

### NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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April 27, 2020

Neil Riley, Chairperson City of Harvard 309 N. Clay Avenue Harvard, NE 68944

Dear Mr. Riley:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received allegations that the Maintenance Superintendent for the City of Harvard (City) retained proceeds from the sale of municipal scrap metal, failing to remit those funds to the City. Consequently, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA received certain financial information from the City. Based upon the outcome of this preliminary planning work, including an analysis of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the course of our preliminary planning work, we noted a certain internal control or compliance matter within the City, which is presented below.

The following information is intended to improve internal controls or result in other operational efficiencies.

#### 1. Scrap Metal Proceeds

The APA was informed that Eric Cox, the Maintenance Superintendent for the City, sold municipal scrap metal to a company, located in Hastings; however, instead of remitting all of the proceeds of those sales to the City, Mr. Cox is alleged to have kept a portion of the funds for himself.

On March 18, 2020, in an attempt to determine whether municipal scrap metal had indeed been sold as alleged, the APA contacted a representative of City Iron & Metal Company, located in Hastings, Nebraska. As result of that inquiry, the APA received documentation showing that the company had purchased 69,700 pounds of scrap metal, which was located in the municipal dump, during the past two calendar years.

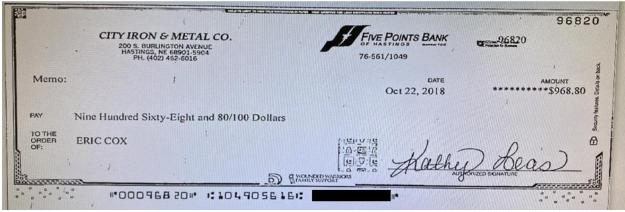
The table below provides a summary of those scrap metal purchases in 2018 and 2019:

Delivery		Quantity	Unit			
Date	Description	In Pounds	Price		Total	Vendor
5/1/2018	Uncut Steel	12,880	0.05	* \$	644.00	City of Harvard
10/19/2018	Uncut Steel	13,900	0.035	\$	486.50	Eric Cox – City of Harvard
10/22/2018	Uncut Steel	13,780	0.035	\$	482.30	Eric Cox – City of Harvard
Subtotal -	- Eric Cox	27,680		\$	968.80	
12/11/2019	Uncut Steel	20,400	0.025	* \$	510.00	City of Harvard
12/12/2019	Uncut Steel	8,740	0.025	* \$	218.50	City of Harvard
	Totals	69,700		\$	2,341.30	

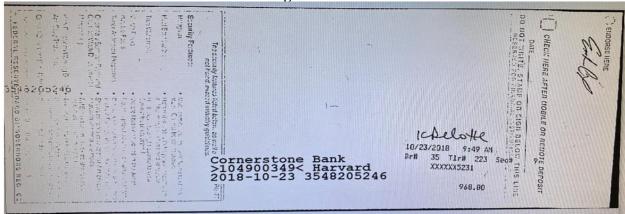
<sup>\*</sup>Unlike the receipts for the two transactions designated in red print, these funds were remitted to the City.

After receiving this information, the APA asked City Iron & Metal Company to provide a check image for the \$968.80 payment made for the scrap metal purchases at issue. On April 1, 2020, the APA received the following copies of the front and back of the cleared check, which was made personally payable to Mr. Cox.

#### Front Image of Check #96820



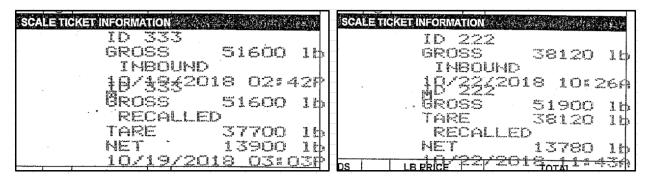
Back Image of Check #96820



As shown by the above image, Mr. Cox cashed this check on October 23, 2018, at 9:49 a.m. Moreover, the cashed check was tied to his personal bank account (number ending in 5231), which is located at the Cornerstone Bank in Harvard. NE.

According to his municipal time card, Mr. Cox was on duty as the Maintenance Superintendent for the City when he cashed this check. The APA contacted the City Treasurer to determine whether the City received any of the proceeds from the scrap metal sales in question. Per the City's records, none of the \$968.80 that City Iron & Metal Company paid to Mr. Cox was deposited to the municipality's bank accounts.

The APA has included below the individual date and time-stamped scale tickets, as provided by City Iron & Metal Company, for the scrap metal purchases on October 19, 2018, and October 22, 2018:



See **Attachments A** herein for the entire scrap metal ticket forms.

Also included in the information received from City Iron & Metal Company was a copy of the check remittance stub for the "Uncut Steel" purchased on October 19, 2018, and October 22, 2018, as shown below:

CITY IRON & METAL CO.			<del>.</del>	96820
Į.	29	Check Number	96820	00020
Vendor: Peic Cox	· · ·	Check Date	Oct 22, 2018	
~ C100	· \	Check Amoun	\$968.80	
Item to be Paid - Description		Discount Take	Amount Paid	
135407		•	968.80	)
Cuty of Harvard			1	

On April 1, 2020, the APA emailed Mr. Cox to ask about both the general process for selling municipal scrap metal and the specific purchases by City Iron & Metal Company in 2018. He responded on April 3, 2020, by telephoning an APA staff member. During the ensuing conversation, Mr. Cox explained that scrap metal accumulates over time at the municipal dump, and the City notifies City Iron & Metal Company when certain loads are ready for pickup. At the time of such pickups, he added, municipal employees use City equipment to stack the sold scrap metal onto the purchaser's trucks. Although unable to recall the 2018 transactions specifically, Mr. Cox did describe them as "semi-sized loads," based on the poundage reported.

On April 3, 2020, the APA contacted another City employee, who confirmed Mr. Cox's account of the process for accumulating and selling municipal scrap metal to City Iron & Metal Company. This employee claimed no knowledge, however, regarding the ultimate remittance of any proceeds from such sales.

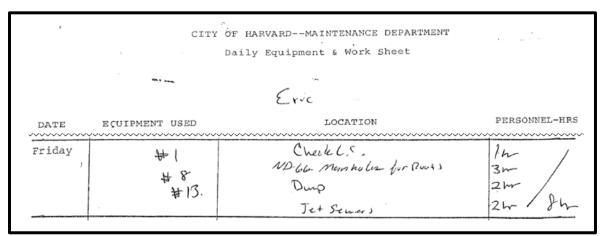
On April 6, 2020, the APA contacted Mr. Cox again to ask once more about the \$968.80 check from City Iron & Metal Company. Unlike during the previous conversation only three days earlier, this time he remembered the specific scrap metal sales for which that payment was received. Mr. Cox explained that the scrap metal sold was from cars he personally owned, which were stored at the municipal dump – but not mixed with the City's metal scrap. Additionally, Mr. Cox acknowledged using City equipment to load all of his personal scrap sold onto the City Iron & Metal Company trucks.

The APA obtained records for the hours that Mr. Cox worked as the Maintenance Superintendent for the City on those days in October 2018 when City Iron & Metal Company purchased and hauled away from the municipal dump what he claims to have been his personal scrap metal. According to the records, Mr. Cox was on duty at those times.

The following is an image of Mr. Cox's time card for the week of October 15-21, 2018, which includes Friday, October 19, 2018, a day on which he sold 13,900 pounds of alleged personal scrap metal from the municipal dump to City Iron & Metal Company:

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Waterway	730	1700	1230	400			8hr
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Prilar	730	1200	1230	400			84
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The following excerpt from the "Daily Equipment & Work Sheet" for the City, which Mr. Cox completed for Friday, October 19, 2018, shows that he was on duty at the municipal dump and used the City's equipment there on that day:



Note: Equipment #8 is the City Loader.

The following is an image of Mr. Cox's time card for the week of October 22-28, 2018, which includes Monday, October 22, 2018, a day on which he sold 13,780 pounds of alleged personal scrap metal from the municipal dump to City Iron & Metal Company:

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Sunday	-							
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The following excerpt from the "Daily Equipment & Work Sheet" for the City, which Mr. Cox completed for Monday, October 22, 2018, shows that he was on duty at the municipal dump on that day:

,	CITY	OF HARVARDMAINTENANCE DEPARTMENT Daily Equipment & Work Sheet	t i sa sa
	the run	Er.'c	
DATE	EÇUIPMENT USED	LOCATION	PERSONNEL-HRS
Monday	HI	Check C.S. Locate Hund off Learner Dump	1h 1hr 2h 3hr Jh

The scrap metal sales by Mr. Cox to City Iron & Metal Company on October 19 and October 22, 2018, give rise to certain concerns.

To start, the APA has no evidence to support Mr. Cox's claim that those transactions involved the transfer of his own personal property, as opposed to that belonging to the City. Rather, circumstantial evidence might tend to indicate the contrary. Given that the present inquiry was occasioned by a complaint lodged with the APA, for instance, it is clear that at least one community member believes the City owned the scrap metal sold. Furthermore, it seems odd that the City sold only 12,880 pounds of scrap metal during 2018, while the Superintendent sold 27,680 of personal scrap metal – all of the sales originating from the same municipal dump. On both of the City Iron & Metal Company Metal Tickets (as shown in **Attachments A** herein), moreover, the customer is designated as the City of Harvard.

The unauthorized sale of City property, such as scrap metal from a municipal dump, for personal gain would constitute theft. Neb. Rev. Stat. § 28-511 (Reissue 2016) provides, in relevant part, the following:

(1) A person is guilty of theft if he or she takes, or exercises control over, movable property of another with the intent to deprive him or her thereof.

(2) A person is guilty of theft if he or she transfers immovable property of another or any interest therein with the intent to benefit himself or herself or another not entitled thereto.

While not proof of any crime, including theft, the present lack of support for Mr. Cox's claim that he sold only his own scrap metal, which was being stored at the municipal dump, could continue to arouse suspicions of possible misconduct nonetheless.

It should be noted also that Mr. Cox was using City property by storing his scrap metal at the municipal dump – ostensibly without either receiving a documented authorization to do so or providing any payments to the City for that privilege. Furthermore, along with Mr. Cox, another City maintenance employee was working at the municipal dump when the problematic scrap metal sales occurred. It is likely, therefore, that significant City resources, including both equipment and labor, were utilized to transfer 27,680 pounds (13,900 for the first sale and 13,780 for the second sale) of scrap metal on those days.

Neb. Rev. Stat. § 49-14,101.01 (Reissue 2010), which is found in the Nebraska Political Accountability and Disclosure Act (Act), states, in relevant part, the following:

- (1) A public official or public employee shall not use or authorize the use of his or her public office or any confidential information received through the holding of a public office to obtain financial gain, other than compensation provided by law, for himself or herself, a member of his or her immediate family, or a business with which the individual is associated.
- (2) A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

\* \* \* \*

(7) Except as provided in section 23-3113, any person violating this section shall be guilty of a Class III misdemeanor, except that no vote by any member of the Legislature shall subject such member to any criminal sanction under this section.

These, and possibly other, potential statutory concerns aside, good internal controls require procedures to ensure that authorized municipal personnel properly track and deposit all amounts due to the City. Those same procedures should also safeguard municipal property and resources, ensuring that they are not subject to either misappropriation or any other form of misuse.

Without such procedures, there is an increased risk for fraud or the mishandling of City property and resources.

We recommend the City implement procedures to ensure that: 1) authorized municipal personnel properly track and deposit all amounts due to the City; and 2) municipal property and resources are protected from misappropriation or any other form of misuse. Finally, because this comment addresses possible violations of State statute, including at least one provision of the Act, we are forwarding the information herein to the Nebraska Attorney General, the Clay County Attorney, the City of Harvard Attorney, and the Nebraska Accountability and Disclosure Commission.

City Response: The City of Harvard stands behind our Maintenance Superintendent as he was doing the City and Fire Department a service. The City never owned any of the vehicles that were sent to the junkyard. The City never gave money for the vehicles, never signed a bill of sale, or had any kind of paperwork. Because Mr. Cox was donating the use of these vehicles for the fire department for jaws training, prior City officials told him verbally that he could store them at our municipal dump. Since Mr. Cox was the owner of the vehicles and the Fire Department was done training on them, he decided to send them to the junkyard to scrap them.

The City will be taking the State Auditor's Office's guidance and implementing procedures to protect our employees who are doing the City & our Fire Department a service.

APA Response: While the Maintenance Superintendent may have been providing a service to the City and Fire Department, using his City work hours – as well as, possibly, that of others – and City equipment for personal financial gain conflicts with certain statutory prohibitions, as outlined in the letter.

\* \* \* \* \* \*

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the City's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful to the City.

Draft copies of this letter were furnished to the City to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response indicating that corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the City and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Sincerely,

Mary Avery

Mary Avery

Special Audits and Finance Manager

Phone (402) 471-3686

mary.avery@nebraska.gov

cc: Nebraska Attorney General

Clay County Attorney

City of Harvard Attorney

Nebraska Accountability and Disclosure Commission

### CITY OF HARVARD

# October 19, 2018 Metal Ticket

CUSTOMER NAME:			0301. /	402) 462-6016	( <b>) 教育</b> (1996年) (1996年) (1996年)
					# 333
DRIVER:	ON OR OFF #OF PASS				
ALUMINUM		POUNDS		LB PRICE	TOTAL
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ALUM-A/CR DIRTY	ALUMINUM/COPPER RAD DIRTY	11	@		
ALUM-CAN	ALUMINUM CANS	<u> </u>	@	:	= -
ALUM-CAST E P	CAST ALUMINUM	1	@		=
ALUM-SHEET	SHEET ALUMINUM		@		=
ALUM-DIRTY	ALUMINUM BREAKAGE		@		
ALUM-ACSR	ACSR ALUMINUM WIRE		@		
ALUM-EC	E.C. ALUMINUM WIRE		@		4
ALUM-EXTR E P	CLEAN ALUMINUM EXTRUSION		@	=	
ALUM-IRR	CLEAN IRRIGATION PIPE	<u> </u>	@		=
ALUM-MLCC	MIXED LOW COPPER CLIP	<u> </u>	@		
ALUM-PAINT E P	PAINTED ALUMINUM		@		
ALUM-RADS	ALL ALUMINUM RADIATIORS		@	-	
ALUM-RADS DIRTY	ALL ALUMINUM RAD DIRTY		@	-	
ALUM-RIMS	AUTO RIMS / TRUCK RIMS		@		
ALUM-DIE	DIE CAST		@		
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## October 22, 2018 Metal Ticket

						*
Cody driver	CITY IRON & METAL C	OMPAN', INC.	METAL	TICKET		
\$ 11 ST ST TO SHARE AND A SECTION OF	200 S. BURLINGTON AVE. 1	ASTIN NE	8901	402) 462-6016	dig	Bistoria (1946) Anti-Anti-Anti-Anti-Anti-Anti-Anti-Anti-
CUSTOMER NAME:		7		-		# 222
DRIVER:		1	-			Uaa.
NAME OF TAXABLE PARTY OF TAXABLE PARTY.		POUNDS	1	LB PRICE		TOTAL
ALUM-A/CR	ALUMINUM/COPPER RADIATORS	<u> </u>	<u>  @</u>		22	
ALUM-A/CR DIRTY	ALUMINUM/COPPER RAD DIRTY	<del> </del>	@		=	
ALUM-CAN	ALUMINUM CANS	<u> </u>	@_		=	
ALUM-CAST E P	CAST ALUMINUM	<b></b>	@		=	
ALUM-SHEET	SHEET ALUMINUM	<u> </u>	@		=	
ALUM-DIRTY	ALUMINUM BREAKAGE	<del> </del>	@		=	
ALUM-ACSR	ACSR ALUMINUM WIRE	-	10		=	
ALUM-EC	E.C. ALUMINUM WIRE	-	0		·=	
ALUM-EXTR E P	CLEAN ALUMINUM EXTRUSION	<u> </u>	@		2	
ALUM-IRR	CLEAN IRRIGATION PIPE	<u> </u>	@		=	
ALUM-MLCC	MIXED LOW COPPER CLIP	1	@_		. =	
ALUM-PAINT E P	PAINTED ALUMINUM		@		12	r
ALUM-RADS	ALL ALUMINUM RADIATIORS	H	@		=	
ALUM-RADS DIRTY	ALL ALUMINUM RAD DIRTY	-	@		.=	
ALUM-RIMS	AUTO RIMS / TRUCK RIMS	H	@		=	
ALUM-DIE	DIE CAST		@		= 1	
FINGERPRINT	NOTES/ADDITIONAL INFO	SCA	LE TIC	KET INFORMAT	TION	because the control of the
Check to Elicox COPPER				10 2	22	2
of ork		'		GROS	SS	38120 1
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and bearing the transmission of the same and		11		S William B		13780 II
		+			20	
		POUNDS			22	12018 OTAL 1 = 431
COPP-1 CLEAN	#1 COPPER	POUNDS	@		22	/ ZUI TOTAL = 431
COPP-1 CLEAN COPP-2 CLEAN	#2 COPPER	POUNDS	Q			/ ZUI TOTALI = 43
COPP-1 CLEAN COPP-2 CLEAN COPP-D 1 L H	#2 COPPER UNCLEANED #1 COPPER	POUNDS	@ @		=	/ 201 TOTAL = 431
COPP-1 CLEAN  COPP-2 CLEAN  COPP-D 1	#2 COPPER UNCLEANED #1 COPPER UNCLEANED #2 COPPER	POUNDS	@ @ @		=	ZUI TOTAL - SI
COPP-1 CLEAN  COPP-2 CLEAN  COPP-D 1	#2 COPPER UNCLEANED #1 COPPER	POUNDS	@ @		=	201 TOTAL TOTAL
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COPP-1 CLEAN COPP-2 CLEAN COPP-D 1 L H COPP-D 2 L H COPP-LIGHT BRASS BRAS-H CORE	#2 COPPER UNCLEANED #1 COPPER UNCLEANED #2 COPPER LIGHT COPPER HEATER CORES	POUNDS	@ @ @		= = = = = = = = = = = = = = = = = = = =	201 TOTAL = 431
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COPP-1 CLEAN COPP-2 CLEAN COPP-D 1 L H COPP-D 2 L H COPP-LIGHT  BRASS BRAS-H CORE BRAS-RADS BRAS-RADS DIRTY BRAS-RED / E P BRAS-SEMI / E P BRAS-SEMI / E P BRAS-DIRTY  LEAD LEAD LEAD LEAD LEAD LEAD LEAD LEA	#2 COPPER UNCLEANED #1 COPPER UNCLEANED #2 COPPER LIGHT COPPER LIGHT COPPER HEATER CORES BRASS AUTO RADIATORS BRASS AUTO RADS DIRTY RED BRASS SOLIDS SEMI BRASS YELLOW BRASS BRASS BREAKAGE SOFT LEAD - WHEEL WEIGHTS LEAD BATTERIES MAGNETIC STAINLESS NON MAGNETIC STAINLESS 14 CAST IRON CLEAN 15 STEEL JINCUT/UNPREPARED RON MIXED / CONV. SM LG		8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8			
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