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CITY OF YONKERS

TO: Philip A. Amicone, Mayor
Chuck Lesnick, City Council President
All City Council Members
Bernard P. Pierorazio, Superintendent of Schools
Bernadette Dunne, President Yonkers Board of Education
All Board of Education Trustees

FROM: Philip A. Zisman, Inspector General *Paz*

SUBJECT: 2009 Annual Report

DATE: January 20, 2010

Overview

The Inspector General's Office faced significant challenges in 2009. At the end of 2008, my five-year term as Inspector General expired and the Mayor announced that he would conduct a search before making an appointment.¹ In addition, the Yonkers Board of Education refused to cooperate with the IG's efforts to audit the School District's health insurance payments. In July of 2009, the Board passed a resolution which rescinded the authority of the City's Inspector General to act as the Schools' Inspector General, and then sued our office in an effort to prevent us from asserting independent authority under the City Charter to audit School District administrative operations.

Despite these challenges, our office continued to work professionally and aggressively as the City's fiscal watchdog. We issued significant reports on: City Fleet Gasoline Usage; the City grant to the Yonkers Alliance for Latino and Immigrant Services; and, community benefits associated with the Mulford Gardens/HOPE VI development project. We actively challenged the Board of

¹The appointment of a new Inspector General is a partnership between the Mayor and the City Council, as mayoral nominations are subject to the advice and consent of the Council. The Mayor's first nominee Michael White withdrew his name from consideration in October, 2009. On January 5, 2010, the Mayor nominated Dan Schorr for Council consideration.

Education on its ill-advised policy of refusing to cooperate with our efforts to conduct independent audits of the School District's administrative operations. And, we are now nearing the completion of our review of the City's administration of cellular phones.

Our annual report has traditionally served three purposes: 1) it provides background information and explains the core functions of the Inspector General's Office; 2) it summarizes the Office's activities for the past year, and sets forth our specific findings and recommendations; and 3) it lists the Office's objectives for the coming year. Since a new Inspector General could soon be installed into office, in this year's report, instead of listing my objectives for 2010, I make specific recommendations for new and continuing projects that I believe the office should pursue in the coming year, and also provide a summary of our findings in our ongoing review of City cell phones.

Mission

The Department of Inspector General's mission is to conduct objective and independent audits, reviews and investigations relating to Yonkers City Government and the administration of the Yonkers Public Schools in order to:

- promote economy, efficiency and effectiveness
- detect and deter fraud, waste, and abuse
- promote ethical, fiscal and legal accountability

The focus of the Office's efforts is to promote effective, efficient and honest government administration and to aid in the prevention of conduct which undermines the integrity of government.

Legislative Authority

The legislative authority of the Inspector General's Office is set forth in Article VII of the Yonkers City Charter §§C7-1-3.² A summary of the authorizing provisions are set forth below.

- A. Sections C7-1-3 of the Yonkers City Charter establishes the Department of Inspector General.
- B. Section C7-2 grants the IG authority to: 1) make any investigation directed by the Mayor or City Council; 2) make any investigation or review which in his or her opinion is necessary to uncover any wrongdoing in City government; 3) prepare written reports of investigative findings and forward such reports to appropriate authorities; 4) issue subpoenas and conduct hearings; 5) audit and

² On July 15, 2009, the Board of Education rescinded its ten year old designation of the City's Inspector General as the Inspector General for the Yonkers Public Schools. See BOE Resolution 09-7-1A.

monitor government operations to ensure that adequate internal control procedures are in place to maximize efficiency and integrity of agency operations and to reduce vulnerability to fraud, abuse and corruption.

- C. Section C7-3 requires full cooperation of all employees with the IG and prohibits anyone from interfering with or obstructing any IG study or investigation. Any violation of this section constitutes cause for suspension or removal from employment.

Office Organization

The Office of Inspector General has four staff members: the Inspector General, Deputy Inspector, Senior Investigator, and Administrative Assistant. The annual budget for fiscal year 2009/10 is \$432,487.

Core Functions

The Office has six core functions which are described below:

A. Performance Auditing and Review

Under the City Charter, a main function of the IG's Office is to monitor City administrative operations. To meet this mandate, the Office conducts operational and financial audits and reviews of City administrative programs to ensure compliance with applicable policies and procedures.

The objective of these audits and reviews is to ensure that there are adequate internal control procedures in place that promote the efficiency and integrity of agency operations and reduce vulnerability to fraud, abuse and corruption. We also make recommendations to management to improve the effectiveness of the agency, and provide information to elected officials as to the details of the work involved in specific municipal operations.

B. Investigations into Allegations of Employee and Official Misconduct

The City Charter provides that the IG shall conduct investigations at the direction of the Mayor, City Council or as deemed necessary by the Inspector General. Discretionary investigations that the Inspector General undertakes are usually based on complaints or tips, both signed and anonymous, information provided by City officials and employees, information reported in the media, and information developed independently by the IG's Office through our efforts to monitor the affairs of government.

Despite the Board of Education's decision to rescind its resolution appointing the City IG as IG for the School District, as a matter of policy, the IG's Office will also continue to conduct investigations at the request of the Yonkers Board of Education and the Superintendent of Schools.

C. Ethics Investigations and Ethics Counseling

The City Charter gives the IG joint jurisdiction with the Yonkers Board of Ethics over ethics investigations involving allegations that City officials or employees may have engaged in ethical misconduct. The IG's Office conducts ethics investigations at the request of the Ethics Board or as otherwise deemed appropriate.³

D. Contract Monitoring and Vendor Background Screening

An important function of the IG's Office is monitoring City and School District contracts.⁴ Our objective is to ensure the integrity of the contracting process, and once a contract is in place, to ensure compliance with contractual terms and conditions. As part of this program, our Office conducts background screening of potential vendors in an effort to ensure that only "responsible" vendors and contractors are hired to provide goods and services to the City and the School District. Vendors and contractors for City and School District contracts complete vendor background questionnaires ("VBQs"). The questionnaires of vendors for contracts exceeding \$100,000, or for lesser amounts when requested, are verified for accuracy before final contracts are approved.

In verifying the accuracy of the VBQs, we seek to uncover undisclosed arrests, indictments, convictions and criminal associations of company principles, debarments, defaults, suspensions and/or terminations by other government entities. We also check for undeclared bankruptcy proceedings and undisclosed investigations involving the vendors. If we find discrepancies in a VBQ, we notify the appropriate City or School District officials and participate in integrity hearings when required. Material misstatements on a VBQ can lead to the disqualification of a vendor for City or School District contracts.

E. Review of Community Based Organizations

On May 27, 2008, the Yonkers City Council adopted Resolution No. 94-2008 which directed the Inspector General to implement an ongoing

³ Prior to the adoption of a new Code of Ethics in 2005 and the appointment of a Board of Ethics, the IG served as the de facto ethicist for the City. Given that traditional role, I still regularly provide informal ethics advice to City employees and elected officials. However, requests for formal ethics opinions are referred to the Board of Ethics.

⁴ Notwithstanding the ongoing dispute with the Board of Education, we continue to screen vendors at the request of the School District's Purchasing Agent and Director of Facilities Management.

program to monitor Community Based Organizations (“CBO”) and other entities that receive grant funding from the City of Yonkers.

We provide an independent assessment of how City grant funds are being spent. Based on our review of documents, interviews with appropriate CBO staff members, and inspection of operations, we issue a report with findings that answers the following questions:

- Are Yonkers grant funds being spent in accordance with an approved grant application?
- Are grant funds properly accounted for?
- Does the CBO have the appropriate accounting policies and procedures in place to safeguard the grant funds?

Our reports also make recommendations to address any deficiencies that we may find.

F. Review of Developers’ Promises to Provide Community Benefits

In a letter dated April 14, 2009, the City Council directed the Inspector General’s Office to conduct a review of the ongoing Mulford Gardens/HOPE VI and Ridge Hill development projects to determine whether “mandates as outlined and approved in any and all legal documents and binding agreements (including, but not limited to project findings and/or land disposition agreements) have been met, or are to be met at an appropriate time during the course of [the] project’s development.” The letter also called for the Inspector General “to develop an ongoing oversight program to monitor developers and other entities that receive approvals and financial incentives from the City of Yonkers...”

Based on subsequent communications and meetings with City Council members, the City Council directive was aimed at having the Inspector General monitor “community benefits” in development projects to ensure that developers who received City approvals for their projects meet their binding commitments to provide ancillary benefits associated with their projects.

2009 Activities

The IG’s Office opened 38 new files in 2009. For every new request for IG action, our Office conducts a preliminary review to determine whether a comprehensive investigation or review is warranted.⁵ After the preliminary review, matters which do not require further IG involvement are either closed or referred to appropriate agencies.

⁵The Office’s annual intake system does not include the ongoing contract monitoring and vendor background screening that the Office conducts, or the daily activities which include dispensing advice regarding municipal ethics and other matters.

Set forth below is a summary of our significant 2009 activities, findings and recommendations.

Inspector General's Dispute with the Board of Education

In 2000, the Board of Education designated the Yonkers Inspector General as the Inspector General for the School District. For many years, the IG's Office worked cooperatively with the Board of Trustees and a succession of Superintendents of Schools in conducting audits and investigations of non-pedagogical matters related to the School District's administrative operations.

Beginning in 2007, however, after the Mayor withdrew a request that the Inspector General review the School District's procurement operations, the Board of Trustees stopped responding to Inspector General recommendations for IG audits of School District operations. Although I had regular meetings with Superintendent Bernard Pierorazio, the Board refused to meet with me to discuss their apparent concerns about the role of the IG in the School District. Through Mr. Pierorazio, the Board rejected our recommendation that we audit the approximately \$65 million in annual payments for employees' health insurance.

During the first half of 2009, I actively attempted to resolve the dispute with the Board of Education. I wrote a number of memoranda articulating the factual and legal positions of my office, and held meetings with the Mayor, Superintendent and the City Council. (The Board continued to refuse to meet with me.) These efforts were unsuccessful.

In June, I decided to rely on the Inspector General's independent authority under the City Charter⁶ to audit the District's payments to the unions' health and welfare funds,⁷ and issued a subpoena to Superintendent Pierorazio for necessary records. The District did not comply with the subpoena. In September of 2009, the School Board sued the Inspector General's Office seeking a declaratory judgment that the Inspector General does not have independent authority to conduct audits and investigations at the School District. The City lawyers are seeking to dismiss the complaint. This matter is currently pending in the Supreme Court of the State of New York, County of Westchester.

⁶ The City Charter authorizes the Inspector General to provide "ongoing review of monetary commitments, expenditures and processes"..."of any person or entity who is paid or receives money from or through the city." (City Charter §§ C7-2D and F)

⁷ At one point, my office did reach a settlement with the Superintendent, in which we agreed to limit our review of health insurance payments to the unions' health and welfare funds. The Board of Trustees, however, refused to allow the School District to cooperate, and stated that the Superintendent had acted without authorization from the Board when he agreed to allow our office to go forward with the review of the health and welfare fund payments.

Reports⁸

City Fleet Gasoline Usage – April 8, 2009

We conducted an audit of the City's use of gasoline in its fleet of vehicles. We found that the City did not effectively monitor or review the information contained in the computerized fueling system, and that the City's procedures for gasoline distribution lacked the necessary oversight and internal controls to ensure that City fuel was only being used for appropriate municipal purposes. We specifically found:

- The City did not have written policies and procedures regarding the access to and use of the City's fueling system.
- Not all employees with take-home vehicles understood the limitations on the personal use of their City-vehicles.
- The City did not monitor the personal use of take-home vehicles.
- For approximately two months from September to November of 2007, the Gasboy computerized fuel dispensing terminal located at the 1st Police Precinct was intentionally disabled. During this period, the pump dispensed gasoline without any controls.
- Of the 20 take-home vehicles that we reviewed, 6 employees had daily round trip commutes that exceeded 100 miles; 6 other employees had commutes between 70 and 90 miles; and 3 commuted between 40 and 56 miles. The longest daily commute was 194 miles round trip.
- Based on low gasoline usage, there were vehicles in the City's fleet that appeared to be underutilized.
- There were no policies and procedures for the authorization and use of City gasoline in private vehicles, and the use of City gasoline in private vehicles was not appropriately monitored.

We specifically recommended that:

- The City establish clear policies and procedures for the use of City fuel and develop a comprehensive monitoring program.
- With respect to take-home vehicles, the City adopt a policy that places a limit on commuting distances. The cost of commuting should be a factor in the decision to assign take-home vehicles.
- With respect to vehicles in the City fleet which appear to be underutilized, the City should conduct an assessment of its vehicle inventory to determine which particular vehicles are needed.

⁸The Inspector General issues written reports of most audits and investigations. Reports on allegations of employee misconduct which are not substantiated, are generally not subject to a public release. Published reports are available for review on the City of Yonkers website at: <http://www.yonkersny.gov/Index.aspx?page=96>

- With respect to any irregularities that the DPW fleet managers discover, a record should be maintained as to the nature of the irregularity and any action that was taken to address problems that are found.
- With respect to the use of City fuel in private vehicles, we recommend that:
 1. the City tightly control private gasoline usage based on written policies and procedures;
 2. the City require annual reauthorization;
 3. the Police Department adopt specific policies and procedures for the K-9 unit officers;
 4. the City end authorization for the retired Police Department Deputy Chief who administers the Police Museum;
 5. the City review and, if appropriate, renew the authorization for the supervising crossing guard; and
 6. the City limit the gasoline usage by the four presidents of the Police and Fire Departments unions as set forth in the applicable union contracts.

Yonkers Alliance of Latinos and Immigrant Services ("YALIS") – CDBG Review
October 29, 2009

As part of our review program of City grants to community based organizations, we audited the City's Year 34 grant to YALIS. During the period of our review, the organization had been administered and managed by City employees. We made four specific findings:

1. YALIS' financial books and records were disorganized and incomplete, and as a result, we could not verify that YALIS accounted for all its cash receipts from program income and cash payments to its employee. YALIS' lack of proper accounting procedures did not meet the minimum standards established by HUD.
2. YALIS' failure to file and pay unemployment insurance taxes and maintain workers' compensation insurance for its employees led to considerable unanticipated costs for the organization which contributed to its financial problems. The payment of penalties and interest with CDBG monies violated HUD regulations. After resolving all New York Department of Labor unemployment insurance claims in November of 2008, YALIS once again failed to file required unemployment insurance taxes.
3. City employees who submitted inaccurate and misleading claims to the Planning Department for CDBG reimbursement violated HUD regulations and the Yonkers Code of Ethics. As required by the City Charter, we forwarded a copy of our report to the Yonkers Board of Ethics for appropriate action.
4. Although we found significant problems with YALIS' administration, and that the services YALIS provided during the Year 34 grant failed to meet stated goals and objectives, we recognize that YALIS has the potential

of becoming an important resource for the Latino and immigrant residents of Yonkers. Since the administration of YALIS was turned over to a new Board President who is rebuilding the organization, the new Board should be given an opportunity to demonstrate that YALIS is worthy of continued support from the City.

*Mulford Gardens/Hope VI Development – Community Benefits Status Report
December 18, 2009*

By letter dated April 14, 2009, the City Council directed this office to conduct a review of the ongoing Mulford Gardens/HOPE VI and Ridge Hill development projects to determine whether developers had met their binding commitments to provide ancillary benefits or “community benefits” associated with their projects.

In our report on the Mulford Gardens/HOPE VI project, we identified six specific community benefits that were set forth in the project’s documents including efforts to hire local residents and women and minority owned businesses, and the provision to build a specific number of affordable housing units. We reported on the current status of the efforts of the Yonkers Municipal Housing Authority and the developers the Richman Group and Landex Development to provide the identified community benefits. We also established a predicate for future IG monitoring of the Mulford Gardens/HOPE VI project.

CBO Inspection and Review Program

As part of our ongoing CBO Inspection and Review program, in addition to YALIS, which resulted in a comprehensive report that is summarized above, we issued reports on three other CBOs that received grant funding and loans from the City:

- My Sisters Place, Inc.
- Yonkers Community Action Program, Inc.
- Community Planning Council of Yonkers, Inc.

In all of these reviews, we found that the City’s grant funding and loans were accounted for and that there were adequate internal controls to safeguard the City funds. (Because the YALIS review was complex and time consuming, we were limited in the number of CBOs that we could review in 2009.)

Contract Monitoring and Vendor Background Reviews

With respect to vendor background reviews, we conducted 78 vendor background screenings for proposed contracts with a total value in excess of \$43 million. As described below, in two matters our review impacted the procurement process, and in one matter we determined that vendor claims that the City gave preferential treatment to a bidder were unfounded:

- City Bid # 5479: Rehabilitation of Sanitary, Storm Water and Combined Sewer
Vendor Allstate Power Vac's bid was rejected because our screening process revealed past willful violations of the New York State Labor Laws, and a current investigation concerning prevailing wage violations that were not disclosed on their Vendor Background Questionnaire.
- City Bid # 5431: Furnish and Install Guide Rails at Various City Locations
Facts revealed in the screening process led to an "integrity review" to determine whether the vendor was a "responsible bidder" as defined by New York State Law. The vendor was determined to meet the legal requirements.
- Allegations by Konica Minolta Business Solutions ("KMBS") that the City Improperly Awarded RFP-195 for Digital Copier Equipment for the City and Board of Education to Connecticut Business Systems / Xerox ("CBS/X")
KMBS alleged that the RFP specifications were defective, the City's analysis of KMBS's bid submission was faulty, the City was biased, and that the KMBS's best and final bid submission was improperly revealed to CBS/X. After review, we determined that the allegations were unfounded.

Investigations into Allegations of Employee Misconduct

In 2009 we conducted three full investigations into allegations of employee misconduct. In two cases we determined that the allegations were not substantiated. In the third case, we referred the matter to the Department of Personnel for possible disciplinary action. In addition, after conducting preliminary reviews, we closed 10 files and made an additional 9 referrals to other agencies for appropriate action.

Ethics Matters

As Inspector General, I regularly receive ethics questions and inquiries regarding potential conflicts of interest. I generally will provide informal and confidential ethics advice, and refer the employee to the Board of Ethics if a formal ethics opinion is necessary. We made one referral to the Ethics Board based on our review of the City CDBG funding to YALIS.

Ongoing Audits

We are currently conducting audits of the City's response to requests for information under the Freedom of Information Law, Community Benefits at the Ridge Hill development project, and the City's administration of cellular phones. Our review of cell phones is nearly completed. Set forth below is a summary of our findings.

City Cell Phone Usage

On May 12, 2009, the City Council adopted Resolution No. 85-2009 directing the Inspector General's Office to conduct a "complete review of taxpayer-funded cellular phones and pagers assigned to city employees and elected officials..." Our objective in this ongoing review is to determine whether the City appropriately administered the use of City assigned cell phones.

Our audit has included a review of the City's written cell phone policy, a survey of departmental usage, and an analysis of cell phone bills for the period of May and June of 2009. Some of our specific findings, based on the May and June 2009 billing cycle, are as follows:

- There is no centralized administration of City cell phones. As of June 2009, the City was paying for 433 cell phones: 239 cell phones are part of a Verizon plan which is administered by the Office of Administrative Services. The other 194 phones are charged to the City on twelve separate Verizon and Nextel bills, and are administered by various City departments.
- The City was charged \$21,262 for one month, which equates to an approximate annualized cost of \$255,000. These charges do not include additional bills for data lines, air cards and satellite phones, which totaled \$9,357, for an additional annualized cost of \$112,000.
- With respect to usage of the 433 cell phones: 77 were used more than 1,000 minutes.⁹ Of these 77 phones, 41 used more than 1,500 minutes, and 20 used more than 2,000 minutes during the period of our review. Additionally, 162 phones were used less than 200 minutes and 128 of these phones were used less than 100 minutes.
- There were 90 calls on Verizon cell phones to information/411 for a monthly charge of \$112.50; there were 30 calls to information/411 on Nextel phones for a charge of \$53.70.
- We found a few instances of apparently improper downloads and purchases of music videos. We will be forwarding one matter to the Personal Commissioner for possible disciplinary action.
- The City is not in compliance with its written cell phone policy because employees are not charged for their personal use of City cell phones. It is also apparent from the review of individual cell phone bills, including night time and weekend usage, that under the aggregate total minutes plan of the City's main Verizon bill, the City is subsidizing employees' personal cell phone usage. A new cell phone policy is required to address the personal use of City cell phones.

A report on City cell phones setting forth the IG's findings and recommendations in more detail should be issued in the coming weeks.

⁹ Although most of the 77 phones, which were used for more than 1,000 minutes, were assigned to a specific employee, some of these phones were unassigned and used by multiple employees.

Recommendations for 2010

The IG should continue to rigorously pursue investigations into allegations of corruption and employee misconduct. In addition, the recession and projected future budget deficits underscore the need for the IG to aggressively seek to expose and make recommendations to eliminate any wasteful, abusive or inefficient practices within government. I recommend three important areas for continued IG oversight:

First, the IG must work to ensure the integrity of the City's payroll. Salaries and fringe benefits make up approximately 69% of the City's annual operating budget of \$439 million. Under the current system, departments essentially pay themselves, with little external oversight. As part of necessary restructuring and to place stronger internal controls over the payroll, the City should move to a centralized payroll system. The Inspector General's Office should continue to audit the accuracy of payments for overtime, sick and annual leave.

The fact that in 2008, 40 Yonkers Police and Fire Department employees earned more than \$200,000 in salary and overtime emphasizes the need for continued payroll oversight. In 2007, the IG's Office, exposed significant abuses in the administration of Police overtime, and recommended that the administration create an overtime review board to oversee all departments' payments of overtime. This recommendation was not implemented. In addition, in our 2007 report, we also advised that after the Police Department adopted new overtime policies and procedures, we would conduct a follow up audit to determine the effectiveness of the new rules. Given the growth in overtime, it is appropriate for the IG's Office to revisit the issue of Police overtime. Clearly, if overtime expenses are to be controlled, the administration must proactively review and manage these escalating costs.

Second, the Inspector General must continue to call for the Yonkers Board of Education to submit to appropriate, independent audits by the IG. For the past two years the Board of Education has refused to cooperate with the IG. The Board's deliberate efforts to thwart the Inspector General have raised serious questions about the Board's overall legitimacy. Continued pressure must be put on the Board to change its policy to ensure integrity and transparency in the District's administrative operations.

Third, there are duplicative and inefficient operations within City that could be restructured. For instance, the City and the School District could combine purchasing, finance and personnel departments; separate fleet operations within the City's Police, Parks and Public Works Departments could be consolidated; and the Parking Authority could be merged with the Parking Violations Bureau. In addition, after the New York State Authority Budget Office's recent critical report on the City's Community Development Agency, the City should consider

consolidation of its economic development bureaucracy.¹⁰ The City may also wish to consider privatizing the skating rink and the rifle range.

The Inspector General's Office should play an important role in efforts to streamline government by conducting audits that analyze departmental operations and project budget savings from possible consolidations. This would help lay the foundation for necessary restructuring.

¹⁰ See, Authority Budget Office Review Report, Yonkers Community Development Agency, October 21, 2009.