected

in the departmental budgets for all city funds did not always agree with the budget summary by fund presented at the end of the city's budget.

- The city's budget for the year ending September 30, 2003, (adopted in September 2002) presented actual financial information for the years ending September 30, 2000 and 2001, and estimated financial information for the year ending September 30, 2002. The actual financial information presented for the year ending September 30, 2001, did not always agree with the financial information included in the city's published financial statement, or the city's annual audit report. For instance, the ending fund balance for the city's Recreation Fund was reported as \$74,110 in the city's budget and \$22,429 in the city's annual audit report. It is unclear why this difference existed. In addition, the ending fund balance of the Tourism Tax Fund was reported as \$7.8 million in the city's budget, but both the city's annual audit report and the city's published financial statement reported an ending fund balance of \$9.1 million. After bringing this difference to the city's attention, the City Finance Director explained that while a transfer of \$1.3 million from the water and sewer fund into the tourism tax fund was reflected in the water and sewer fund, it was omitted from the tourism tax fund.
- The city's budget also did not reflect about \$4 million in reserve funds that the city had voluntarily reserved for a "rainy day." According to city officials, the \$4 million represents a 20 percent reserve from the general, recreation, and water and sewer funds. While the city's published financial statement and audit report included these reserve funds, the city's budget did not reflect the amount.

Failure to present detailed financial information decreases the effectiveness of the budget as a management tool. In addition, to be of maximum benefit to the city and its taxpayers, a complete, accurate and detailed budget document is needed.

- B. The city's semi-annual financial statements were not always published timely and were not always accurate.

While the city generally publishes its semi-annual financial statements for the six months ending March 30 timely, they routinely publish the financial statements for the six months ending September 30 after the statutory deadline. The city indicated the financial statements for the six months ending September 30 are not published until the city's independent auditor issues the annual audit report of the city. For example, the financial statements for the six months ending September 30, 2002 were not published until March 18, 2003, and the financial statements for the six months ending September 30, 2001, were not published until January 18, 2002.

In addition, the beginning fund balance reported on the published financial statement for the six months ending March 31, 2002, did not agree to the ending

fund balance reported on the financial statement published for the prior six months. The difference in the reported fund balances was approximately \$2.8 million, and represented differences in the city's General, Debt Service, Capital Projects, Recreation, and Proprietary Funds. Based upon information provided by the City Finance Director, the difference represents audit adjustments made by the city's independent auditor, as well as the inclusion of several city funds that were not previously reported in the city's published financial statement.

The city's published financial statements did not provide any detail of receipts such as sales tax, property tax, fees, interest, etc. Further, the published financial statement for the six months ending March 31, 2002, provided a summary of expenditures by fund as well as a more detailed list of expenditures by program; however, the totals of the two listings did not agree. The summary showed expenditures of \$49.3 million, while the detail list of expenditures by program totaled only \$44.7 million. According to the City Finance Director transfers between city funds were excluded from the detail listing of expenditures, causing the difference in the reported amounts.

Section 79.160, RSMo 2000, requires the board to prepare and publish semi-annual financial statements within one month of the end of each six-month period. In addition, Section 79.165, RSMo 2000, states the city cannot legally disburse funds until the financial statement is published. Further, the city should ensure that the city's financial statements are accurately reported to keep the citizens informed of the financial activity and condition of the city.

- C. Documentation is not adequate to determine if the financial information reviewed by the Board of Aldermen was sufficient to properly monitor the financial position of the city's funds.
- Board members receive monthly budget to actual reports listing expenditures by department, however these reports do not compare actual revenues to budgeted revenues, do not include information for some city funds, and only include detail by department. Board members also receive a monthly listing of sales tax monies received; however, information regarding other revenues such as property taxes, fees, or interest is not provided. There is no evidence that these reports are reviewed and approved during board meetings.
 - Board members also receive a copy of the monthly check register; however instances were noted where the check register was incomplete, missing numerous check numbers.
 - Board members do not receive any information regarding payroll transactions. For fiscal year ending September 30, 2002, payroll transactions were about \$7 million.

- The Board of Aldermen normally approves expenses at the next regular board meeting after the checks have been written. However, the Board of Aldermen postponed their approval of the check register in two consecutive meetings during February and March 2002. As a result, checks presented to the Board on February 25, 2002 and March 11, 2002, were not approved until March 25, 2002. The board should review and approve city disbursements in a timely manner.

Complete and detailed information about the city's finances is essential for the Board of Aldermen to make informed decisions while managing the resources of the city. In addition, good business practices require all disbursements to be reviewed by the board.

D. City Code requires the creation of three committees (budget and finance, personnel, and capital improvement) composed of two members of the Board of Aldermen and the Mayor. While the city has properly established these committees, it is not evident how the personnel and budget and finance committees fulfill their duties as required by city code.

1. According to city officials, the budget and finance committee met only once during 2001 and twice during 2002 to review the city's budget document; however, city code specifies that the committee review and recommend the disposition of payable and claims and routinely be informed about cash flow and investment matters. There is no indication that the committee performed these duties.

While minutes of the budget and finance committee's meeting are not specific as to what information the committee reviewed prior to approving the budget, city officials indicate that no detail, other than what is included in the city's final budget document, was provided to the committee. The City Administrator indicated that additional financial information is provided verbally to the committee during their review of the city's budget. Given the lack of detail included in the city's budget as noted in part A., it is questionable how the committee's review of the budget was adequate. Subsequent to the review and approval of the budget by the committee, the city's budget is adopted by the Board of Aldermen.

2. The personnel committee met only once during both 2001 and 2002 to approve raises for city employees and the addition of staff positions. While city code requires the committee to develop and review salary schedules for each budget year, it is not evident how the personnel committee is performing other duties as outlined in the city code, such as supervising the administration of the city's personnel manual.

Considering the lack of documentation to support what the budget and finance committee reviewed regarding the city's budget, it is questionable as to the thoroughness of the committee's review prior to making recommendations to the

Board of Aldermen. Further, without the committees involvement in financial and personnel decisions as outlined in the city code, the effectiveness of the Board of Aldermen's management of city business is reduced.

WE RECOMMEND the Board of Aldermen:

- A. Ensure the city's budget is adequately detailed, contains accurate financial information and presents all city funds, including reserve funds.
- B. Publish accurate semi-annual financial statements in a timely manner, as required by state law.
- C. Require complete and detailed information regarding the financial position of the city. In addition, the Board should review and approve financial information in a timely manner.
- D. Ensure the personnel and budget and finance committees perform the duties as required by city code. In addition, to ensure the effectiveness of the review and approval process, the budget and finance committee should review detailed financial information regarding the cities budget prior to making recommendations to the Board of Aldermen.

AUDITEE'S RESPONSE

A.1. *The Board of Aldermen disagrees with the auditor's opinion that the City's budget is not sufficiently detailed and is not structured correctly. The City's budget structure follows approved and recommended guidelines from the Governmental Finance Officers Association (GFOA). Additionally, the City's budget is structured as a program budget. This budget format is recognized as an excellent method of budget presentation especially at the municipal level for city councils and citizens because it is an outstanding tool for defining and evaluating service delivery.*

The auditors also state that there is not a clear relationship shown between the operating details of the Water and Sewer Department and the Fund Summary of the Water and Sewer Fund. After reviewing this specific issue, the Board of Aldermen believe that the auditors did not recognize the difference as well as the relationship between the operating budget pages and the Fund Summaries section of the budget.

The level of detail provided in any municipal budget document is determined by the governing body and the community. The purpose of the budget is to provide a working document to the Board of Aldermen and citizens. Such a document must be a useful and clear tool to allow the public to evaluate programs and service delivery. The Board believes that the City's budget format presents the information in just such a manner. The City will provide any greater level of detail when requested. In keeping with past practices, however, the Board will continue to annually evaluate the level of detail contained in the budget and direct staff accordingly.

2. *The City agrees that the Fiscal Year 2003 budget document contains informational numbers for Fiscal Year 2001 that were typographical errors. It should be noted, however, that those FY2001 numbers are included in the budget for informational purposes only and are not part of the annual appropriation ordinance adopted by the Board of Aldermen that establishes expenditure appropriations and creates the official numbers for the adopted budget.*
 3. *The Board of Aldermen disagrees with the auditor's opinion that the "rainy day" reserve should have been included in the City's budget. State law provides for the creation of a "rainy day" reserve and the Board of Aldermen have, by ordinance, required that such a reserve be established and maintained with "unexpended" funds. Because the reserve is maintained with "unexpended" funds, then in accordance with Government Finance Officers Association recommendations, the City only recognizes this reserve in the operating budget when the Board of Aldermen appropriates these funds. This reserve has been and continues to be documented in reports provided to the Board of Aldermen and to the public, reports provided to the Board of Aldermen Budget Committee, have been published in the semiannual financial reports in the newspaper and in the annual audit report presented to the Board in a public meeting. The City will consider the auditor's recommendation that the "rainy day" reserve be included in the annual operating budget.*
- B.1. The Board of Aldermen acknowledges that Chapter 79 requires that a semi-annual financial statement be published within thirty days of the close of the City's fiscal year. However, because the Chapter 79 language was adopted by the Missouri General Assembly in 1909 and does not fit current accounting standards, the City believes that it is better to publish semi-annual statements when such statements are in their most accurate form. At all times, however, the City published semi-annual statements in full compliance with the ordinances adopted by the Board of Aldermen. The timing requirement contained in Chapter 79 can only be met using a cash basis accounting system. The City is required by the Governmental Accounting Standards Board to account on a modified accrual basis. The City cannot provide an accurate financial report by literally complying with Chapter 79. However, the Board will consider the onsite state auditor's verbal recommendation made to the Board that the City should go ahead and spend taxpayers' dollars twice annually to publish an erroneous financial statement and then note on those statements that the reports are not accurate.*
2. *The Board of Aldermen disagrees that the City's financial statements were not always accurate. The Board acknowledges that due to the inclusion of reserve funds into its March 2002 financial statement, a one-time difference in fund balances was created. Reserve funds were included in an effort by the Board to give more information to the public. However, the statement was accurate. While the City could have been more thorough in explaining this change when it published this statement, the Board fails to see any basis for the auditor's assertion that this statement was inaccurate.*
 3. *The audit report states that the City's published financial reports do not provide certain details and that the published financial statement listings do not agree. The Board does*

not understand the auditor's allegation for the following reasons. First, the City is publishing the detailed statements required by Section 79.160 RSMo. There are no other statutory guidelines or requirements specifying the amount of detail to be published. Second, the City routinely provides more detail than is required by Section 79.160 RSMo. Finally, the financial statement does correctly note balance differences between summary expenditures and expenditures by program. Transfers are not expenditures and consequently they should not be included in the "Expenditure by Program" section of the published report as implied by the auditors. Transfers are, however, properly noted in the section titled "Summary of Revenue, Expenditures and Fund Balance."

- C.1. The auditors state that documentation is not adequate to determine if the Board receives adequate information to monitor the City's financial position. The Board disagrees. Monthly financial information is routinely provided the Board. The Board receives and reviews the amount of detail that they have directed staff to provide. The Board will continue to collectively review the information provided along with the information available and will direct staff to provide information as requested.*
- 2. The auditors state that the check register presented to the Board of Aldermen is incomplete because it was missing check numbers. As fully explained to the auditors, the report that the auditors are addressing is an expenditure report requested by the Board of Aldermen and is not intended nor is it presented as a check register. Check numbers are not required on this report for the purpose that the Board is receiving and reviewing the report. Additionally, a review of the proper reports by the Board show that there are no missing check numbers and that the City has a very strict internal control process to account for and secure voided checks. That process is reviewed annually during the state mandated independent financial audit. However, this issue will be resolved in the future by the Board requesting an expenditure report only.*
- 3. The Board disagrees with the auditor's opinion that the Board does not receive information regarding payroll transactions. The City has a sophisticated classification system and pay matrix that is adopted by ordinance, reviewed annually by the Board's Budget Committee, and approved by the Board through the adoption of the annual appropriation ordinance. However, the Board will continue to review the payroll transaction information it receives and determine if additional information is desired.*
- 4. The Board of Aldermen disagrees with the auditor's opinion that the Board did not approve claims in a timely manner. On the dates stated by the auditors, the Board did not have a quorum on that issue and could not take action. The Board fails to understand why the auditors would suggest that the Board did not act in a timely manner when the Board was prohibited by law from taking action.*
- D. The Board of Aldermen do routinely review information about cash flow, investment matters and, when necessary, review personnel issues. The Board often chooses to address these items as an entire Board rather than through a specific committee. The Board will review the appropriateness of the ordinance creating the existing committees.*

AUDITOR'S COMMENT

- A.3. Section 67.010 RSMo 2000 states the annual budget shall present a complete financial plan for the ensuing budget year.
- B. State Law requires the city to prepare and publish semi-annual financial statements within one month of the end of each six month period. The city needs to determine a way to provide accurate financial information to the public on a more timely basis. It is of concern that the city needed almost six months to compile financial information for the September 30, 2002 published financial statements.
- C.4. The written minutes on those dates show five of six board members were in attendance at the meeting.

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| 6. Expenditures |
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Controls and procedures over city expenditures need improvement. The Board of Aldermen does not consistently follow the city's procurement policy regarding professional services. The city does not have a policy regarding local meal expenses, and numerous expenditures did not appear to be a prudent or necessary use of city funds. Further, controls over the petty cash funds need to be improved.

- A. The city's procurement policy is not consistently followed. The policy indicates that professional services are excluded from the competitive bidding requirements if the funds have been approved by the Board of Alderman in the annual budget. However, as noted at MAR No. 5, the city's budget is not adequately detailed; therefore it is unclear which professional services were included in the budget. In addition, the city had no documentation to support why they solicited proposals for only some professional services.
- The city did not solicit proposals for the services of the bond underwriter, bond counsel, and bond rating services for debt instruments issued in January 2003, for the Branson Landing project and to retire previous bond issues. These issuance costs totaled about \$800,000.
 - The city has hired several law firms and individuals to provide various legal services and to serve as the city's prosecuting attorney. The city paid approximately \$124,400 for these legal services during the year ended September 30, 2002. In addition, the city has contracted with a governmental relations attorney and a legislative consultant and paid them \$64,000 and \$35,000; respectively, during the year ended September 30, 2002. The city did not solicit proposals for these services.

- The city contracted with a company based in Florida to provide services related to re-codifying the city's ordinances. The base amount of the contract is \$16,000. The city did not solicit proposals for these services.
- We reviewed contracts with two separate architects during the year ended September 30, 2002. The city solicited proposals for architectural services related to a new recreation center with swimming pool and sports complex, and paid the architect about \$15,000 during the year. However, the city did not solicit proposals for architectural services related to the Branson Landing project, for which they paid approximately \$114,000 during the year ending September 30, 2002. (See MAR No. 1 regarding the Branson Landing project).
- The city solicited proposals for auditing services in 1998 and 2001. In 1998, the city advertised in four newspapers throughout Missouri and one newspaper in Arkansas, receiving proposals from six different firms. The city solicited proposals for auditing services again in 2001, however they only advertised in a local newspaper and indicated they sent letters to select firms. The city received proposals from only two firms and awarded the contract to the same auditing firm they contracted with 1998. While this firm was the lowest of the two proposals received in 2001, city officials could not adequately explain why the city solicited proposals in a different manner which resulted in less proposals. The city paid this auditing firm approximately \$36,800 during the year ended September 30, 2002.

While professional services, such as attorneys, architects, accountants, and consultants, may not be subject to standard bidding procedures, the city should consider amending its policy and solicit proposals for professional services to the extent practical. Soliciting proposals and subjecting such services to a competitive selection process does not preclude the city from selecting the vendor or individual best suited to provide the service required. Such practices help provide a range of possible choices and allow the city to make a better-informed decision to ensure necessary services are obtained from the best-qualified vendor at the lowest and best cost. In addition, the city should maintain documentation indicating the basis for selection.

- B. The city does not have a policy regarding local meal expenses. Numerous meal expenses within the city limits of Branson were requested and reimbursed, or charged to the city's credit card. In the one month reviewed, we noted local meal expenses of about \$700. According to city personnel, these meals were for meetings among city employees or board members. Many of the instances noted included lunch reimbursements for the same three or four employees as well as members of the board. The City Administrator indicated that due to the long hours city employees are required to work, it seems appropriate for the city to incur these costs.

The city should review the need for reimbursing local meal expenses. If the city determines this to be a necessary cost of the city, guidelines should be established defining those expenses eligible for reimbursement.

C. The city allocates vending machine revenue from all vending machines located throughout the city parks and property to pay for annual parties, gift certificates, and employee recognition awards. However, for fiscal year ended September 30, 2002, these revenues of approximately \$9,900 were not sufficient to cover the expenses of approximately \$10,800. Our review noted the following:

- The city holds an annual holiday party which all city officials, employees, and their spouses are invited to attend. The city pays all of the costs related to the party, which totaled approximately \$3,800 for the year ended September 30, 2002. Cost related to the party were for meals, facility, band, prizes, candy, decorations, and camera film.
- The city awards numerous gifts to employees selected as employees of the month and employees of the year. These include gift certificates to area restaurants (\$50-\$75), gift certificates to a local business or outlet mall (\$150), movie and popcorn passes (\$20), a designated parking space with a marker including the employees name, plaques, and a reception in the employees department with food and beverages for the reception (\$100-\$300). For the year ending September 30, 2002 approximately \$3,300 was expended on employee awards.

Numerous other questionable expenditures including flowers and gifts for employees were also purchased. In addition, the city has a policy allowing employees to make one 15 minute personal call per day paid for by the city when the employee is traveling out of town on city business. It is unclear how these expenditures are a prudent use of public funds.

The city's residents place a fiduciary trust in their public officials to expend public funds in a necessary and prudent manner. These purchases do not appear to represent a necessary and prudent use of city funds.

D. The city does not have a policy regarding the use of petty cash funds. Various departments within the city maintain petty cash funds ranging from \$50 to \$650. Reimbursements to these petty cash funds for the year ended September 30, 2002, totaled approximately \$6,700. Our review of the city's petty cash funds noted the following areas of concern:

1. The petty cash funds are used to pay for items which should be purchased through the city's normal disbursement process. For instance, petty cash was regularly used to reimburse employees for meals. All meal expenses should be reimbursed to employees based on the filing of detailed expense reimbursement reports.

2. Although the petty cash reimbursement form requires an approval signature, we noted numerous instances in which the reimbursement was not authorized by someone independent of the requestor, or was approved by someone that does not have authority to approve expenditures. We also noted several instances in which the form did not indicate who actually received the reimbursement. Several of the expenditures that were not properly approved were for questionable items such as employee gift certificates and refreshments noted in part C. above.

To ensure expenditures are valid and appropriate, all reimbursement forms should be properly completed and approved by someone independent of the requestor that has the authority to approve expenditures.

- E. The city does not account for the numerical sequence of checks, and voided checks are not always input into the city's computer accounting system in a timely manner. The city provided us with an electronic database of checks issued during the year ended September 30, 2002. While the city indicated the database was a complete listing of all checks issued, we noted several missing checks. At our request the city investigated the missing check numbers and found many of them to be voided checks that had not been added to the system in a timely manner. However, one check had been issued out of numerical sequence and was included in the prior fiscal year's activity.

To ensure all checks are accounted for properly, the numerical sequence of all checks should be accounted for and all checks should be entered into the computer system in a timely manner, including voided checks.

WE RECOMMEND the Board of Aldermen:

- A. Consider amending the city's procurement policy and require periodic solicitation of proposals for professional services. In addition, maintain adequate documentation indicating the basis for selection.
- B. Review the need for reimbursing local meal expenses. If this is determined to be a necessary operating cost of the city, a formal policy should be established defining those circumstances where such expenses would be eligible for reimbursement.
- C. Ensure all expenditures from city monies are a prudent use of public funds.
- D.1. Ensure meals are properly reimbursed through the accounts payable system, and that the petty cash fund is only used for small type expenditures.
2. Ensure petty cash reimbursement forms are properly completed and approved by someone independent of the requestor with the authority to approve expenditures.

- E. Account for the numerical sequence of checks issued and ensure all checks are entered into the system in a timely manner, including voided checks.

AUDITEE'S RESPONSE

- A.1. *The Board of Aldermen disagrees with the auditor's opinion that the Board of Aldermen does not consistently follow the city's procurement policy for professional services and excludes them from bidding requirements. Professional services are obtained based on qualifications. Professional services providers are selected based on the specific nature of the service, circumstances surrounding the purchase and past experience. These criteria are presented by staff during the necessary Board committee meetings and regularly scheduled board meetings. This flexibility is what is intended within the city code to insure the best outcome for the City and it fully complies with city and state law.*
2. *The Board disagrees with the auditor's opinion that the City's budget is not adequately detailed to determine which professional services are included. It should be noted that there is no standard regarding the amount of detail that should be included in a published budget. The Government Finance Officers Association recommends a more summarized publication using service categories that allow an easier analysis by citizens for the cost of services. The City's published budget is a summarized program-based budget using service categories. The amount of detail that is actually available could not possibly be placed into one published document. The question then becomes how much detail is enough. Each community makes a determination and establishes an answer through its elected officials.*

The City's published budget provides a category called Contractual Services that includes professional services. This category, reviewed in detail by the Budget Committee, includes all known contractual services along with all reasonably anticipated, but uncertain expenses, for contractual services. Additionally, the Board of Aldermen approves all contracts exceeding \$15,000, even if the item is specifically stated in the budget. Given the types of professional services that fall within the Contractual Services Category, competitive bidding would be adverse to the City's best interest since these purchases usually involve specialized expertise within a narrow legal or professional area. Merely awarding a contract to the lowest bidder for these types of services would result in the City receiving substandard or inferior services. It should be noted that even the state of Missouri, when seeking Requests for Proposals (RFPs) for such services as road design and engineering, prohibits cost from being submitted in the RFP response. The state only considers the qualifications of the respondent when awarding a contract.

- B. *The Board of Aldermen approves the current practice regarding meal expenses. However, the Board will continue to review this practice.*
- C. *The Board disagrees with the auditor's opinion regarding employee morale programs. Every business and organization understands the need to provide these types of programs. Human resource management research continues to show that these*

programs create a more positive, productive and effective workforce and are good business practices. It has also been the practice of the Board to provide flowers for funerals and hospitalized employees and awards for years of service and retirement. The Board will continue to review the use of employee programs, expenditures for flowers and appropriate awards for retirement and service. Further, these forms of expressing appreciation to volunteers and employees are an appropriate use of taxpayers dollars and do not violate state law or published rules.

- D.1. The Board of Aldermen disagrees that the City does not have a policy regarding the use of petty cash funds. While there is not a written policy, the Finance Department has established petty cash fund procedures through standard operational and internal cash management processes. The City uses the American Institute of Certified Public Accountants (AICPA) guidelines in determining process and adequacy of petty cash controls. Furthermore, as documented by the AICPA and the Controllers Policy and Procedures Manual, standard business practices definitely do not limit the proper use of petty cash to only those uses suggested by the auditors. Petty cash provides a timely reimbursement to employees who must use their own cash to make a city related purchase. Additionally, and even more important, the use of petty cash for small but necessary city purchases eliminates the need to create a check through the accounts payable system. Running a small purchase through the accounts payable system would often create a cost greater than the original expenditure.*
- 2. Organization-wide, the City averages approximately \$550 dollars per month for petty cash reimbursements. The decision to allow departmental directors to authorize petty cash reimbursements, including any they incur themselves, is a decision which reflects the limited number of petty cash transactions, the responsibility levels of those directors as executive staff and efficiency issues based on the fact that many department heads are not centrally located. Additionally, all petty cash reimbursements are reviewed by Finance for appropriateness. Consequently, due to the small amounts and limited number of transactions involved, any improperly reimbursed petty cash expenditure would be quickly determined and corrected.*
- 3. The Board of Aldermen disagree with the auditors statement that some petty cash expenditures were not properly approved or authorized. A review of all petty cash transactions showed proper approval and authorization of all transactions by city department heads or their appropriate designees.*
- E. The Board of Alderman disagrees with the auditor's opinion that the City does not account for the numerical sequence of checks, and voided checks are not always entered into the city's computer accounting system in a timely manner. The "All Check Register Report" and the "Voided Check Register Report" come directly off the computer system and clearly document that checks are accounted for in a numerical sequence in the system and documents that entries are processed in a timely manner.*

AUDITOR'S COMMENT

- E. The expenditure data provided to us from the city's computer system did not include 19 check numbers.

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| 7. Cellular Phones |
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The city pays for seventy-seven cellular phone plans for various city departments and employees. Seventy-five cellular phones are serviced by one provider charging a monthly fee of approximately \$21 per phone with 15,000 shared minutes for all the phones. The remaining two phones are serviced by a different provider. Cellular phone expenditures totaled approximately \$21,800 for the year ending September 30, 2002. Our review identified the following:

- The city has not developed a formal written policy regarding cellular phone usage, or guidelines to determine whether a cellular phone is needed or of benefit to the city. The city currently has cellular phones for approximately 38% of full-time employees. We noted several cellular phones with little or no usage, while the majority of the usage on several other cellular phones was for personal calls. Of the seven employees we reviewed for one month, two directors utilized their cellular phones over 60% for personal use, three employees had more than 20% personal usage, and two employees had less than 10% personal usage.
- Confusion apparently exists among city employees as to whether personal cellular phone usage is allowed and if so, if the personal use is to be reimbursed to the city. Some city departments discourage personal use of cellular phones except in cases of emergency, while other departments allow personal use of cellular phones with such costs to be reimbursed to the city. The City Administrator indicated that personal phone calls were allowed, and reimbursement is on a voluntary basis and not required. We reviewed the cellular phone usage for the City Administrator, Assistant City Administrator, several directors and employees, and found that most of these employees regularly reviewed their personal cell phone usage and reimbursed the city. However, the City Administrator only reimbursed the city \$18 during the year, but the one month reviewed indicated personal calls and fees in excess of \$18. While it appears the City Administrator regularly makes personal phone calls, there was no documentation to indicate that he reviews his bills for personal use.
- Two of the cellular phones are through a separate provider, and the city is charged a monthly fee as well as a fee for each minute of usage. As these phones receive very little usage, it appears it would be more cost-efficient to use the same provider for all cellular phones.

While cellular phones can help increase employee productivity, they are also costly. A formal written policy should be developed regarding cellular phones. This policy should

establish a monitoring system for the assignment and usage, and ensure the cellular phones are properly used for business purposes. In this policy, the city should consider prohibiting the personal use of the cellular phones, except in cases of emergency.

WE RECOMMEND the Board of Aldermen develop a formal written policy regarding the use of cellular phones, including a provision prohibiting their use for personal reasons. In addition, the city should establish a monitoring system for the assignment and usage of cellular phones and should consider utilizing the same provider for all cellular phone services.

AUDITEE'S RESPONSE

The Board of Aldermen disagrees that the City does not have a written cell phone use policy. The City has a phone use policy that applies to cell phones and landline phones. Since this policy was provided to the auditors, the Board fails to understand their claim.

Just as with the City's landline phones, the City is charged a flat rate not based on accumulated air time minutes. Consequently, cell phone air time within the city's cell phone region, which includes the state of Missouri and parts of several other states, does not result in additional charges just as the use of the City's landline phones create no extra cost when only local calls are made. While the use of any city phone for personal use is discouraged, it is recognized that a certain amount of personal calls will occur – on either cell phones or landline phones. Call histories for all phones are reviewed monthly for excessive personal use and any personal calls that generate long distance or roam charges must be reimbursed.

The auditor's comments regarding personal use of cell phones by department heads completely ignores the reality of the work obligation expected and required of the City's executive staff. Work requirements and demands occurring both before and after normal working hours, create circumstances that can and often do place a strain on family relationships. Because the Board recognizes and supports positive family values and relationships, it will continue to allow the reasonable usage of phones for personal use. Additionally, all directors are assigned a cell phone. The amount of usage of a cell phone by an employee has no correlation with the importance or necessity of that employee being assigned a cell phone.

AUDITOR'S COMMENT

While the city does have a written policy regarding telephones and fax machines, the policy does not specifically address cellular phones. Such a policy should address which employees need a cellular phone, the proper use of a cellular phone, and a reimbursement policy if the Board of Aldermen authorizes cellular phones to be used for personal use.

Mileage logs are not maintained on most city owned vehicles, and the Board of Aldermen did not receive complete bid information on a vehicle purchased for the City Administrator.

- A. Through its various departments, the city owns and operates approximately 140 vehicles. With the exception of some vehicles utilized by the fire department and police department, mileage logs are not maintained for most city owned vehicles. Complete and detailed mileage logs are necessary to monitor mileage and evaluate the usage of vehicles. The mileage logs should include the purpose and destination of each trip, and the daily beginning and ending odometer readings. These logs should be reviewed by a supervisor to ensure vehicles and equipment are used only for city business and are being properly utilized. Information on the logs should be reconciled to gasoline purchases and other maintenance charges.

In addition, 18 employees, including the City Administrator, Assistant Administrator, and several directors, use city owned vehicles to commute to and from work. Further, the City Administrator's employment contract authorizes personal use of the city owned vehicle as part of his compensation; however, no compensation has been included on the City Administrator's W-2. IRS reporting guidelines indicate personal commuting mileage is a reportable fringe benefit. Furthermore, IRS guidelines require the full value of the provided vehicle to be reported if the employer does not require the submission of detailed logs that distinguish between business and personal usage. Procedures have not been established by the city to ensure personal mileage is reported to the IRS. As a result, the city may be subject to penalties and/or fines for failure to report all taxable benefits.

- B. In February 2002 the city purchased a new utility vehicle costing approximately \$33,000 for the City Administrator. While advertising records indicate bids were publicly solicited and it appeared several bids met the specifications outlined in the bid request, only one bid was presented on the staff report provided to the Board of Aldermen for consideration. According to the City Administrator, after bids had been requested, members of the Board of Aldermen verbally told him to ensure the utility vehicle purchased was equipped with a third seat for additional adult seating, and only one of the bids met this requirement. However, we identified other bids containing the third row seating option; one \$1,000 less and the other \$2,500 less than the bid selected. The city provided no documentation to support the justification for eliminating all but one bid on the staff report presented to the Board of Aldermen.

Competitive bidding helps ensure all parties are given an equal opportunity to participate in city business. If specifications were changed after the bid was publicly requested, the Board of Aldermen should have considered rebidding.

WE RECOMMEND the Board of Aldermen:

- A. Require a mileage log be maintained that reflects business and personal miles driven and review this log periodically for reasonableness. In addition, the board should comply with IRS guidelines for the reporting of fringe benefits relating to personal vehicle use.
- B. Ensure specifications are not changed after public bids are solicited. If the Board of Aldermen determines the need to change bid specifications, consideration should be given to rebidding.

AUDITEE'S RESPONSE

- A.1. *The Board of Aldermen will review the auditor's opinion regarding the merits of certain employees maintaining a mileage log. While the City Administrator does maintain a mileage log, the Board questions the practicality and actual value for other employees who are not allowed to use city vehicles for personal use to be required to maintain a log. The City is complying with IRS guidelines pertaining to the use of company vehicles.*
- 2. *Twelve of the eighteen vehicles taken home by employees are on-call emergency fire and police personnel. The remaining vehicles are assigned to employees who are expected to be responsive to immediate call out and other special duties required by their positions. Additionally, it is more cost effective to provide a city vehicle than to pay mileage reimbursements to an employee using their personal vehicle for city business.*
- B. *The Board disagrees with the auditor's comments concerning the purchase of the City Administrator's vehicle. The specifications were not changed as stated by the auditors, and the Board was directly involved in the decision to purchase the vehicle. All expenditures are subject to the Board's judgment of whether they are a prudent use of taxpayer funds. The auditors should not substitute their judgment in place of those of the duly elected local authority.*

AUDITOR'S COMMENT

- A. We saw no evidence of personal usage being reported to the IRS.
- B. With the lack of documentation for this transaction, any judgment would be difficult.

Several weaknesses were noted with the Board of Aldermen's procedures for closed meetings. Open meeting minutes were not always maintained or signed attesting to their accuracy. In addition, it is not evident if the city is complying with the Sunshine law regarding public requests for information.

A. The Board of Aldermen held several closed meetings during 2001 and 2002. Our review of the closed meeting minutes identified the following concerns:

1. The regular board minutes and the meeting agendas do not document the specific reasons for going into a closed session. The minutes and the agendas normally quote Section 610.021 RSMo., subsections 1, 2, and 3 which are three general reasons for going into closed session and include litigation, real estate transactions, and personnel issues. The specific reason for going into closed session is not indicated, and several instances were noted in which the board did not discuss all three of the issues indicated.

Section 610.021, RSMo, allows the board to close meetings to the extent the meetings relate to certain specified subjects, including litigation, real estate transactions, personnel issues, some competitive bidding issues, confidential or privileged communications with auditors, etc. Section 610.022, RSMo, requires a closed meeting, record or vote be held only for the specific reasons announced publicly at an open session. In addition, this law provides that public governmental bodies shall not discuss any other business during the closed meeting that differs from the specific reasons used to justify such meeting, record, or vote.

2. It is unclear how some items discussed by the Board of Aldermen during closed meetings are allowed under the provisions of the Sunshine law. Examples include the city's bond rating and financing options, the contract with the city's governmental relations attorney, and the advertisement of the Municipal Judge position. The board should ensure that topics discussed in closed session are restricted to the specific business at hand.

Section 610.021, RSMo, allows the board to discuss certain subjects in closed meetings. The board should restrict the discussion in closed sessions to the specific topics listed in Chapter 610 of the state statutes.

3. Numerous decisions have been made in closed meetings and are not recorded in the regular minutes or otherwise publicly posted. Instead, the city's practice is to make them available only upon request. Section 610.021, RSMo 2000, requires certain matters discussed in closed meetings to be made public upon final disposition.

- B. Minutes were not maintained for some meetings of the Board of Aldermen, and the city does not have adequate controls over the postings of public meetings.

Annually the Board of Aldermen and the Mayor meet for a goal setting workshop, and although a notice appears to have been posted for these workshops, there were no minutes taken. In addition, we noted several instances when meeting notices indicate a majority of board members were to attend various activities at other locations, but minutes were not maintained.

The City Clerk maintains a file of the notices for all meetings. Based upon documentation in the file, it appears that only some notices are faxed to the media, and it is unclear why all notices are not handled consistently. The city needs to establish controls to ensure minutes are maintained of all meetings, and the method in which meeting notices are posted is adequately documented. Section 610.010, RSMo 2000, indicates that any meeting of a public governmental body at which any public business is discussed, decided, or public policy formulated is subject to the provisions of the open meetings law, which includes the requirement to post the meetings, and the preparation of minutes documenting any actions taken or decisions made.

- C. Regular board meeting minutes are prepared by the City Clerk; however, the minutes are not always signed by the City Clerk and the Mayor. The minutes from October 28, 2002, through January 27, 2003, had not been signed. The minutes should be signed by the City Clerk and approved by the Board of Aldermen and signed by the Mayor immediately upon approval to provide an attestation that the minutes are a correct record of the matters discussed and actions taken during the board meetings.
- D. The city does not have adequate controls to ensure compliance with the Sunshine law in following up on information requested by the public. The city maintains a log of public requests; however, various problems were noted with the log.

The log was often incomplete, as in numerous instances the log did not indicate the date the request was completed. Without such information, compliance with the request being answered within the three days as required by statute cannot be proven. In addition, there was no documentation of how the information provided to the requestor was derived and in some instances, the information provided was vague.

Section 610.023, RSMo 2000, indicates each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request was received by the custodian of records of a public governmental body. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be

available for inspection. To ensure the city is complying with statute, the city should document adequate information in the request log to determine if requests are completed timely and that all requests are adequately fulfilled. In addition, the city should ensure the request is adequately fulfilled by providing clear, detailed information.

WE RECOMMEND the Board of Aldermen:

- A. Ensure minutes state the specific reasons for going into a closed session and limit closed meetings to only those purposes specifically allowed by state law. In addition, the board should ensure the final disposition of certain matters discussed at closed meetings is made public.
- B. Ensure meetings are publicly posted and minutes are maintained for all meetings, in accordance with the provisions of Chapter 610, RSMo.
- C. Ensure board minutes are properly signed to attest to their accuracy.
- D. Ensure the city's public request log is complete and that the city is complying with the Sunshine law.

AUDITEE'S RESPONSE

The Board will review the auditor's comments and continue to rely upon the City's legal counsel's advice to ensure compliance with state law.

| |
|-----------------------------------|
| 10. Contractual Agreements |
|-----------------------------------|

The city has not adequately monitored lease payments due to the city, obtained documentation of insurance coverage on boat dock leases, and entered into an agreement with Taney County for the collection of city property taxes.

- A. The city entered into an agreement with a local business in 1986 to lease a portion of the old airport property. The lease agreement provided for an increase in the rent amount every 5 years based upon the consumer price index. While lease payments were adjusted in 1991, payments were not increased in 1996. The city noticed the error in April 2001 and subsequently billed the lessee \$64,000, which according to city records was paid on October 18, 2002.

The failure to monitor lease agreements timely could result in lost revenue to the city.

- B. The city entered into lease agreements with several boat dock owners. The lease agreements indicate the dock owners are required to keep insurance in force that will protect the city against any liability that may arise based on claims of persons

who go on the boat docks from the city's property. However, the city has not monitored to ensure the dock owners are maintaining insurance coverage. Insurance policies for dock owners dated back to 1992 and 1993, with the most current copy dated 1997.

To protect the financial interests of the city and ensure the dock owners are complying with contract terms, the city should obtain and review insurance documentation from the dock owners.

- C. The city has not entered into a formal written contract for the collection of city property taxes by the Taney County Collector. Amounts are withheld from all city tax collections for commission and assessment withholdings by Taney County. The last contract for these services expired in 1996. Section 432.070, RSMo 2000, requires contracts of political subdivisions be in writing.

WE RECOMMEND the Board of Aldermen:

- A. Ensure lease payments are adjusted in a timely manner in accordance with lease agreements.
- B. Ensure adequate documentation of insurance coverage is obtained from dock owners that protects the city against any potential losses.
- C. Obtain a written agreement with Taney County for tax collections.

AUDITEE'S RESPONSE

- A. *The Board acknowledges the auditor's finding that in 1996 the City did not adjust an airport lease. The adjustment due the City from the 1996 lease adjustment had been identified by the City in 2001 and was corrected.*
- B. *The Board will review the auditor's findings and will continue to rely upon its legal counsel's advice to ensure compliance with all contracts and state law.*
- C. *The Board notes the auditor's suggestion regarding a formal written contract with the Taney County Collector for the collection of city taxes. However, as the auditors are aware, the County Collector, due to prior litigation involving collection contracts, had determined that it was better practice to not enter into written collection contracts with the city and instead to follow guidance of Missouri statutes regarding the collection of ad valorem taxes.*

HISTORY, ORGANIZATION, AND
STATISTICAL INFORMATION

CITY OF BRANSON, MISSOURI
HISTORY, ORGANIZATION, AND
STATISTICAL INFORMATION

The city of Branson is located in Taney County. The city was incorporated in 1912 as a fourth-class city. The population of the city in 2000 was 6,050.

The city government consists of a mayor and a six-member board of aldermen. The members are elected for two-year terms. The mayor is elected for a two-year term, presides over the board of aldermen, and votes only in the case of a tie. The Mayor, Board of Aldermen, and other principal officials at September 30, 2002, were:

| <u>Elected Officials</u> | <u>Term Expires</u> | <u>Compensation Paid for the Year Ended September 30, 2002</u> |
|---|---------------------|--|
| Louis Schaefer, Mayor | April 2003 | \$ 10,200 |
| Stan Barker, Alderman (1) | April 2004 | 210 |
| Eric Farris, Alderman (2) | April 2003 | 110 |
| Dick Gass, Alderman (3) | April 2004 | 120 |
| Ron Huff, Alderman | April 2003 | 220 |
| Larry Taylor, Alderman (4) | April 2003 | 110 |
| Bob Warlick, Alderman (5) | April 2003 | 230 |
| <u>Other Principal Officials</u> | | |
| Terry Dody, City Administrator (6) | | 137,539 |
| Kevin Faught, Assistant City Administrator(7) | | 87,154 |
| Sandra Williams, City Clerk(8) | | 58,213 |
| Deanna Schlegel, Finance Director(7) | | 79,626 |
| Donald Stephens, Planning Director(8) | | 69,502 |
| Larry VanGilder, Public Works Director(8) | | 74,112 |
| David Miller, City Engineer(8) | | 73,630 |
| Carl Sparks, Fire Chief(8) | | 64,479 |
| Stephen Mefford, Chief of Police(8) | | 74,113 |
| Linnea Smith, Health Director(8) | | 61,184 |
| Deborah Durler, Personnel Director(8) | | 67,782 |
| Thomas Motley, Municipal Judge (9) | | 10,625 |
| Cindy Shook, Parks Director(8) | | 47,455 |
| Deborah Deuster, City Attorney(8) | | 70,816 |
| Jerry Adams, Public Relations Director(8) | | 58,204 |

All city employees, including elected officials, are covered by a \$100,000 blanket bond.

- (1) Elected in April 2002 to replace Mike Palmer.
- (2) Elected in April 2002. Replaced by David Edie in April 2003.
- (3) Elected in April 2002 to replace Jeanne Hendricks
- (4) Elected in April 2002 to replace Walt Stone. Replaced by Beverly Martin in April 2003.
- (5) Served in Ward I until April 2002 when he was elected in Ward II replacing Barbara Nygard. Replaced by Jack Purvis in April 2003.
- (6) In addition to his base salary, the City Administrator was paid \$12,450 for deferred compensation, \$19,263 for unused vacation and sick leave, and \$2,884 for "special leave." His total compensation for fiscal year 2002 was \$137,539.
- (7) In addition to base salary, includes payments for deferred compensation and "special leave."
- (8) In addition to base salary, includes payments for "special leave."
- (9) Appointed in March 2002 replacing William Adams who passed away in December 2001.

On September 30, 2002, the city employed approximately 200 full-time and 16 part-time employees.

Assessed valuations and tax rates for 2002 were as follows:

ASSESSED VALUATION

| | |
|-------------------|-----------------------|
| Real estate | \$ 298,745,230 |
| Personal property | <u>38,636,092</u> |
| Total | <u>\$ 337,381,322</u> |

TAX RATES PER \$100 ASSESSED VALUATION

| | |
|--------------|------------------|
| | Rate |
| General Fund | \$ <u>0.4842</u> |

The city has the following sales taxes; the rates are per \$1 of retail sales:

| | | |
|------------------|----------------|-----------------|
| | Rate | Expiration Date |
| General | \$ <u>.010</u> | <u>None</u> |
| Road improvement | .005 | 09/30/2005 |

The city also has the following tourism taxes; rates are per \$1 of related sales:

| | |
|--|----------------|
| | Rate |
| Rooms/accommodations and tourist attractions | \$ <u>.040</u> |
| Restaurants | .005 |