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## Independent Accountant's Report on Applying Agreed-Upon Procedures

To the Honorable Mayor and Members of the Board of Trustees  
Town of Oologah, Oklahoma

We have performed the procedures enumerated below, which were requested by and agreed to by the specified users of the report as identified above. Management of the Town of Oologah and the Oologah Municipal Authority (OMA) are responsible for the Town and Authority's financial accountability and its compliance with applicable legal and contractual requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and *Generally Accepted Government Auditing Standards*. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

### **1. Expense reimbursements for Mayor, Vice Mayor and Town Clerk for the period of January 1, 2011 through December 31, 2014.**

We obtained a listing of payments made to the Mayor, Vice Mayor and Town Clerk for the period in question. The listing was agreed to the Board authorization as indicated in the Board Minutes that were provided to us and categorized by purpose of the payment. We obtained the relevant sections of the Town's code book and reviewed the payments made in light of the Town's regulations. We reviewed the W2s and the 1099s to determine if amounts paid appear to be consistent with requirements of the Internal Revenue Service.

#### **Expense reimbursement payments to Mayor, Vice Mayor and Town Clerk**

In our review of the Town's monthly board minutes, purchase order reports and bank statements we traced the \$500 paid per month for expense reimbursement to Jerry Holland along with reimbursement of various non-routine expenses and with monthly cell phone expenses. In a special meeting held March 17, 2003, Jan Miller made a motion to increase the Mayor's monthly expenses from \$150 to \$500. Darrell Mitchell seconded the motion. It passed unanimously. These \$500 payments were paid monthly through September 2014.

In our review of the Oologah Municipal Authority's monthly board minutes, purchase order reports and bank statements we traced the \$500 per month that John Dirickson, Vice Mayor, was paid from the Oologah Municipal Authority, OMA. These payments were listed on the monthly purchase order reports as Vice Chairman expense. The April 7, 2008 minutes reflect a motion for reimbursement of expenses for Vice Chairman John Dirickson for monitoring operations of the Waste Water Treatment Plant. Alice Snyder made the motion, Jan Miller seconded the motion and it was approved unanimously.

Additionally, John Dirickson's cell phone expenses were paid along with reimbursement of various non-routine expenses. These \$500 payments were paid monthly through June 2014.

Sandy McNaughton, the Town Clerk, received monthly expense reimbursements for mileage and various non-routine expenses. The reimbursement amounts varied by month.

We selected a haphazard sample of the payments paid to Jerry Holland, John Dirickson and Sandy McNaughton for detailed review. No supporting documentation was available for the expense reimbursement payments made to Jerry Holland and to John Dirickson. The reimbursement payments to Sandy McNaughton were supported by mileage logs.

We reviewed the W2s issued for the 2011-2013 years, Jerry Holland and John Dirickson received employee compensation reported on their W2s for the quarterly stipends paid for their Town Trustee positions. Sandy McNaughton's W2s reported the wages she earned and the quarterly stipend paid to her as the Town Clerk.

The town was unable to locate the W2s issued for the 2014 year.

**Findings:**

**Based on our review, the monthly recurring expense reimbursement payments of \$500 paid to Jerry Holland, Mayor and to John Dirickson, Vice Mayor, do not qualify as expense reimbursement payments per the IRS accountable plan requirements.**

In order for expense reimbursement payments to be non-taxable compensation, all three of the following elements of an 'accountable plan under IRS code Section 62(a)(2)(A) and (c)' must be met:

1. The expenses that are reimbursed are exclusively business expenses – all expense documentation must be submitted and include information for the employer to be able to verify that it is reimbursing exclusively for business expenses.
2. The substantiation requirement of Section 1.62-2(e)(1) must be met – all expenses must be itemized on an expense report with a paper or electronic receipt noting the amount, time, place and business purpose of the expenditure.
3. A process for the return of any payments in excess of the employee's substantiated expenses is adhered to – the employer reimburses only those expenses identified as business expenses and included in the expense report with appropriate documentation. Reimbursement of unsubstantiated expenses must be returned within a reasonable period of time.

The required supporting documentation to substantiate that these reimbursement payments were paying only for business expenses were not available nor were the required expense reports. The town was not able to provide any payments made by Jerry Hollard or John Dirickson back to the town or back to the OMA to return the portion of these reimbursement payments for unsubstantiated business expenses.

**Based on our review, the \$500 monthly reimbursement payments, \$6,000 paid annually, to Jerry Holland and to John Dirickson should have been classified as taxable compensation and reported annually to the IRS on their W2s.**

*IRS Regulations mandate all compensation including payments for wages and salaries, fees for professional services and other amounts received for services rendered including but not limited to commissions, tips, fringe benefits and bonuses be reported annually to the IRS as compensation.*

**Based on our review, the monthly payments of \$500 paid to Jerry Holland and John Dirickson violated Oklahoma Statute Title 11 Section 8-106 which prohibits a member of a governing body from receiving any additional compensation for his services, as follows:**

*Oklahoma Statute Title 11 Section 8-106*

*No elected or appointed official or other authority of the municipal government shall appoint or elect any person related by affinity or consanguinity within the third degree to any governing body member or to himself or, in the case of a plural authority, to any one of its members to any office or position of profit in the municipal government. The provisions of this section shall not prohibit an officer or employee already in the service of the municipality from continuing in such service or from promotion therein. A person may hold more than one office or position in a municipal government as the governing body may ordain. A member of the governing body shall not receive compensation for service in any municipal office or position other than his elected office.*

## **2. Grant Expenditures related to specified grants that were administered during fiscal year 2005**

We obtained a listing of the town and OMA expenditures and Board Minutes for the fiscal year 2005. We reviewed the list for payments made to the Mayor and Vice Mayor. This listing was agreed to the Board authorization as indicated in the Board Minutes that were provided to us and categorized by purpose of the payment. We obtained the relevant sections of the Town's code book and reviewed payments made in light of the Town's regulations. We reviewed W2s and 1099s to determine if amounts paid appear consistent with the requirements of the Internal Revenue Service.

### **Grant Expenditures -**

John Dirickson was sworn into office as a Town Trustee on August 26, 2004 at a Town of Oologah Special Board Meeting.

The Town Trustees also serve as the Trustees for the Oologah Municipal Authority, OMA, which operates the town's water treatment plant.

In August 2004, Town Ordinance #81-3 was in effect and provided that the elected official compensation rates were \$137.50 per quarter for the Mayor, \$50 per quarter for each the Trustees and \$137.50 per quarter for the Town Clerk with an additional \$15 for each special and emergency meeting per Town Ordinance #96-2.

At the August 1, 2005 Town Board meeting, John Dirickson was included in the Trustee roll call and was present at the meeting. At the August 1, 2005 OMA Board meeting, John Dirickson was not included as part of the Trustee roll call at that meeting. However, he was listed in those minutes as an inspector and gave the inspection report for the Water Treatment plant.

Also at the August 1, 2005 OMA Board meeting, the board approved the acceptance of CDBG grant contract number 11843 in the amount of \$250,000. The CDBG grant contract was not available for our review nor were any supporting documents except a grant expenditure listing.

In our review of the Town Board Minutes and the OMA Board Minutes, John Dirickson was included in the Trustee roll call for the Town Board Meetings but not mentioned in the Trustee Roll Call for the OMA Board Meetings during the period from January 2005 through April 2006. There were no notations reflected in the minutes to explain his absence.

In our review of purchase order reports and bank statements, we noted payments to John Dirickson of \$2,000 per month which started August 2, 2005 and ended May 3, 2006. During this time period, John Dirickson was paid \$10,000 in 2005 and \$10,000 in 2006. The Town was not able to provide any supporting documentation to explain the contractor selection process, the scope of services provided or the contractual arrangement with Trustee John Dirickson.

We reviewed all OMA Board Minutes from December 2004 to December 2006. We were unable to locate a motion and or Board authorization for the \$2,000 monthly payments made to John Dirickson. However, at the April 3, 2006 meeting, a motion was made and approved to continue the \$2,000 inspector fee payments to John Dirickson until an assistant operator was hired. The last \$2,000 inspector fee payment to John Dirickson was paid in May 2006.

We reviewed the CDBG grant contract number 11843 expenditure listing provided to us by the current Town Clerk. None of the expenditures listed on the grant report were payments made to John Dirickson. It appears the \$2,000 payments made to John Dirickson were paid from local funds.

We reviewed the W2s and 1099s issued by the Town and the OMA for the 2005 and 2006 years. The \$2,000 payments were not included in John Dirickson's taxable compensation and were not reported to the IRS. The quarterly meeting payments authorized for Trustees in Town Ordinances #81-3 and #96-2 were reported as taxable compensation to the IRS in both 2005 and 2006.

Based on our review, it appears John Dirickson while serving as a Town Trustee and while serving as an Authority Trustee was being paid to perform inspections at the water treatment plant. As is often inherent with related party transactions, it may not be possible to determine whether a particular transaction would have taken place if the parties had not been related, or what the terms and conditions would have been.

In our review of the Town Board of Trustees Administrative and Government Ordinances, the authority for a Trustee to assume additional duties is included:

*Section 2-105 Trustee may be Designated to Perform Certain Duties*

*The Board of Trustees may designate various ones of its members or a committee of its members to have supervision of various personnel and activities of the Town, such as streets, water systems and so on, and may give each such Trustee or committee designated an appropriate title. Each such Trustee or committee so designated shall be subordinate to the Board.*

**Findings:**

**Based on our review, the monthly payments of \$2,000 paid to John Dirickson while serving as an Oologah Town Trustee and OMA Trustee created a conflict of interest and violated Oklahoma Statute Title 60 Section 178.8 which prohibits a Trustee directly or indirectly from buying or selling services to the trust, as follows:**

*Oklahoma Statute Title 60 Section 178.8*

*A. Except with regard to residents of a facility for aged persons operated by a public trust, who are trustees of the public trust operating the facility and who comprise less than a majority of the trustees, a conflict of interest shall be deemed to exist in any contractual relationship in which a trustee of a public trust, or any for-profit firm or corporation in which such trustee or any member of his or her immediate family is an officer, partner, principal stockholder, shall directly or indirectly buy or sell goods or services to, or otherwise contract with such trust. Upon a showing thereof, such trustee shall be subject to removal and such contract shall be deemed unenforceable as against such trust unless the records of such trust shall reflect that such trustee fully and publicly disclosed all such interest or interests, and unless such contractual relationship shall have been secured by competitive bidding following a public invitation to bid.*

**Based on our review, the monthly payments of \$2,000 paid to John Dirickson violated Oklahoma Statute Title 11 Section 8-106 which prohibits a member of a governing body from receiving any additional compensation for his services, as follows:**

*Oklahoma Statute Title 11 Section 8-106*

*No elected or appointed official or other authority of the municipal government shall appoint or elect any person related by affinity or consanguinity within the third degree to any governing body member or to himself or, in the case of a plural authority, to any one of its members to any office or position of profit in the municipal government. The provisions of this section shall not prohibit an officer or employee already in the service of the municipality from continuing in such service or from promotion therein. A person may hold more than one office or position in a municipal government as the governing body may ordain. A member of the governing body shall not receive compensation for service in any municipal office or position other than his elected office.*

**Based on our review, the arrangement where John Dirickson was providing Inspection Services for the town violated Oklahoma Statute Title 11 Section 8-113 which prohibits a municipal officer from contracting with the municipality, as follows:**

*Oklahoma Statute Title 11 Section 8-113*

*A. Except as otherwise provided by this section, no municipal officer or employee, or any business in which the officer, employee, or spouse of the officer or employee has a proprietary interest, shall engage in:*

- 1. Selling, buying, or leasing property, real or personal, to or from the municipality;*
- 2. Contracting with the municipality; or*
- 3. Buying or bartering for or otherwise engaging in any manner in the acquisition of any bonds, warrants, or other evidence of indebtedness of the municipality.*

*C. Provisions of this section shall not apply where competitive bids were obtained consistent with municipal ordinance or state law and two or more bids were submitted for the materials, supplies, or services to be procured by the municipality regardless of the population restrictions of subsection B of this section, provided the notice of bids was made public and open to all potential bidders.*

**Based on our review, the inspection services paid to John Dirickson in 2005 and through March 2006 were not approved by the Board of Trustees as required in Section 7-105 of the Town Board of Trustees Administrative and Government Ordinances, as follows:**

Section 7-105 When Prior Approval by the Town Board of Trustees is Required

*Every contract for, or purchase of supplies, materials, equipment or contractual services for more than Five Hundred Dollars (\$500) shall require the prior approval of the town board of trustees; and under no circumstances may such contract or purchase be made without first obtaining the approval of the board of trustees.*

**Based on our review, the inspection services paid to John Dirickson in 2005 and through March 2006 were not approved by the Board of Trustees and were not encumbered as required in Oklahoma Statute Title 62 Section 310.1, as follows:**

*State Statute Title 62 Public Finance, Chapter 2 Section 310.1 A. requires that all purchases or contracts against all budget appropriation accounts be encumbered. Provided, instances where it is impossible to ascertain the exact amount of expenditure to be made at the time of recording the encumbrance, an estimated amount may be used for the encumbrance.*

*Additionally, Section 310.2 requires the encumbering officer of the municipality to keep a record of the exact account of each appropriation as made by the municipal governing body. The amount and purpose of each purchase order or contract shall be charged against the appropriation as made at the time of purchase or contract let and the balance in the appropriation account after such charges are deducted shall constitute the unencumbered balance available.*

**Based on our review, the \$2,000 payments, \$10,000 annually paid in 2005 and 2006 to John Dirickson should have been classified as taxable compensation and reported annually to the IRS on his W2s.**

*IRS Regulations mandate all compensation including payments for wages and salaries, fees for professional services and other amounts received for services rendered including but not limited to commissions, tips, fringe benefits and bonuses be reported annually to the IRS as compensation.*

### **3. Purchasing procedures, expenditures and project administration related to a remodel of the Town's office building**

We obtained the listing of all expenditures by the town related to the project. We categorized the advertisement for bids that was published in the local newspaper related to this project by individual trade categories and, for each trade category, identified the quotes and proposals received and the amounts actually expended. We reviewed this information for apparent compliance with the applicable Oklahoma State Statutes and Town policies. We also reviewed related 1099s and W9s for apparent compliance with applicable requirements of the Internal Revenue Service.

#### **Town Hall Remodel Project**

The Town's Capital Expenditure schedule lists the total cost of the Town Hall Renovation at a cost of \$157,408.32. This project began in 2010. A project proposal dated December 18, 2010 by Johnson Woodcraft estimates the project cost to be \$112,780 which included a \$12,000 project manager's fee. The town was unable to provide any additional proposals for this project or any supporting bid documentation to explain the justification for how this selection was made or if any public competition

was sought. On December 29, 2010, the town entered into a \$12,000 contract with Johnson Woodcraft for Construction Manager Services. The contract was signed with Jerry Holland's signature stamp and initialed by 'JD' and signed by Diana Johnson, Vice President of Johnson Woodcraft. The only termination language included was the termination date of April 29, 2011.

On January 5, 2011, the town's attorney, William Higgins, sent a letter to Mayor Holland advising that "although I don't believe that the public Competitive Bidding Act of 1974 would apply in this case, I do believe that the better course in this matter would be to let an award bid to the lowest responsible bidder after receipt of written bids. The successful bidder would be required to execute a contract and provide proof of insurance."

The Town held a special meeting on January 10, 2011 and approved the motion made by John Dirickson, Vice Mayor and seconded by Jan Miller to let new Town Hall renovations out for bid. The motion passed by unanimous vote by the Board of Trustees.

The Town published notice on January 13<sup>th</sup> and 20<sup>th</sup> for the Invitation for Bids to be accepted until 2:00pm on January 21, 2011. Bids were to be opened at a special meeting of the Town Board of Trustees on January 25, 2011 at 10:00am. Major work on the project listed in the publication was: demolition and framing labor, plumbing labor, sheetrock labor, insulation labor, concrete labor, masonry labor, glazing labor, tile and masonry work; trim carpentry; labor regarding the installation of counter tops, carpet installation labor and electrical labor. Anyone needing more information regarding the scope of the project and specifics regarding labor was directed to Town Hall during business hours.

On January 18, 2011, the Town Trustees held a special meeting and approved the motion made by John Dirickson not to withdraw the Invitation to Bid on the remodeling of new Town Hall. The motion passed by unanimous vote by the Board of Trustees. Additionally, Alice Snyder made the motion to approve a payment to Johnson Woodcraft for \$9,770.60 for preliminary exploratory work for the proposed remodel of the new Town Hall. Darrell Mitchell seconded the motion and the motion passed by unanimous vote by the Board of Trustees.

The town was unable to provide any supporting bid documentation to explain the justification for how this selection was made or if any public competition was sought for the preliminary exploratory work that Johnson Woodcraft was approved to receive payment for.

The \$9,770.60 payment to Johnson Woodcraft approved at January 18, 2011 Special Meeting for preliminary exploratory work for the proposed remodel of Town Hall was paid from two purchase orders both dated January 18, 2011. The first PO #336 totaled \$7,770.60 for demolition labor, clean-up, rough in framing and new window installation. The invoice (#161) for this work is dated January 9, 2011 and has a handwritten note that check will be picked up on January 14, 2011. Purchase Order #337 was \$2,000 for plan design and project management fee. The invoice (#162) for this work is dated January 11, 2011. The scope approved by the Board for exploratory work does not seem to align with the actual work performed. In our review of the invoice, the services appear to have been performed before board approval was obtained.

On January 25, 2011, the Town Trustees held a special meeting and approved the motion made by John Dirickson and seconded by Alice Snyder to accept the following bids:

Danny Ashwood Plumbing	\$7,500
ABC Electric excludes materials	\$7,750
Endex	\$9,400
Loren Pauls Heat& Air excludes materials	\$3,730
Audie Motter - excludes sheet rock	\$5,300
Jim Wilson	\$8,660

The motion passed with a unanimous vote by the Board of Trustees. In our review of all supporting documentation, the Electric Contractor was the only trade for which there were two proposals received. One ABC Electric's quote was a fixed price quote, the other was a per hour quote. The town was unable to provide any additional supporting documentation to explain the how these selections were made or if any public competition was sought.

Additionally, John Dirickson made a motion to modify the acceptance of ABC Electric and Loren Pauls bids to exclude materials and be changed to labor only, with a second from Alice Snyder and a unanimous vote by the Board of Trustees, the labor only bids approved were ABC Electric for \$7,750 and Loren Pauls for \$3,730.

Additionally, the Board of Trustees unanimously approved the motion by Jan Miller with a second from John Dirickson to engage Rusty and Diana Johnson to supervise and oversee completion of remodeling of new Town Hall. The approved motion did not include a rate of pay or contract amount. The town was unable to provide any supporting documentation to explain the justification for how this selection was made or if any public competition was sought.

Supplies and materials for the project were purchased from Locke Supply and Pixley Lumber for \$13,062.29 and \$18,615.86, respectively. The town was unable to provide any supporting price quotes or bidding documents or any record of Board approval of these purchases.

Additionally, On January 27, 2011 Sandy McNaughton sent a fax to Locke Supply in Claremore authorizing ABC Electric and Loren Pauls to charge material purchases on the Town's account. The authorization did not include any limits or reporting requirements.



Board approval was obtained for contractors and suppliers at the following meetings:

2/1/2011	Endex	\$ 9,700
	Ashwood Plumbing	\$ 7,500
	Audie Motter - excludes sheet rock	\$ 5,300
	ABC Electric - labor only	\$ 7,750
	Jim Olson painting labor and materials	\$ 8,960
	Loren Pauls, Heat and Air - labor only	\$ 4,500
	CRV Construction dumpster service	\$ 300
	Trinity Brick	\$ 878
	Richard Hamilton Brick mason	\$ 1,000
	Lee Buchfink concrete labor and materials	\$ 800
	L&M Office for office furnishings	\$ 9,526
	Noblitt Computer - cable and labor	\$ 1,226
	L&M Office for chairs for Court and meeting room	\$ 2,949
3/1/2011	Brunson Cabinet - labor and materials	\$ 3,974
	Johnson Woodcraft for labor to install insulation	\$ 350
	Johnson Woodcraft for labor for trim carpentry	\$ 7,700
	ABC Electric - change order 150 amp breaker disc	\$ 609
4/5/2011	Affordable Insulation	\$ 1,630
	Utility Cable - pipe and boring	\$ 1,310
	Anderson Tile for tile installation	\$ 8,856
	OK Glass for office window	\$ 206
	Home Depot - fireplace doors	\$ 299
	Halcyon Marble - vanity tops	\$ 540
	Johnson Woodcraft Formica Installation	\$ 250
	Johnson Woodcraft - cubbies	\$ 250
	Brunson Cabinets	\$ 2,945
	Jim Wilson - labor and materials stain desks	\$ 540
5/3/2011	Fours chairs for police	\$ 1,754
	Six chairs for trustees	\$ 2,826
	Ok Glass - new price	\$ 263
	Home Discount - fixtures	\$ 178
	Hahn Appliance	\$ 1,350
	johnson Woodcraft- appliance deposit	\$ 500
	johnson Woodcraft- mirrors - hardware	\$ 133
	George Noblitt	\$ 1,225
6/7/2011	Johnson Woodcraft - steeple repair	\$ 350
	Johnson Woodcraft - project manager fee - final payment	\$ 10,000
	Robertson Plumbing - labor and materials	\$ 2,715

The town was unable to provide any supporting documentation to explain the justification for how these selections were made or if any public competition was sought.

Payments made to Johnson Woodcraft for construction services and project management fees totaled \$29,924.87 in 2011.

### **Findings:**

**Based on our review of the magnitude of the construction work performed at Town Hall and as we read Title 61 of the Oklahoma Statutes, we question the determination that the Competitive Bidding Act would not have applied to the Town Hall project.**

*The Public Competitive Bid Act requires "all public construction exceeding \$50,000 be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids. No work shall commence until a written contract is executed and all required bonds and insurance have been provided by the contractor."*

*Section 102 defines a "Public construction contract" or "contract" means any contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for the contract unless the public tax revenues used for the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost.*

*Section 102 further defines a "Public improvement" to mean any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes.*

*Section 131 clarifies that no contract shall be split into partial contracts for the purpose of avoiding the requirements of this act.*

**Based on our review of the payments made to construction contractors and our review of payments made for the material purchases, it appears that the contractor and vendor selections were not based on competitive bids as required by the Town Board of Trustees Administrative and Government Ordinances Section 7-106, as follows:**

#### Section 7-106 Competitive Bidding

*Before any purchase of, or contract for, supplies, materials, equipment of contractual services are made, the town shall submit to at least three parties dealing in and able to supply the same, or to a smaller number if there are not three dealing in and able to supply the same, a request for quotation or invitation to bid and/or publish notice of the proposed purchase in a newspaper of general circulation within the town. Additionally, this ordinance references State Law, 61 O.S. Sections 101 et seq. which requires public competitive bidding on construction and public works projects over \$7,500.*

**Section 7-107 does allow certain exceptions from competitive bidding. Based on our review the payments made to construction contractors and our review of payments made for the material purchases, it appears no documentation is available to justify not obtaining competitive bids:**

Section 7-107 When Competitive Bidding is Not Required

*The following may be purchased without giving an opportunity for competitive bidding:*

- 1. Supplies, materials, equipment or contractual services whose cost does not exceed \$2,500 in a single transaction;*
- 2. Supplies, materials, equipment or contractual services which can be furnished only by a single dealer, or which have a uniform price wherever bought;*
- 3. Supplies, materials, equipment or contractual services purchased from another unit of government at a price deemed below that obtainable from private dealers, including government surplus;*
- 4. Equipment to replace existing equipment which has become inoperable when the board of trustees declares the purchase an emergency;*
- 5. Contractual Services, including but not limited to natural gas, electricity, telephone service, purchased from a public utility at a price or rate determined by the State Corporation Commission or other governmental authority.*
- 6. Supplies, materials, equipment or contractual services when purchased at a price not exceeding a price set therefor by the state purchasing agency or any other state agency hereafter authorized to regulate prices for things purchased by the state, whether such price is determined by a contract negotiated with a vendor or otherwise; and*
- 7. Contractual services of a professional nature, such as engineering, architectural and medical services unless competitive bidding is required by applicable law or regulations, such as certain federal grants programs.*

**Based on our review of the payments made to construction contractors and our review of payments made for the material purchases, it appears purchases took place prior to Board approval. Town Board of Trustees Administrative and Government Ordinance Section 7-105 requires all purchases over \$500 be approved by the Board of Trustees before the purchase transaction takes place, as follows:**

Section 7-105 When Prior Approval by the Town Board of Trustees is Required

*Every contract for, or purchase of supplies, materials, equipment or contractual services for more than Five Hundred Dollars (\$500) shall require the prior approval of the town board of trustees; and under no circumstances may such contract or purchase be made without first obtaining the approval of the board of trustees.*

**Based on our review of the board minutes, the Board of Trustees approved contracts for which there was no amount included in the motion for approval. And based on our review of correspondence with suppliers, the Town Clerk authorized contractors to make purchases on the town's accounts without any specified dollar amount or limitations on the amount purchased.**

*State Statute Title 62 Public Finance, Section 310.1 A. requires that all purchases or contracts against all budget appropriation accounts be encumbered. Provided, instances where it is impossible to ascertain the exact amount of expenditure to be made at the time of recording the encumbrance, an estimated amount may be used for the encumbrance.*

*Additionally, Section 310.2 requires the encumbering officer of the municipality to keep a record of the exact account of each appropriation as made by the municipal governing body. The amount and purpose of each purchase order or contract shall be charged against the appropriation as made at the time of purchase or contract*

*let and the balance in the appropriation account after such charges are deducted shall constitute the unencumbered balance available.*

**Based on our review of the payments made to contractors, it appears the mandated sworn statement for payments of \$25,000 or more to a contractor as required by the following State Statute was not obtained:**

*State Statute Title 62 Section 310.9 requires that for every contract entered into by a political subdivision of the state for an architect, contractor, engineer or supplier of materials of \$25,000 or more they shall obtain a sworn statement under oath stating that the contract is true and correct and that the work will be or was completed in accordance with the plans and specifications.*

**Based on our review of vendor files and payment records, it appears no W9s were received from and no 1099s were sent to contractors who received payments from the Town Hall renovation.**

IRS Regulations mandate Form 1099-MISC be sent to each person to whom you have paid at least \$600 for services, including parts and materials. This requirement includes individuals, partnerships, limited liability companies, limited partnerships and estates.

#### **4. The payment of accrued vacation to a former Town Clerk upon termination.**

We obtained the detail of the payment of accrued vacation for the former Town Clerk and compared it to the leave accrual balances shown on the payroll records. We reviewed the summary leave records for the duration of the Town Clerk's employment to confirm consistency with Town paid leave policy and trace the paid leave to timesheets supporting the payments for paid leave.

#### **Sandy McNaughton, Town Clerk – Payment of Accrued Vacation**

At the March 5, 2001 regular meeting of the Town of Oologah Trustees the following ordinance was adopted:

*Ordinance 2001-01*

*Section 1. The pay period for the Town Clerk/Treasurer of the Town of Oologah shall be \$300. The Town Clerk/Treasurer shall be paid quarterly contingent upon the Town Clerk/Treasurer performance of the Town Clerk/Treasurer performance of the Town Clerk/Treasurer statutory duties of the office.*

*Section 2. There is hereby a position for the performance of such extra duties relating to the maintenance of the books and records and office operations of the Town as the Board of Trustees shall prescribe. Said position shall be filled by the person serving as the Town Clerk/Treasurer as provided by the Board of Trustees. Said person shall be an employee of the Town and shall serve at the pleasure of the Board of Trustees.*

*The pay period for such position shall be the same as for other municipal employees. The salary for the position shall be in the amount of \$12.00 hourly. Benefits, holidays and sick leave for such position shall be provided in accordance with any personnel policy or other policy of the Town. The salary of the position shall not be subject to constitutional restrictions.*

Additionally, at the March 5, 2001 meeting the Board of Trustees approved the motion to adopt the same unused sick and vacation policy adopted by the Oologah Municipal Authority. That policy states

that if an employee chooses to not use all of their vacation time, they will lose that time, and there will be no compensation for any un-used vacation time unless they terminate.

These motions adopted at the March 5, 2001 regular meeting of the Board Trustees officially adopted the leave accruals for the Town Clerk to be the same as all other Town employees as documented in the Town of Oologah's Personnel Policy.

*The Town of Oologah's Personnel Policy states the following:*

*No employee is entitled to overtime pay unless it is authorized by the Town board in advance.*

*No employee is entitled to compensatory time without express authorization from the Town Board.*

*Daily Time Records shall be kept by each employee in accordance with the Rules and Regulations of the Town Board of the Town of Oologah. No employee shall be entitled to compensation until such time that records are approved by a supervisor and submitted to the Town Clerk/Payroll Clerk.*

*Each full time employee shall be entitled to annual vacation pay upon completion of one year of service, as follows:*

- 1. Ten days paid vacation after completion of one year of continuous employment.*
- 2. Three weeks paid vacation after five years of continuous employment.*
- 3. Four weeks paid vacation after ten years of continuous employment.*

*Vacation time shall be available upon the employment anniversary date of the employee and shall be used before the next employment anniversary date. Any unused vacation will be forfeited by the employee.*

*Employees shall not be entitled to compensation for any unused or accumulated sick leave upon termination of employment.*

Based on our review of the payroll records, Sandy McNaughton's start date was documented to be May 15, 2001 with a termination date of August 6, 2014. Based on these dates, Sandy was entitled to four weeks of vacation to be awarded on her anniversary date of May 15<sup>th</sup>, 2014. For prior years, any unused vacation days would have been forfeited on May 14<sup>th</sup> annually.

Vacation accruals and leave records were reviewed for Sandy's tenure. On May 15, 2002, Sandy earned her first accrual of 80 hours of vacation. At her second anniversary, May 15, 2003, Sandy had an unused balance of 24 hours to which her new allocation of 80 hours was added to making her available vacation 104 hours. The policy of forfeiting unused vacation was not followed throughout her entire tenure.

Because of this practice, consistently throughout her tenure, Sandy's vacation balance included the unused hours from the prior year. This carryforward of unused vacation hours actually caused Sandy to use more hours than permitted on an annual basis, creating an overpayment of authorized vacation.

However, because the policy to forfeit unused vacation hours was not enforced, removing the overpayment amounts, Sandy's vacation balance would have been 112.50 hours on August 6, 2014. Using her final rate of pay of \$16.29, her vacation pay out would have been \$1,832.63.

The actual vacation payout to Sandy was for 225 hours for a payment totaling \$3,665.25.

**Detailed Calculation of Vacation Earned and Paid to Sandy McNaughton, Town Clerk**

<u>Anniversary Date, May 15,</u>	<u>Hours Earned</u>	<u>Hours Used</u>	<u>Hours Unused &amp; Forfeited</u>	<u>Hours Unearned &amp; Overpaid</u>	<u>Hours Unused &amp; Paid at Termination</u>	<u>Amt Due Employee</u>
2002	80	56	24			
2003	80	88		8		
2004	80	80				
2005	80	120		40		
2006	120	84	36			
2007	120	80	40			
2008	120	115.5	4.5			
2009	120	76	44			
2010	120	96	24			
2011	160	192		32		
2012	160	132	28			
2013	160	168		8		
2014	160	47.5			112.5	
Amount Due Employee at Termination (112.5 hours @ \$16.29/hour)						\$1,832.63
Actual Payment to Employee at Termination						<u>\$3,665.25</u>
Overpayment - salary only						\$1,832.62
Payroll Taxes @7.65%						<u>\$140.20</u>
Overpayment - including benefits						<u>\$1,972.82</u>

**Finding**

Based on our review of the Town of Oologah’s Personnel Policy, any unused vacation should have been forfeited by the employee. The vacation records for Sandy McNaughton were never adjusted for the forfeiture of unused vacation. Therefore, Sandy’s final check #15412 included payment for excess vacation hours for which she was not entitled to receive. The payment she calculated and authorized as the Purchasing Agent on Purchase Order #758 included an overpayment of at least \$1,832.62 in wages and \$140.20 for payroll taxes for a total overpayment of \$1,972.82.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the accompanying review of transactions. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified users, as identified above, and is not intended to be and should not be used by anyone other than these specified parties.



Anne Marie Elfrink, MS, CPA

July 29, 2016

Disclaimer: In this report there may be references to state statutes and legal authorities, which appear to be potentially relevant to the issues reviewed by us. We have no authority, purpose, or intent to determine the guilt, innocence, culpability, or liability, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.