



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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October 3, 2023

D.J. Smith, Mayor
City of Ponca
123 West Third Street
Ponca, Nebraska 68770

Dear Mayor Smith:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the City of Ponca's (City) former Clerk/Treasurer/Administrator, Denise Peterson. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA obtained financial records and other relevant documentation from the City. Based on the outcome of this preliminary planning work, including an analysis of the information obtained, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the course of the preliminary planning work, the APA noted certain issues that merit corrective action.

Background Information

The City of Ponca (City) is a city of the second class located in Dixon County, Nebraska. The City Council (Council) is the governing body that exercises financial accountability and control over activities relevant to the operations of the City. Council members are elected by the public and have broad decision-making authority, including the power to levy taxes and to designate management, the ability to exert significant influence over all City operations, and the primary responsibility for related fiscal matters.

The following comments and recommendations, which have been discussed with the appropriate members of the City and its management, are intended to improve internal control or result in other operating efficiencies.

Comments and Recommendations

1. Alleged Abuse of Public Records

According to municipal representatives, Ms. Peterson's employment as the City's Clerk/Treasurer/Administrator was terminated on February 1, 2023. Among the concerns brought to the APA's attention, Ms. Peterson cleared out her office and supposedly erased the contents of her municipal laptop computer, which held 18 to 20 gigabytes (GB) of City-related data, including public records, financial information, and other important documentation.

Enlisting the assistance of both the Dixon County Sheriff's Office and Computer Forensic Resources, Inc. (CFR), a computer forensics company based out of Sioux Falls, SD, the City attempted to recover the deleted data from Ms. Peterson's municipal computer. According to a report that CFR issued to the City on May 24, 2023, it was discovered that "579,000 artifacts had been accessed, changed, or otherwise altered as a result of general usage and noted attempts to restore/recover data on February 2, 2023." However, CFR was unable to determine the extent to which such activity could be directly attributed to Ms. Peterson, and the attempts to recover the deleted data proved largely unsuccessful.

This apparent erasure of electronic City records from Ms. Peterson's municipal computer gives rise to concerns regarding possible violations of State statute.

To start, Neb. Rev. Stat. § 84-1213 (Reissue 2014) of the Records Management Act (Act) provides the following:

(1) All records made or received by or under the authority of or coming into the custody, control, or possession of state or local agencies in the course of their public duties are the property of the state or local agency concerned and shall not be mutilated, destroyed, transferred, removed, damaged, or otherwise disposed of, in whole or in part, except as provided by law.

(2) Any person who willfully mutilates, destroys, transfers, removes, damages, or otherwise disposes of such records or any part of such records, except as provided by law, and any person who retains and continues to hold the possession of any such records, or parts thereof, belonging to the state or local agency and refuses to deliver up such records, or parts thereof, to the proper official under whose authority such records belong upon demand being made by such officer or, in cases of a defunct office, to the succeeding agency or to the State Archives of the Nebraska State Historical Society, shall be guilty of a Class III misdemeanor.

(Emphasis added.) For the purposes of the Act, Neb. Rev. Stat. § 84-1202(3) (Reissue 2014) defines a "local agency" as follows:

Local agency means an agency of any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Local political subdivision does not include a city of the metropolitan class or a district or other unit which by law is considered an integral part of state government[.]

Subsection (4) of that same statute provides the following definition for "record":

Record means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business[.]

Further, Neb. Rev. Stat. § 28-911 (Reissue 2016) prohibits "abuse of public records," as follows:

(1) A person commits abuse of public records, if:

(a) He knowingly makes a false entry in or falsely alters any public record; or

(b) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or

(c) Knowing he lacks the authority to retain the record, he refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such record; or

(d) He makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.

(2) As used in this section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

(3) Abuse of public records is a Class II misdemeanor.

(Emphasis added.) Notwithstanding these potential statutory concerns, good internal control requires procedures to ensure that the City's records, including electronic data stored on a municipal computer, are adequately secured and safeguarded from unauthorized disposal.

Without such procedures, there is an increased risk for not only theft or destruction of City records but also violation of State statute.

We recommend the implementation of procedures to ensure City records, including electronic data stored on a municipal computer, are adequately secured and safeguarded from unauthorized disposal. Further, because the issue addressed herein gives rise to concerns regarding possible violations of State law, we are referring this information to the Nebraska State Patrol, the Attorney General, and the Dixon County Attorney for further review.

City's Response: It is important to note that the 20+ year, long-time City Administrator/Clerk/Treasurer's Office area was completely sanitized of all treasurers' financial reports, meeting minutes and numerous other city generated documents essential in day-to-day city operations. The Mayor and Staff believe Peterson had believed she would not be re-appointed by newly elected Mayor DJ Smith and in December & January began the destruction and sanitization of her office and all city documents generated and acquired over the 20+ years. The only files left in Petersons Office was a hanging file in her desk labeled "February Meeting" when she was removed from office by newly elected Mayor D.J. Smith. Peterson's removal, theft, destruction, relocation and deceptive filing of city owned documents caused excessive costs to the City of Ponca in the following months as the City Staff & Consultants had to recreate and retrieve city operating and historical documents. Due to her actions which were deliberate and premeditated to leave all the city cupboards bare and the city non-operational.

Prior to Petersons February 1st removal meeting, the Mayor and the Cities IT Company, Riverside Technologies of Sioux City IA, on the evening of January 31st, confidently installed a 250gb "Carbonite Core" data backup system on the City Administrator/Clerk/Treasurers laptop/desktop & Utility office desktop system. On the early afternoon of Petersons dismissal by Mayor Smith on February 1st, she discovered the Carbonite Backup system and disabled the program which alerted the Cities IT company remotely in Sioux City. In the days following the IT Company discovered during system damage assessments that the recently installed 250gb "Carbonite Backup" had been additionally wiped clean by Peterson and no document recovery was able to be obtained.

Peterson, before her departure on February 1st deleted and erased all City Administrator/Clerk/Treasurer email accounts, passwords and attachment documents that were generated over the last 20+ years, which were not recovered by IT Vendor, Riverside Technologies of Sioux City IA. Additionally, Peterson removed city essential operating programs and desktop icons off the city laptop in her office and during damage assessment inspections it was also found that Peterson sanitized her city issued cell phone of call logs, voicemails and email accounts.

Mayor Smith and the Ponca City Attorneys Office did issue to Peterson, after her dismissal and discovery of the City Administrator/Clerk/Treasurers office being cleaned out and city owned records missing, a written demand letter to Peterson and her attorney in Omaha. The City of Ponca and it Chief of Police did retrieve a "Christmas Bag" of city owned notebooks, files and a computer flash storage drive from the Plainview Police Department on February 20th, 2023 that Peterson said she had taken from the City of Ponca offices and dropped off the evidence to the Plainview Police Department. Many of the documents retrieved from Plainview were of no value to the cities document reconstruction efforts and had personal files and flash drive files of scrapbooking and quilting items.

Mayor Smith and the Governing Body has implemented full data backup procedures, established administrative access rights and protections, personnel log-in records, employee access restrictions and is in the final of stages a City Server placement by its IT Vendor, Riverside Technologies of Sioux City IA to safeguard City records and operating processes.

2. Credit Card Issues

Additional concerns brought to our attention regarding the former Clerk/Treasurer/Administrator included possible improper use of two municipal credit cards (ending in 5966 and 6683). The APA obtained the City's bank account and credit card statements, as well as related supporting documentation, for the period December 7, 2020, through February 1, 2023. The following issues with the City's credit card procedures were identified by the APA:

Questionable Credit Card Charges

The APA noted 58 questionable payments, totaling \$2,647.89, made with the two municipal credit cards. The charges are summarized in the following table:

Vendor	Number of Transactions	Amount
Walmart	41	\$ 2,255.87
Other Questionable Vendors Note	17	\$ 392.02
Totals	58	\$ 2,647.89

Note: The APA included vendors with dubious payments totaling less than \$500 each in the "Other Questionable Vendors" line item.

Shown below is an example of one of the 41 questionable Walmart charges included in the table above:

Walmart Receipt Lookup

Sioux City Supercenter
3101 Floyd Blvd
712-239-8901

Store purchase 34 items **\$85.39**

Apr 27th, 2021 | 12:55:37

Lipton Peach Iced Tea, 16.9 oz, 12 Pack
\$4.98

Gold Peak Real Brewed Tea Unsweetened, Black Iced Tea Drink, 16.9 fl oz, 6 Bottles
\$5.48

Gold Peak Real Brewed Tea Unsweetened, Black Iced Tea Drink, 16.9 fl oz, 6 Bottles
\$5.48

Clear American Black Cherry Sparkling Water, 33.8 fl oz
\$0.57

The APA obtained from the City a copy of the Walmart receipt, shown above on the left.

In order to identify the specific items listed on the receipt, the APA utilized Walmart's "Receipt Lookup" website (<https://www.walmart.com/receipt-lookup>). Displayed to the right of the receipt shown on the previous page are 4 of the 20 items purchased – primarily, a variety of beverages that included peach tea, unsweetened tea, sparkling water, coffee, water, and soft drinks. Also included in this purchase were 14 Iowa bottle deposit fee charges.

The APA questions whether these beverage purchases were an appropriate use of public funds.

The Local Government Miscellaneous Expenditure Act (Act), which is set out at Neb. Rev. Stat. §§ 13-2201 to 13-2204 (Reissue 2022), specifies various expenditures, aside from those otherwise authorized by law, that constitute allowable uses of public funds by designated political subdivisions. The provisions of the Act are made applicable to cities, among numerous other public entities, by both subsections (2) and (3) of Neb. Rev. Stat. § 13-2202 (Reissue 2022).

Section 13-2203(2) authorizes the “expenditure of public funds” for the following:

(a) *Nonalcoholic beverages provided to individuals attending public meetings of the governing body; and*

(b) *Nonalcoholic beverages and meals:*

(i) *Provided for any individuals while performing or immediately after performing relief, assistance, or support activities in emergency situations, including, but not limited to, tornado, severe storm, fire, or accident;*

(ii) *Provided for any volunteers during or immediately following their participation in any activity approved by the governing body, including, but not limited to, mowing parks, picking up litter, removing graffiti, or snow removal; or*

(iii) *Provided at one recognition dinner each year held for elected and appointed officials, employees, or volunteers of the local government. The maximum cost per person for such dinner shall be established by formal action of the governing body, but shall not exceed fifty dollars. An annual recognition dinner may be held separately for employees of each department or separately for volunteers, or any of them in combination, if authorized by the governing body[.]*

(Emphasis added.) The City was unable to provide documentation to support that the beverages purchased with a municipal credit card were authorized for the purposes specified above. Likewise, none of the other municipal credit card purchases from Walmart or any of the “Questionable Vendors” – which also included primarily additional beverages and ice – could be traced clearly to a legitimate City purpose, whether permitted under the Act or any other State statute.

In addition, the APA noted 10 clothing purchases, totaling \$1,105.75, made with the two municipal credit cards, as shown in the following table:

Vendor	Number of Transactions	Amount
Amazon	4	\$ 310.25
Walmart	2	\$ 228.78
Fleet Farm	1	\$ 223.29
Scheels	1	\$ 149.80
Bomgaars	1	\$ 124.09
Shoe Sensation	1	\$ 69.54
Totals	10	\$ 1,105.75

Among the above clothing purchases were the following:

- A Carhartt Men’s Yukon Full Swing Insulated Jacket (\$189.99)
- A pair of Men’s KEEN Targhee III Waterproof Hiking Shoes (\$140.00)
- An Ariat Men’s Rebar Washed DuraCanvas Insulated Work Vest (\$109.99)
- A pair of Skechers Sport Men’s Vigor 2.0 Sneakers (\$60.00)

The City’s Employee Handbook (Handbook) contains the following provision for a clothing allowance:

Employee dress should be neat in appearance. The Utility Commissioners will be allocated \$20 a month clothing allowance. All shirts, jackets and coats will be embroidered with Ponca Public Utilities.

While the Handbook does provide for this allowance, several of the clothing items purchased with the two municipal credit cards cost considerably more than the \$20 monthly limit. As a result, such purchases do not appear to have been made in accordance with City policy and are potentially questionable.

Good internal control requires procedures to ensure that any expenditure of City funds is not only supported by adequate documentation but also made in strict accordance with both underlying statutory authority and administrative guidelines.

Lack of Adequate Documentation

In addition to the above questionable purchases, the APA noted 144 other transactions made with the two municipal credit cards between December 7, 2020, through February 1, 2023, that lacked adequate supporting documentation.

The City was unable to support the transactions adequately, in part, due to the former Clerk/Treasurer/Administrator’s erasure of electronic City records from her laptop computer, as detailed previously in **Comment and Recommendation Number 1** (“Alleged Abuse of Public Records”) herein.

The table below lists these unsupported transactions, which total \$10,673.50.

Vendor	Number of Transactions	Amount
Ponca Cooperative LLC	27	\$ 2,076.45
Intuit	3	\$ 1,455.02
Menards	8	\$ 990.31
Amazon	51	\$ 901.72
Blue to Gold LLC	1	\$ 895.00
Lowe’s	6	\$ 720.19
Bomgaars	3	\$ 571.31
Safetysign.com	1	\$ 523.98
Other Vendors Note	44	\$ 2,539.52
Totals	144	\$ 10,673.50

Note: The APA included vendors with inadequately supported payments totaling less than \$500 each in the “Other Vendors” line item.

Neb. Rev. Stat. § 13-610(4) (Reissue 2022) requires all purchases with a political subdivision’s purchasing card to be supported by an itemized receipt, as follows:

An itemized receipt for purposes of tracking expenditures shall accompany all purchasing card purchases. In the event that a receipt does not accompany such a purchase, purchasing card privileges shall be temporarily or permanently suspended in accordance with rules and regulations adopted and promulgated by the political subdivision.

(Emphasis added.) Good internal control requires procedures to ensure that proper documentation is maintained for all disbursement transactions, including itemized receipts for purchases made with the City’s purchasing cards.

Lack of Formal Credit Card Policies

Between December 7, 2020, and February 1, 2023, a total of \$54,188.81 in expenditures was made using the municipal purchasing cards ending in 5966 and 6683. According to City representatives, the City did not approve a formal, written purchasing card policy until March 27, 2023, at which time the City Council passed Ordinance #462.

Neb. Rev. Stat. § 13-610 (Reissue 2022) authorizes political subdivisions in Nebraska to establish a purchasing card program. Subsection (1) of that statute says, in relevant part, “The governing body shall determine the type of purchasing card or cards utilized in the purchasing card program and shall approve or disapprove those persons who will be assigned a purchasing card.” Subsection (4) provides for the suspension of card privileges “in accordance with rules and regulations adopted and promulgated by the political subdivision.” Likewise, subsection (6) states, “No officer or employee of a political subdivision shall use a political subdivision purchasing card for any unauthorized use as determined by the governing body.”

Ensuring that City purchasing cards are used only for authorized purposes, or the privilege of their use is properly suspended, as required by law, is difficult, if not impossible, without formal municipal guidelines or, as referenced in statute, “rules and regulations adopted and promulgated by the political subdivision” to establish the parameters for such legitimate use.

Additionally, good internal control requires written guidelines for the proper use of the City’s purchasing cards, including formal designation of both the authorized users and the allowable uses thereof.

Payment of Interest and Sales Tax

During our examination of the City’s credit card statements and supporting documentation, the APA noted that the City paid a total of \$541.75 in interest and Nebraska sales and lodging taxes.

Per Neb. Rev. Stat. § 77-2704.15(1)(a) (Cum. Supp. 2022), purchases made by the State or its political subdivisions are exempt from sales tax, as follows:

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village

Furthermore, Title 316 NAC 68-004.01 of the Nebraska Department of Revenue’s formal rules and regulations states the following, in relevant part:

Occupants granted an exemption from the lodging tax are the same entities which are exempt from the sales and use tax under the Nebraska Revenue Act of 1967, as amended

In addition, good internal control requires procedures to ensure that credit card billings are paid timely to avoid unnecessary interest penalties, and sales taxes are not paid on municipal purchases.

Without such procedures, there is an increased risk for not only loss or misuse of public funds but also noncompliance with State statute.

We recommend the City implement procedures to ensure the following:

- Proper documentation is maintained for all disbursement transactions, including itemized receipts for purchases made with the City’s purchasing cards;
- A formal purchasing card policy is implemented to outline procedures for the proper use of the City’s cards, including the designation of allowable purchases and authorized users;
- The City does not pay Nebraska sales or lodging taxes; and
- Credit card billings are paid timely to avoid unnecessary interest penalties.

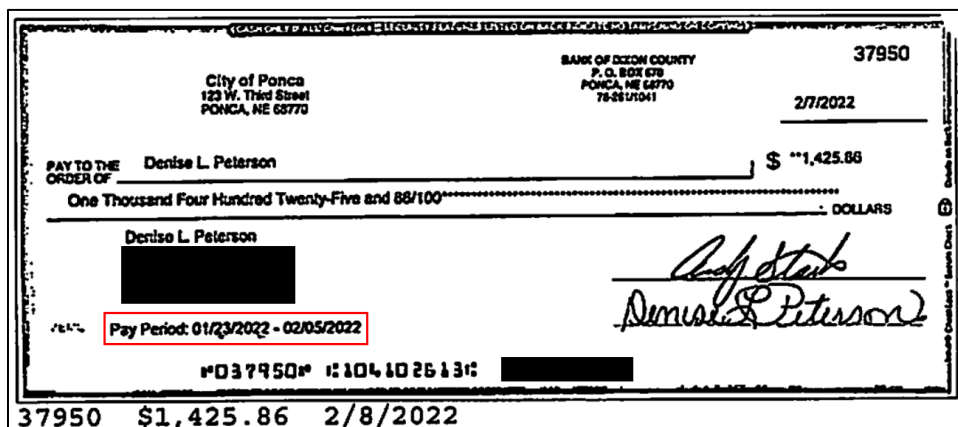
City’s Response: On March 27th, 2023, The City Governing Body upon the recommendation of Mayor Smith, passed a comprehensive Credit Card Ordinance and this document was provided to the APA’s office. Additionally, the Mayor’s Office will monitor future city purchases related to Nonalcoholic beverages and comply to recommendations provided and the strict compliance of the new Credit Card Purchasing Ordinance recently adopted.

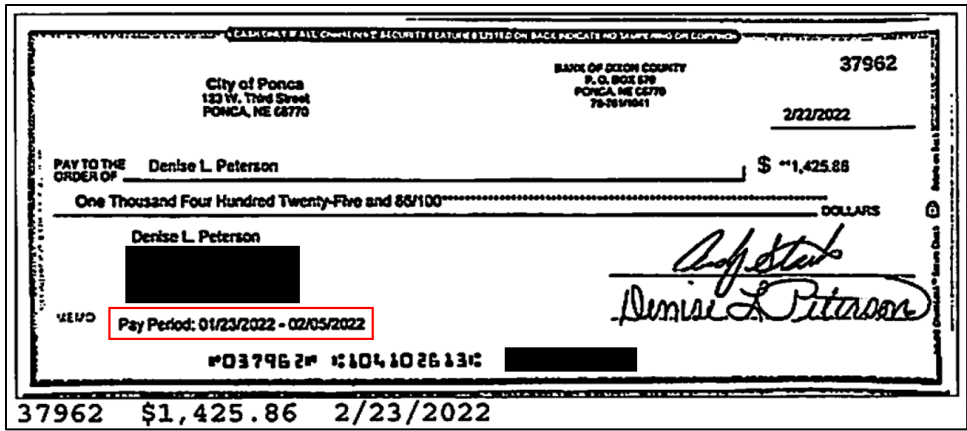
The City of Ponca has hired a new City Clerk/Finance Director effective April 10, 2023 and she has been exceptional in administrating good internal control policy for the City along with requiring documentation for all purchases to eliminate delays and payments of interest and sales tax by the city

3. Payroll Issues

In examining the City’s bank statements, the APA noted that Ms. Peterson appears to have been paid twice for the same pay period of January 23, 2022, through February 5, 2022, with each payment totaling \$1,425.86.

The cleared check images for both of these payments are shown below:





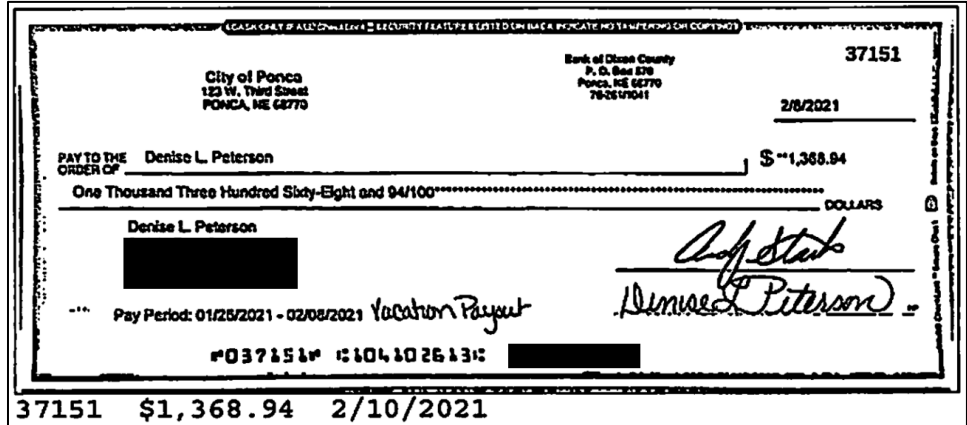
Additionally, the APA identified another potentially duplicate payroll payment to Ms. Peterson in February 2021.

The following table shows the checks paid to Ms. Peterson in February 2021:

Check #	Check Date	Cleared Date	Payee Per Check	Memo	Check Amount
37148	2/8/2021	2/9/2021	Denise L. Peterson	Pay Period: 01/24/21 - 02/06/21	\$ 1,368.94
37151	2/8/2021	2/10/2021	Denise L. Peterson	Pay Period: 01/25/21 - 02/08/21	\$ 1,368.94
37169	2/22/2021	2/23/2021	Denise L. Peterson	Pay Period: 02/07/21 - 02/20/21	\$ 1,368.94

Check #37151, dated February 8, 2021, for \$1,368.94, cleared the bank on February 10, 2021. This check’s memo states that the payment was for the pay period January 25, 2021, to February 8, 2021, and also includes the words “vacation payout” handwritten on the side.

An image of check #37151 is shown below:



As shown in the table on the preceding page, check #37148, which was issued on the same day and for the same amount as check #37151, cleared the bank one day prior on February 9, 2021. The memo for this check designates the relevant pay period as January 24, 2021, through February 6, 2021 – overlapping all but three days with the pay period for check #37151.

The APA questions whether check #37151 was truly a “vacation payout,” as it seems unlikely that such a payment would agree to Ms. Peterson’s regular bi-weekly paychecks. Per the minutes for the City Council’s February 25, 2021, meeting, this payment appears to have been included with the City’s other payroll costs for the month – all of which, totaling \$12,754.72, were listed under the claim item “Wages” and approved by the Council accordingly.

The City was unable to provide any documentation to support that the “vacation payout” supposedly made by check #37151 was, in reality, anything other than a usual bi-weekly payroll disbursement to Ms. Peterson, as indicated by the February 25, 2021, meeting minutes.

Good internal control requires procedures to ensure that duplicate payroll disbursements to a municipal employee are not made for the same or overlapping pay periods. Those same procedures should ensure also that adequate documentation is maintained to support any leave payouts made to employees.

Without such procedures, there is an increased risk for the loss or misuse of City funds.

We recommend the implementation of procedures to ensure duplicate payroll disbursements to municipal employees are not made for the same or overlapping pay periods. We also recommend the City ensure adequate documentation is maintained to support any leave payouts made to employees.

City's Response: The City of Ponca has eliminated all "Signature Stamps" that were previously utilized by Peterson. In April, Mayor Smith and the Governing Body invested & voted to eliminate Peterson's deficient and single user QuickBooks accounting program/process and replace it with the authorized multi-user "PowerManager" fully integrated Utility and Accounting Software Program to control the cities general ledger, payroll processing, accounts payable, utility billing, budget cash management and bank reconciliation processes. Additionally, the Mayor and Governing Body passed motions to adopt and develop a City Departmental Line-Item Operating Budget with Capital Improvement Planning, effective for the 2023-24 Budget year beginning October 1st, 2023.

* * * * *

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use the knowledge gained during our work to make comments and recommendations that we hope will be 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 comments and recommendations 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 that indicates 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 these specified parties. However, this communication 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.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor

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Sincerely,



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