

ARMISTEAD RESEARCH AND INVESTIGATIVE SERVICES

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**REPORT OF INVESTIGATION
FINANCE CONTRACTS MATTER, CITY OF MODESTO, CALIFORNIA**

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**PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
COMMUNICATION**

TO: Joseph Lopez, City Manager

FROM: Timothy W. Armistead

DATE: 30 August 2018

SUBJ: Report of Investigation, Finance Contracts Matter, City of Modesto, California

I. INTRODUCTION AND BACKGROUND

On 14 November 2017, the City of Modesto (hereafter, "City") retained me to investigate current and former personnel in the purchasing division of the City's Finance Department. The primary focus of the investigation was to determine which of the employees were involved in, or knew about, past practices that had recently been determined to be in violation of purchasing provisions of the Modesto Municipal Code (§8-3.200 et seq.). The practice of principal concern was the failure to obtain the requisite approval of the Modesto city council before augmenting the encumbrances of forty-five (45) then-current purchase agreements and contracts beyond the \$50,000.00 limit specified in the Municipal Code. Some of these failures occurred only recently; others extended back several years and were repeated numerous times for the same vendor and agreement. Some reflected other errors, as well, such as the entry of the wrong contract amount in the accounting system or the extension of agreement expiration date beyond the previously approved final optional extension.

II. EXECUTIVE SUMMARY

I conclude that there were various degrees of culpability among several employees. There are no current employees who knowingly committed violations of the Municipal Code. The details follow.

• **Gloriette Genereux:** Genereux, the director of the Finance Department during the critical timeframe, did not adequately supervise or monitor the purchasing division, nor did she realize that the improper practice was occurring. She acknowledged that she placed too much trust in the purchasing manager, Mark Averell, in part because she was fully occupied with her duties in the finance division. Averell's personnel file contains no performance evaluation by Genereux more recent than 2012. Genereux was fully cooperative with the investigation, and she was open and candid in her interview, acknowledging that it was her fear that when she first took on the job of acting purchasing manager upon Averell's departure in 2016, she might have inadvertently signed off on an augmentation that she should not have because of the press of work. As discussed in the text, she did in fact approve an improper augmentation on a contract that had a history of them. Shortly thereafter, however, she discovered other examples of the improper practice, brought them forward to the City's attention, and corrected internal practices in order to ensure that the provisions of the Municipal Code were no longer violated. Genereux also alerted me to an issue involving sole source contracting which, as described in the text to follow, was a source of concern that the City has since taken steps to correct and monitor.

• **Mark Averell:** Averell, the purchasing manager during the timeframe at issue, had direct responsibility over the purchasing division. In either participating in, or failing to take note of, practices that violated provisions of the Municipal Code and the City's purchasing manuals, Averell neglected his duty to ensure that requisite training was given to buyers and assistant buyers and that proper procedures were followed in augmenting and extending agreements. Averell was not fully cooperative during the investigation, and he proffered explanations for the improper augmentations of agreements that were not credible. After minimally cooperating in the investigation, he refused further contact. In light of his status as a former employee, I could not compel his continuing cooperation.

• **Kenneth Masasso:** Senior buyer Kenneth Masasso acknowledged that he had intentionally prepared and implemented revisions to agreements beyond the \$50,000 limit without requisite approval by the city council and in such a manner as to bypass his supervisor, Mark Averell. He estimated that beginning in approximately 2012 and continuing to his resignation in 2016, he had revised approximately twenty-five agreements in this manner, sometimes serially for the same agreement. He acknowledged that he knew at the time that he was violating the Municipal Code, and that he worried about that. He said he felt compelled to do it because of shortages in staffing of the division and the lengthy process involved in obtaining city council approval. Masasso was cooperative with the investigation as regards his own actions. As regards his knowledge of Averell's involvement in the improper practices, he was not helpful. Masasso and Averell resigned within a month of each other, and witnesses state that the two worked closely together, so it is possible that Masasso withheld knowledge of Averell's role in the practices at issue.

• **Cindy Medley:** Medley, a buyer in the City purchasing division at the time of my investigation, was the only person currently employed in the division who in the past had actively participated in preparing augmentations of agreements beyond the \$50,000 limit without

city council approval. I conclude that Medley, who was fully cooperative with the investigation, did not knowingly commit any policy violations, but instead was subject to ad hoc, incomplete training by Masasso. Following Genereux's assumption of the acting purchasing manager role, Medley was trained properly and adhered to Municipal Code procedures. She also was the staff person who brought the Hot Patch matter to light and who discovered the existence of hitherto unused automatic triggers in the Oracle accounting system that could assist staff in anticipating agreement deadlines and in adhering to proper augmentation procedures. I believe that Medley has no culpability in this matter.

- **Meagan Torres:** Torres, a former buyer who resigned in 2014, was aware of the practice of bypassing requisite city council approval. She felt it was justified by virtue of circumstances that are discussed in the text to follow. She denied participating in the practice, and as of this writing there is no evidence that she participated in it. She was fully cooperative.

- **Mark Quiroz:** Quiroz, an assistant buyer during the period at issue, was never involved in preparing or submitting revisions of agreements to his supervisor during Averell and Masasso's tenure. Quiroz, at the time, performed lower level tasks. I do not find any culpability on his part.

- **Findings not specific to a particular employee:** Two findings of more general importance were made, as follows:

- I found no evidence that any of the employees prepared or submitted improper revisions to agreements for personal financial gain.

- I found no evidence of misconduct or negligence within the City ranks above the level of Gloriette Genereux.

III. DETAILS OF INVESTIGATIVE ACTIVITIES AND FINDINGS

A. File Review

The personnel jackets of current and former purchasing division assistant buyers, buyers, the one senior buyer, and administrative staff, including the former director and purchasing manager, were reviewed. None reflected any disciplinary or competency issues that might enlighten the practice of revising contracts and agreements in violation of Municipal Code provisions. Most of the evaluations were extremely positive and were complemented by notes of thanks and congratulations from a succession of Finance Department directors as well as client departmental personnel who cited the improvement of services under Averell.

All annual and leaving office Form 700's filed by assistant buyers, buyers, the senior buyer, and departmental managers and administrators were accessed and reviewed. No conflicts

were reflected in them, nor were any holdings or investments that implied an income level beyond that expected of the employee and any spouse or domestic partner.

The Municipal Code and both purchasing manuals (*Purchasing Manual* (as revised 01 July 2009) and *Purchasing Procedures Manual* (as revised 09 March 2007)) were reviewed. The purchasing manuals are consistent with the Municipal Code as regards the conditions under which purchasing matters must be submitted to the city council for review and approval.

B. Interviews

Recorded interviews were conducted of six personnel, as follows:

- DeAnna Christensen, director of the Finance Department;
- Gloriette Genereux, retired director of the Finance Department;
- Cynthia Kline, the new (05 September 2017) permanent purchasing manager;
- Full-time buyer Cindy Medley, an employee in various Central Stores and purchasing positions since her hire in 1989;
- Mark Quiroz, an assistant buyer who has worked in various City positions in MPD, Central Stores, and in the purchasing division;
- Carolanne (“Carol”) Wattle, a half-time buyer hired in September 2016.

The interviews are summarized below in an order that facilitates a continuous, understandable narrative of the issues in the case. Following this presentation, the answers given to my written questions by the three former purchasing division employees who declined to be interviewed are summarized.

• **DeAnna Christensen Interview:** Christensen was interviewed on 21 November 2017. She was interviewed as a witness and was not represented. The interview was recorded and the transcript is attached at **Tab 3**.

Christensen was hired by the City in 2009 as a principal accountant on the finance side of the Finance Department. Within approximately three years her position was reclassified to that of accounting manager. In the late spring and early summer of 2017, when the problems with unapproved revisions to contracts and agreements were becoming known, Christensen took on the role of acting director of the Finance Department while Gloriette Genereux, who planned to retire in December, was given various finance-related assignments in the City Manager’s office. During this transition period, Christensen took over more and more of the oversight of the

purchasing division – which, by then, had only one full-time buyer, Cindy Medley. Christensen began, at that point, mentoring Medley in proper procedures for Medley’s increasingly responsible role in the division. Christensen stated that she took this on largely because she felt that Genereux was not able to offer regular guidance to staff regarding purchasing matters.

Christensen confirmed that in recent years the Finance Department experienced budget cuts, including an administrative assistant position on the finance side and the one senior buyer position in the purchasing division. Shortly after the resignation of Averell and Ken Masasso, senior buyer, in February and March 2016, the senior buyer position was eliminated, leaving only Cindy Medley as the most senior buyer in the division, and no permanent purchasing manager.

While reserving final judgment until the external audit is complete, Christensen said she had the impression that the improper practice of exceeding dollar amounts and extending expiration dates for contracts and agreements could be traced to Mark Averell’s tenure and leadership.

Christensen said that she had just taken on the role of acting director of the department, and of mentoring Cindy Medley, when the improper practices were exposed by Medley in conversation with Genereux (**Tab 3**, pp. 19-21):

Tim Armistead: When and how did all of this come to light and start to be questioned?

DeAnna: From my perspective, how I understood it came to light was the Hot Patch issue. My understanding was the system was entered incorrectly to begin with, but then once the department reached the cap that was assigned to Garret Thompson, again the department processed an invoice . . . so when they reached the cap of the incorrect amount that was entered in the system—

Tim Armistead: And the incorrect amount was?

DeAnna: Millions of dollars.

Tim Armistead: The incorrect amount was entered in the first place?

DeAnna: Correct. So again, it was entered wrong to begin with. They reached the cap. When that first invoice came through once the cap had been reached, Cindy Medley went to the agreement, reviewed the agreement, and at that point she saw the red flags in regards to what's in the system, does it match what was on the agreement, and the resolution that was approved. And at that point, it was brought to Gloriette's attention.

Tim Armistead: And when was that?

DeAnna: I want to say... I'm not going to quote the exact date, but I believe is in July. It was towards the end of June, early July, when it was brought to Gloriette's attention.

Tim Armistead: You mean of this year?

DeAnna: Mm-hm.

Tim Armistead: So that was a period when you were already sort of assuming the role of acting?

DeAnna: Correct.

Tim Armistead: In your view, now that you've been the director for a while, would it be possible, for a purchasing manager who wished to, to engage in this practice and manage to make it work without the director of the department ever learning about it?

DeAnna: I would say correct, because nothing in the system at this point required any kind of director of finance approval. Everything was being authorized at the purchasing manager level. And then once that purchasing manager was vacant, then again they gave part of that authority to Cindy Medley up to that \$50,000 cap. And then anything above, at that point, was provided to the director of finance [as acting purchasing manager] once the purchasing manager was vacant.

Christensen said that although Genereux historically held biweekly staff meetings that included representation from the purchasing division, the improprieties were not brought to light in that setting. According to Christensen, Averell did allude to the pressure of an excessive workload for purchasing staff, but he did not discuss corner-cutting as a response to that pressure (**Tab 3**, pp. 21-22):

Tim Armistead: Did Gloria ever have regular staff meetings, say of her senior staff?

DeAnna: Correct. With her manager positions, she would try to meet every two weeks. Usually when they had a senior management meeting with all the directors, city manager, she would usually follow with a meeting with the [Finance Department] managers. And then usually during budget season, we would probably have a little bit more frequent meetings based on whatever was needed to get the budget done.

Tim Armistead: All right, and you attended those meetings?

DeAnna: Yes.

Tim Armistead: Did this issue ever come up?

DeAnna: This specific issue did not come up, but I do recall a couple discussions where Mark Averell, the purchasing manager, did express concerns of workload volume, and basically we're just being asked too much with limited amount of staff. So he would voice those comments, when Gloriette would tell us the city manager needs this information, he would usually come back with a rebuttal that we just don't have enough staff to get just key things done.

But I mean, it was very vague in the communication. It was never specific that they were increasing agreements above council's authority. Nothing was ever referenced in the meetings that I was in.

Christensen explained at some length why she believed illicit financial gain was not a motivation among staff below the level of purchasing manager for the improper processing of extensions and funding increases. She stated that the workload was crushing for the understaffed division, and that because the client departments requested the goods or services and had final sign-off on the vendors' invoices, there would be no gain for purchasers except getting the job done timely (**Tab 3**, pp. 22-24):

Tim Armistead: Now that you know that happened, I have some questions to ask you that may be difficult for you, but you need to answer them.

DeAnna: Will do.

Tim Armistead: What's your gut feeling, what's your personal feeling — and of course, that's just a personal feeling and I understand that — about whether or not there was anything more involved here other than just the pressure of time?

DeAnna: So my opinion in this whole situation, again I can't speak in regards to the purchasing manager's role, but based on the staff that I'm dealing with currently, I truly do feel that they were just trying to deal with the pressures of ensuring bills were getting paid, operations were still occurring based on just key services of the City.

So I mean, that's what I see as just the high-level overview and what I see has been the viewpoint and the feedback that I've received. But again, I don't see

what benefit the buyers would get out of increasing these agreements, other than to ensure operations can continue and that our vendors would be paid.

The departments were still authorizing all invoices, so it's not like they were approving them to get higher benefits that they're billing the City. They didn't have that authority or authorization. All of those would be vetted through the department. All they were doing was just giving the approval increases to ensure that those bills that the department directors, managers, supervisors were reviewing could get processed and billed in a timely manner.

But that was my viewpoint. And just the work volume that I'm seeing right now, they cannot manage the bids that are being flown through with the staff that we've just barely built up within these last few months.

So to have a vacancy of two — well, an elimination and a vacancy — for almost a year and a half and not be able to keep up with the volume of the bid request, the managing of the system that they have to manage for the purchasing area, and then facilitating all of the department requests, I mean there was no way that it could have been handled with a month and a half and to keep operations flowing as they have been over this last year and a half.

Tim Armistead: Did you ever see evidence — you'd have to think back on this because you probably wouldn't really notice it until I bring it up — but did you ever see evidence that either Ken or Mark were dressing better, were driving better cars, were taking more vacations? In other words, did you ever see any evidence on the part of either of these people that they were more wealthy than they had been in 2009 when you arrived?

DeAnna: No. I didn't see any fancier clothes or comments about fancier cars or anything in any discussions, or just general conversations that we've had.

Tim Armistead: Is there anything else about their personal behavior that caused you to have a little light go on in the back of your head and say "Something's funny with this guy"?

DeAnna: No. I never saw any reason. And just from the history of dealing with Mark Averell — and again, I've hardly dealt with Ken from the accounting manager role other than bids that he might have worked on in my department division.

0:39:58.0 But in my dealings with Mark, he seemed to always be a stickler of policy procedures. I mean, I would hear comments by other departments that he was just being too stringent on department policies and procedures, so this just blows my mind in regards to why he would do that when I've seen him push departments in regards to not moving forward on other things if he felt that it did not fall within the standard procurement roles and procedures.

That's why my viewpoint of the situation is that — and why it was never voiced at Gloriette's attention, and I don't know that — but my viewpoint is again that they were just ensuring that operations were still running as they could be to ensure we could run operations in the City as a whole.

Christensen was more puzzled by Genereux's apparent inattention than by what she felt was likely the innocent reason for the corner-cutting that has come to light. Before catching the violations of procedure in the history of the Hotpatch agreement in the spring/summer of 2017 — thanks to Medley's new understanding of the Municipal Code — Genereux had approved more than one large, improper revision in her role as acting purchasing manager following the departure of both Averell and Masasso (**Tab 3**, pp. 24-27):

Tim Armistead: Have you talked about this whole matter with Gloria — Gloriette? Is it Gloriette?

DeAnna: Gloriette.

Tim Armistead: Gloriette, sorry.

DeAnna: Yes. I've talked to her about this situation. I think it's just more of my frustration. And again, Gloriette's comment to me is similar to what I voice in regards to we always saw Mark as a stickler in making sure that people were following policies and procedures.

But other than that, I mean, given our specifics, I'm to the point of frustration just because, with some of these recent agreements that have run into issues or problems, she's been part of the approval process where this one that I'm dealing with now, Gloriette approved an increase that was made by the buyer that was not approved by council.

0:41:52.0 And I think I've shared with HR, just in the ones that I've audited recently, that Gloriette's on there a few times.

Tim Armistead: But I thought that she didn't have to be a part of the approval process.

DeAnna: Well, for the purchase orders and for requisitions of invoices. But when you're establishing a new agreement, it does require an approval of the purchasing manager. And because we were absent a purchasing manager, then at that point it would go to the director of finance approval. But I'm talking about agreements that are way above 50, you know, within Cindy's authority.

Tim Armistead: Give me an example.

DeAnna: The one that I'm dealing with now is Aramark Uniform Services, so they provide all of the laundry services for all of the positions.

Tim Armistead: So this is just sort of an ongoing thing?

DeAnna: Correct.

Tim Armistead: Yeah. You need your unies cleaned and so on.

DeAnna: Correct. So the original agreement was set up with a five-year term. The authorized amount under the agreement was \$500,000.

Tim Armistead: 500 grand for the five years?

DeAnna: Correct.

Tim Armistead: Were there also limits on each year?

DeAnna: There was a limit on each year.

Tim Armistead: Well, was it 100,000 a year?

DeAnna: It was 100,000 a year, but the way it was entered in the system was the full five-year total. So when that initial agreement was entered for year one, it was entered at 500,000.

Tim Armistead: So then they went over 500,000?

DeAnna: Yep, within the first three years.

Tim Armistead: And she just approved that?

DeAnna: She was the second approval. So what happened was they exceeded the 500. The first increase that was made was done by Ken, and he increased it by 200,000, which now revised the amount to 700,000. So that was entered by Ken, approved by Mark. They spent the additional 200,000, so then Cindy Medley increased it last year, in 2016, by an additional \$100,000. And that was entered by Cindy Medley and approved by Gloriette.

0:43:50.0 So now I'm getting ready to go to council because we're barely starting the competitive bid process, but we have to continue receiving this service from Aramark until we have a new agreement in place.

Tim Armistead: Did Aramark simply underbid the job and that's how they got it?

DeAnna: Well they could have underbid, but the other thing that needs to be researched is what was the basis of how the amount was derived at.

Tim Armistead: Exactly.

DeAnna: Did they underquote the need of uniform services? And the other thing too is new positions have been added. And when they counted those positions, did we have maybe a high volume of vacant positions at the time and they didn't factor that into their cost when they came up with the original agreement amounts? But I mean, it could be a combination of everything.

But again, I mean, this is just one of several. So again, I haven't voiced my frustration to Gloriette, but it has been voiced to Joe in regards to the accountability and why it's not being questioned at Gloriette's level, even though she might not have known — because again, the purchasing manager at that time didn't bring it to her attention, but during the—

Tim Armistead: What do you mean? about how he could not bring it to her attention? Shove a piece of paper in her face and ask for a signature?

DeAnna: That, or when they were having one-on-one briefings. I mean, I assume he didn't share any information about the backlog of bids that were in his queue, in his department's queue, and agreements being increased. I mean, my assumption — again, I haven't asked Gloriette that specific question — but based on the conversations I've had with her, it's assumed that he never voiced those issues to her.

The remainder of the interview concerned the safeguards Christensen has implemented in the various purchasing tasks. In that regard, she mentioned that Medley had been of great help in discovering controls and “tickler systems” in the Oracle software that had either been unknown to Averell since the system was implemented several years ago – or had been known but not activated.

2) Gloriette Genereux Interview: Genereux was interviewed as a witness on 21 November 2017. The interview was recorded. The transcript is attached at **Tab 4**. Genereux appeared without representation. While it appeared at the time that Genereux could be appropriately interviewed as a subject, instead of as a witness, I made the decision to consider her a witness for two reasons. First, as a subject, she would have been entitled to representation and would have needed to locate and employ private counsel (she was unrepresented by a bargaining unit). I had little confidence that this would occur prior to her pending retirement ten days later on 01 December 2017, after which date she could not be compelled to sit for an interview. Second, I

had conferred at some length with the external auditor, Brian Henderson, prior to the interview, and had asked him if he had found evidence of what he considered to be a corrupt purpose, rather than negligence or “corner-cutting” by purchasing staff. He answered that to date, he had not encountered evidence of fraud or personal enrichment. I decided it was more important to press Genereux as a witness for the details of how her purchasing staff might have performed as they had than it was to set up the framework for possible disciplinary charges against her.

Genereux, with an active CPA license and a background in accounting and in directing finance departments, was hired as director of the City’s Finance Department on 01 December 2009, and began work in the position on 21 December 2009.¹ She characterized her authority in the office as being somewhat muddled by the Municipal Code, in that while the purchasing division formally reported to her through the purchasing manager, the Municipal Code gives the purchasing manager authority over certain purchasing decisions at the manager’s discretion. Genereux further distanced herself from the problems at issue in this case by noting that she was responsible for an unusual collection of financial responsibilities while, at the same time, undergoing critical staff reductions (**Tab 4**, pp. 3-4):

Gloriette: We don't have a treasurer in this City, so the finance director functions as the City treasurer and as the City collector, and also—

Tim Armistead: The purchaser?

Gloriette: Well the tax administrator and bond . . . guru. The Municipal Code is actually maybe a little different from what you've seen While the purchasing division is under the finance department, the muni code actually states the purchasing manager’s responsible for various authorities under direction from the City Manager.

So it's a little weird in that you have the finance director over the purchasing division reporting to the City Manager, but the purchasing manager is listed in the municipal code.

....

¹ As of this writing, Genereux’s CPA license has been renewed until 30 November 2018, but its status is “inactive.” According to the California Board of Accountancy, “An inactive license is current; however, the licensee is not required to meet the continuing education requirements and is not permitted to engage in the practice of public accountancy.”

Tim Armistead: Let's talk about when you came in and were actively the director. Let's not talk for a minute about the last six months or so. What were the divisions of your department?

Gloriette: So, when I first came in, it was in the middle of the recession, which would have been December 2009, and finance was going through significant staff reductions and reorganization. So, they had eliminated two deputy director of finance positions and shifted that work up and down through the organization.

At the time also, they had moved budget out of the City Manager's office but had decided to move it back to the finance department. So, I had the accounting division, the purchasing division, the budget division, and the customer service division downstairs, and in addition to taking on the responsibility for management of the debt portfolio and bond documents and the rating agencies.

Genereux stated that she always thought she had excellent managers, in particular Averell. Her performance evaluations of Averell confirm her high regard for his leadership and expertise, which was particularly welcome in light of the heavy load of finance-related duties she carried. It is noteworthy, however, that no performance evaluation of Averell more recent than the year 2012 is present in Averell's personnel jacket. It wasn't until Averell and Masasso had been gone for several months, leaving Genereux in the position of acting purchasing manager, that she began to see inappropriate approvals of encumbrances coming to her from the only remaining full-time buyer, Cindy Medley (**Tab 4**, pp. 8-10):

Gloriette: I lost Mark in mid-February (2016), and Ken approximately a month later, so mid-March. So it was actually pre-spring, early spring, late winter.

Tim Armistead: Okay. So at that point, you and Cindy Medley kind of shared of the job, it seems to me, right? [Genereux nods "yes"]. Okay.

Now, at what point did you become aware that Mark in particular had been basically accepting and approving invoices for payment in blanket agreements and in some contracts that went above and beyond what had been approved by the city council? When did you first learn of that?

Gloriette: So, this is really complicated. I would say approximately a year ago.

Tim Armistead: So that would be roughly November of 2016?

Gloriette: '16, right around in there. I became aware of issues arising from blanket agreements where staff would be purchasing, in accordance with staying under the minimum, you know, the floor, the maximum that they could do, which is a thousand dollars. I became aware of cumulatively where they were exceeding the \$50,000 limit.

0:17:01.4 And Cindy and I had a lot of discussion about that, and past practice had been that this was acceptable.

Tim Armistead: How did you learn that and when did you learn that?

Gloriette: Cindy came and told me. We were talking about them, and one of the things that started happening is I started receiving approvals as a purchasing manager in the accounting system to start approving these increases, and started asking Cindy for authorization for this kind of stuff.

And I have to admit, I placed, prior to Mark leaving, I placed a tremendous amount of confidence and trust in his ability to do that. So I was focused on trying to close a \$12 million bond deal budget shortfall and do rating agencies reviews and those kinds of things, and purchasing seemed to be going rather smoothly with no bumps.

0:18:10.0 So while I had a general knowledge of what they were doing, I didn't have specific details.

Tim Armistead: So you were pleased with his performance, is what it sounds like. Did he ever share with you how he was, I would call it, cutting some of these corners?

Gloriette: No.

Tim Armistead: Okay.

Gloriette: I can recall conversations like the one that just got approved last week with the police department background item. I can remember conversations—

Tim Armistead: This is the backgrounding agreement contract?

Gloriette: Yeah.

Tim Armistead: Go ahead, I'm sorry.

Gloriette: And I can remember Mark discussing that there were some issues in our bi-monthly briefings, and like a follow-up discussion about he took care of it, and it turned out not to be a big deal after all or something like that. You know.

0:19:10.1 So basically, there's an issue, we dealt with it, moving on, there's these issues now that we're dealing with, and that kind of thing. So, never specifics about Garrett Thompson, "I approved \$1.7 million of an increase." Never had no clue. I had no clue that was going on.

Tim Armistead: Now, who approved that kind of increase? You, or Mark?

Gloriette: No. Mark. Mark did.

Tim Armistead: Okay. Has there ever been a contract where you were involved after Mark left, you and Cindy were involved where, whether you knew it or not, you were continuing to approve things that were not strictly according to your policies and your procedures — in other words, continuing on to do what Mark did?

Gloriette: That is one of my biggest fears. I can't recall knowingly doing that. But at the same time, when I first took over that role, Mark was approving something like a hundred purchase orders a day. And you add that on to everything else I was dealing with, with the mayor's "hundred days" and the other functions, and I can honestly say I didn't review those as. . .

Tim Armistead: You can say you didn't or did?

Gloriette: Didn't review them all the way down to source documents.

Tim Armistead: He was doing sometimes a hundred a day?

Gloriette: I was approving something like one hundred purchase order transactions a day when I took over.

Tim Armistead: Okay.

Gloriette: So that's my fear, in the midst of this big pile of work that I took on, that it is possible. So I can't tell you I never did. My fear is I did, and some place down the road someone's going to find something.

As DeAnna Christensen pointed out (see above, pp. 9-11) the "something" that was found was the Aramark contract.

When Genereux realized in the summer of 2017 that Averell's practices were what she called "a big deal," she attempted to contact him about the improper approvals that were coming to light and left a message that she or Joe Lopez (acting city manager) had to talk with him. He failed to return her call. After three additional efforts to reach him via voicemails failed to elicit a response, she stopped trying. She has not been in contact with him since then.

In retrospect, Genereux believes that it was not coincidental that Averell and Masasso left when they did. Rather, she suspects that they realized their corner-cutting would come to light, along with their increasing reliance on sole-sourcing – this last being an area of concern that was not mentioned to me in any briefings on the issue at hand. As Genereux put it, her reasoning is a bit of a “bunny trail,” but the trail is worth following. At the end of it, she believes that the corner-cutting and sole-sourcing was about getting the job done with a minimum of effort, not about corruption. The trail begins in the summer of 2015 (Tab 4, pp. 13-15):

Tim Armistead: Is there any possibility that the two of them saw this problem coming to the surface, and that's why they left? Or do you think it was other reasons why they left? What do you know about that? Why did they leave? They both left within a month of each other.

Gloriette: So, neither of them spoke to me about fear of something's coming to the surface or something, but I do not believe in coincidences, and I believe... So, what was going on the summer before they both left is the mayor put together this hundred-day committee review.

And in addition to that, over the last year or year and a half before that, Moss Adams had done two reviews of finance. . . .

And so, that was kind of background information to the mayor's hundred-day committee coming in. And the mayor, I believe, has contacts throughout the community who had heard things. And so he formed this hundred-day review committee that went through financing with a fine-toothed comb, and Mark and Ken had to make presentations and answer questions and talk with some of the community leaders here around Modesto — and we're talking about high-level CFOs, CEOs of organizations.

0:26:12.3 And there was continuing pressure being put on Mark and Ken about sole sourcing. That was a big thing that they were doing when the mayor came in, in that they would sign — there are these sole source forms, and the purchasing manager under the muni code can find that a public procurement wouldn't be productive because there's only one person who does what they're doing.

Tim Armistead: Sure.

Gloriette: So, pretty much a lot of what we were doing at that point was sole source, and you could go back and review the council minutes on a lot of these purchasing agreements — purchases of software and hardware and police radios and whatever — that were done under that.

0:27:13.5 And part of what started happening is I started putting pressure on Mark and Ken. . . . There has to be more than one company out there that can do a half-ton pickup truck, you know?

. . . .

Gloriette: So we began to put pressure that summer before they left about some of these procurements.

Tim Armistead: So that would be summer of 2015, correct?

Gloriette: Correct, in challenging, not allowing them to go forward, making them go through a bid. And you put on top of that the mayor's pressure for a hundred-day committee and the accountability and the disconnect between what was being said in the community about procurement here at the City of Modesto with the information provided by Moss Adams, and how it wasn't aligned.

0:28:23.2 I think — and this is like a bunny trail, so bear with me — I can speculate that Mark and Ken saw this house of cards beginning to fall apart, and they both decided collaboratively, together, to begin to pursue other employment opportunities. You see where I'm kind of... But I do not know that for a fact.

Tim Armistead: I got it. Okay, but it makes sense to you, that's what you're saying. Okay.

0:28:59.3 Let me ask you something now. Since then, has there been a change in the City's practice of sole sourcing a lot?

Gloriette: There has. So, during that timeframe after Mark left, where I said I kind of took on some of the duties of the purchasing manager, one of the things I took on was reviewing and signing of sole source forms. And I would not sign sole source forms that truly were not one-of-a-kind type items. And so we've kind of moved in a different direction from doing that now.

Tim Armistead: Did you ever suspect that they were sole sourcing because they were being paid under the table?

Gloriette: I had never thought that.

Tim Armistead: Looking back on it, did either of them, by way of personality or by way of appearing to be better-off financially, give you any little tickle in the back of your head?

Gloriette: I . . . [shaking her head]

0:30:03.0

Tim Armistead: Do you think the sole sourcing was just a matter of convenience for people who were under a lot of pressure?

Gloriette: I think it was a way to get the job done with a minimal amount of work.

3) Cindy Medley Interview: Medley was interviewed on 05 December 2017. The interview was recorded. The transcript is attached at **Tab 5**. Medley was interviewed as a subject and was represented by Kim Gillingham of Goyette and Associates.

Medley was hired as a stores keeper in 1989, after having received a certificate in 1987 from Cal Poly Pomona in American Production and Inventory Control, after which she had worked in a number of warehouse and inventory control positions. She worked in Central Stores for eleven years until she was brought into the purchasing division in 2001 to assist in reception and clerical duties. At that time, there was no purchasing manager. There were two senior buyers only. After about a year, she was introduced to basic assistant buyer duties, helping client departmental staff complete their paperwork and issuing the purchase orders for low-dollar supplies. She was promoted to buyer by Averell in 2014, when Meagan Torres left the office for a position at UC Merced.

When asked how she was mentored and by whom when she was promoted to buyer in 2014, Medley stated that Masasso mentored her. She described his mentoring as reviewing and correcting her paperwork. When asked if she had been instructed to review the Municipal Code and the departmental purchasing manuals, she prevaricated, answering a different question from the one I had posed. On a second attempt later in the interview, she stated that the first time she reviewed the purchasing provisions of the Municipal Code was when considering applying for the open purchasing manager position. Later still, under more directive questioning, she acknowledged with considerable emotion that she did not recall ever having been taught to read or understand the purchasing provisions in the Code or the purchasing manuals until Genereux brought to her attention in the spring/summer of 2017 that she had been submitting augmentations to encumbrances in contravention of Municipal Code provisions (**Tab 5**, pp. 10-12 and pp. 18-24):

Tim: So same question as before, did Mark or anyone else mentor you in the sense of acquainting you with, for example, what I would call a purchasing manual, or acquainting you with the general purchasing statutes in the municipal code?

Cindy: My mentor was Ken Massaso. He was senior buyer.

Tim: And did he do any of those things with you?

Cindy: Yes, he did.

Tim: Let's talk about that. Tell me what you recall yourself doing with regards to those things.

Cindy: I would work on an RFP, and he would review it, and tell me corrections to make, give me advice on changes that were needed. And we would go back and forth until he felt that it was good enough for me to put out there on the street to collect bids. I would do the recaps and he would review them to make sure I was accurate.

Tim: What's a recap?

Cindy: A big recap. We would take the pricing and put it on a spreadsheet, so that we could see each vendor's bids, to check on pricing, to see who the lowest bidder was or is.

Tim: Let's go back to my original question. Did Ken or anyone else literally hand you or direct you to look at the municipal code or anything like a purchasing manual or purchasing guide?

Cindy: The purchasing manual.

Tim: The purchasing manual?

Cindy: Yes.

Tim: And did you get a chance to read that through?

Cindy: I'm sure I did.

Tim: Can you remember?

Cindy: [laughs] No.

Tim: See that answer makes sense. You're thinking, well of course I must've done that. But do you actually remember doing it?

Cindy: No.

Tim: More recently, right up until today, do you remember doing it? Do you remember reading the purchasing manual and the purchasing policies and procedures?

Cindy: Over a course of — yes. I have read them.

Tim: How about the municipal code as regards purchasing?

Cindy: I have read it when they had the opening for the purchasing manager position. That's when I read it.

....

Tim: Now what happens when you've got a situation where a contract is say for five years? What kind of approvals are required there? Is there something different about that from just a onetime agreement that's over 50? Say you've got a five year contract for half a million dollars or a five year contract for \$200,000 or something like that. When is the city council required to get involved in that situation? Just to approve the original contract?

Cindy: Correct. And then — yes.

Tim: So say you've got this five year contract and the amount is 500,000. At the end of, let's say as of December 31st of the fifth year — we're gonna call it a January 1st through December 31st contract just for the ease of this. So you're on December 31st of the fifth year. And there's a bill outstanding for another \$10,000 or something like that, which would take it over the 500,000. Does the city council need to approve that kind of overage? Or does it need to extend the contract for another month? What happens and does the city council have to get involved in it? And I'm talking right now, not in the past, right now.

Cindy: Right now. Yes, city council would have to approve going up to the limit to pay that invoice. So if you wanted to pay \$500,000 or less, you were okay. But if you wanna pay \$510,000, you have to go to council to get that approval for the additional \$10,000.

Tim: So that's now. Was that the case back in — let's not take it clear back to 2002. Let's take it back to when you became a buyer. And I think we put that in 2014. Or was it 2015?

Cindy: 2014, I believe.

Tim: Let's take that five year contract, which has exhausted its 500,000 as of December 31st, but in order to honor the purchases that were made on the contract let's say back in 2014, you needed another \$10,000. Did it go back to the city council back then?

Cindy: According to the municipal code, yes, it should.

Tim: Did it?

Cindy: I don't always know if it did or not.

Tim: But it's possible in your own experience that it did not, correct?

Cindy: Yes.

Tim: When you were a buyer, not assistant buyer, can you give me an example of one of those contracts that did not go back to the city council either to be extended or because of the need for an excessive amount of money beyond the dollar limit of the contract? Give me an example of one that you know about.

Cindy: The Hotpatch one. It's famous.

Tim: I believe that my information, and you correct me if I'm wrong, is that you brought the Hotpatch situation to the attention of someone when you saw something. Can you fill in — is that correct?

Cindy: Yes.

Tim: Fill in those details. Tell me what you saw, when you saw it, and what you did. What triggered your involvement in that regard?

Cindy: Well it needed to be increased because we had invoices that weren't processing. And it's because the contract that was in Oracle, the amount that was in Oracle was exceeded. So there —

Tim: Can you give me some dollar amounts here?

Cindy: Not really. Because I know that I was involved in all of this, but geez, this was last summer. And I'm just not —

Tim: You mean the summer of '16 or the summer of '17?

Cindy: Summer of '17. And so we're talking about something again that happened six months ago. But I believe it was right around \$800,000.

Tim: What was?

Cindy: The amount that was in Oracle.

Tim: You mean that's the total value of the contract?

Cindy: That was the total value of that Hotpatch contract was \$800,000, or was —

Tim: Was that the original value? Or had it grown over time?

Cindy: It had grown over time.

Tim: With or without city council approval?

Cindy: There was in December of 2014 it had been increased with council approval.

Tim: From what to what, do you remember?

Cindy: Unfortunately, no, I do not remember.

Tim: That's okay. What happened after 2014?

Cindy: After 2014, I believe it was increased again without council approval.

Tim: And do you know what staff was involved in that decision?

Cindy: I can — yes, sir. Well Ken Massaso submitted it for approval.

Tim: Where did it go from then?

Cindy: It went to Mark Averell for approval.

Tim: Were you involved in that at all?

Cindy: No.

Tim: Did you know about it at the time?

Cindy: No.

0:36:02.7

Tim: Had you known about it, would you have known at that time from what you had learned about the proper purchasing procedures and the muni code, would you have recognized that that revision should have gone to the city council? Did you know that back then?

Cindy: I don't know. I don't know that it would've — I don't know that I would've thought anything different than, you know.

Tim: So Cindy, I'm not clear. When did you become aware that according to the municipal code and/or the purchasing manual, revisions like that without council approval are not according to code? When did you become aware of that and how?

Cindy: I was having a conversation with at that time the finance director, Gloriette Genereux. And we were discussing increasing something else. And she said, well we can't do that 'cause we have to take it back to council, 'cause it would have

to go to council to do that, to make the increase, we'd have to get council approval.

Tim: Was this at the time when Gloriette was acting as the purchasing manager in addition to being director of finance?

Cindy: Yes.

Tim: So give me a rough idea of what time period we're talking about here.

Cindy: I don't remember the exact timeframe. I wanna say probably May or April of 2017.

Tim: Do you remember the contract that we're talking about or the agreement if it wasn't a contract?

Cindy: No, I don't remember what particular item we were discussing at that time.

Tim: When she said that to you, did it catch you by surprise?

Cindy: I was like, okay.

Tim: [laughs] Well, "she's the boss." That kind of okay?

Cindy: Yes, sir. [laughs]

Tim: But did it catch you by surprise? Did you not know that? That's what I mean by that. Did you not know that that was required?

Cindy: I think I was more worried about — I think it caught me by surprise because my thought process is going to be, "Oh, what's the department gonna do to keep this service going then? How are we going to react?" Would have been my thought.

Tim: Had Gloriette not said that, would you have assumed that you would go ahead and get approval to up the amount on that agreement?

Cindy: Yes.

Tim: Just internally within the purchasing division?

Cindy: Yes.

Tim: This is a really broad question. I'm gonna let you answer it with whatever details you wish and we'll go from there. The question is, what's your understanding of

the difficulties exposed recently in the *Modesto Bee* articles, if you're acquainted with the *Modesto Bee* articles.

Cindy: Could you repeat that one more time?

Tim: Yes. . . . The question is, what is your own understanding of the difficulties that have been exposed recently in two articles in the *Modesto Bee*, if you are familiar with those articles? Are you?

Cindy: I have read them.

Tim: So what's your understanding of those difficulties?

Cindy: That contracts exceeded the amounts approved by council, without the authority of council. So the Hotpatch, because it was increased without the authority of council, so that was an issue with one of the articles in the *Modesto Bee*.

Tim: Now that requirement in that situation, purchasing needs to go back to the city council for review and approval. Are you aware that that requirement is in the municipal code? Don't say yes if you're not aware of it, really.

Cindy: Well I've read it now.

Tim: When did you read it?

Cindy: I believe that I read it after my conversation with Gloriette.

Tim: So that would be just a few months ago, basically.

Cindy: Yes, sir.

Tim: So then is it fair to say that that was the first time you read the code with regard to the general purchasing provisions?

Cindy: Yes. Before I never really had much to do with the municipal codes. That was handled by Mark, the purchasing manager, to make sure we kept within the guidelines.

Tim: Didn't quite work out that way, did it?

Cindy: [laughs]

Tim: Is that a no?

Cindy: Yes, sir. Or that's a no, yes.

Tim: So now I want to return to a question I asked kind of at the beginning. Because now your mind is on these details. Did no one — prior to your conversation with Gloriette in roughly May of this year, did no one in a position of authority over you lead you to the purchasing provisions in the municipal code and the recitation of those same provisions in the purchasing manuals? Did no one in authority over you lead you to those two sources and say you need to know these things or something to that effect?

Cindy: I don't remember anything —

Tim: You don't remember it happening? Or you don't know either way?

Cindy: I don't remember it happening.

4 and 5) Interviews of Cynthia Kline and Mark Quiroz: Kline, the permanent purchasing manager as of 05 September 2017, and Quiroz, an assistant buyer in the purchasing division, were interviewed on 05 and 12 December 2017, respectively. They were interviewed as witnesses and were unrepresented. Their transcripts are attached at **Tabs 6 and 7**, respectively.

Neither Kline nor Quiroz had been involved in any of the questioned practices at issue in this matter. Kline was hired in September 2017 specifically to help correct the procedural problems in the purchasing division. In her interview, she expressed a good understanding of what had gone awry and how to ensure compliance with the Municipal Code. She indicated that she was working well with Christensen and Medley, both of whom stated the same in their interviews. Kline mentioned Medley, in particular, as helping her understand how to use the Oracle accounting system and implement its controls and tickler systems that had previously been either unknown or ignored.

Kline stated that the division was understaffed. She called the workload and backlog in the division “astronomical” and estimated that instead of the one buyer, two part-time buyers and one assistant buyer that comprise the staff now, the division needs four full-time buyers and an assistant buyer.

Quiroz has been with the division intermittently since 2006 as an acting assistant buyer. Recently, he was promoted to full-time assistant buyer. He has a good, but distant understanding of the problems in the division under Averell. His job as an assistant buyer was limited to basic processing that did not entail preparing, submitting, or approving revisions to agreements. Now that Medley and Kline are training him in the preparation of bid packages and RFP's, he may soon have responsibility for preparing revisions as well. If so, he is well aware of the guidelines for city council approval.

6) Carolanne Wattle Interview: Wattle was interviewed as a witness on 17 January 2018 (**Tab 8**). She was not represented in the interview. I interviewed her because she was hired at a time (September 2016) when Genereux was acting purchasing manager but had not yet discovered that agreements were still in the system with balances and expiration dates that had been established by improper revisions. Prior to the interview, I had established that Wattle's name had not appeared on any improperly revised agreements.

Wattle advised that when she started work, she was trained to augment contracts only to the cap previously approved by the city council. In the first six months of 2017, when Genereux was still acting as purchasing manager, Wattle was gathering file material pertinent to a request from a client department for an augmentation, and she discovered that the contract had previously been augmented without city council approval (**Tab 8**, pp. 5-8). Wattle brought it to Cindy Medley's attention. Medley took notes and said she was going to report the discovery to Genereux. Wattle subsequently put the contract out to bid, as required. By implication, then, Wattle's memory provides support for Medley's recollection that in the first half of 2017, Medley and Genereux were aware of prior improper revisions to agreements and were correcting the practice.

Wattle described current procedures and system controls that had not been established under Averell, and she noted their importance in gaining better compliance by client departments (**Tab 8**, pp. 10-12):

Wattle: As I said, I was trained, when I put agreements in the system, to put them in based off of what is awarded by council.

0:16:15.0 And actually, now we changed some procedures recently in the last couple months, that we only put contracts in for the term of the contract, meaning the first two years, and for the dollar amount of the first two years. And then with the three one-year options, those would be added later, after we've agreed with the vendor when the term is up whether they want to extend the contract.

Armistead: Are there any ticklers, what I call them, triggers or ticklers, built into the Oracle system that are being used right now with regard to when a contract is reaching a certain amount against its encumbrance or when an expiration date is coming up?

Wattle: Right. We've also learned that there's a control system, there's a separate tab when you enter an agreement in the system, you can add an expiration date of, you can be notified of when that's going to expire. I believe we set it at 120 days before the contract expires. And then we add a second line control for a dollar amount, whether it's the released amount or if it's the not release amount. Depends on...

0:17:47.2 And then we give it a percentage, whether it's 60% of the contract or 50%, depending on the usage of how much they're going to run out, and when.

Armistead: Okay, good. Have you had any experience learning from your client department or just learning from the figures, the expenditure figures against an encumbrance that pop up, that you've got more than one client department using this contract, and that that was not anticipated? Is that anything you've encountered since you've been here?

Wattle: That multiple departments have used? One contract?

Armistead: Yeah. And yet that was not contemplated.

Wattle: Yeah. I've seen that running contract status reports to find out where they're at on the contract and who's actually used it, and found out there was other departments that used it that weren't actually originally on the bid.

Armistead: Is that a problem for purchasing? It seems to me that could be a problem.

Wattle: It is a problem, because then the department that requested the agreement expects that they have a certain amount of funds left, and then they find out that another department's been using it, and then they run out of money quicker.

Armistead: How is it possible that, in a given contract between a client department and say GCU Trucking and Destination Anywhere, that some other department can come in and use funds and allocate funds from that same contract? I don't understand how that's possible.

Wattle: The way it's possible is, my understanding is that when an administrative worker puts in — not myself, but another administrative worker, an admin for the department — puts in a requisition, and they choose the contract number, if they're really not paying attention to what that contract's for, they can choose a contract in that vendor's name. . . . I know we're also putting in language in the description of the annual agreement that it's only used for, say, water services or wastewater division. For multiple, I don't remember if we're putting... I haven't put any multiple contracts in lately. I know there's something, we have something written from DeAnna that we're supposed to do with multiple, but I know for mainly single use departments, we've put in their division name in there, and state it's only for them.

Many of the past problems stemming from client departments' compliance with agreements that Wattle identified above were also discussed by Torres in her written responses to my questions (**Tab 13** and text at pp. 30-31).

C. Written Questions and Answers from Kenneth Masasso, Mark Averell, and Meagan Torres

None of the three former purchasing division employees consented to an interview, but each of them eventually agreed to answer written questions. The letters, emails, and written questions are attached at **Tabs 9** (Masasso), **11** (Averell) **and 13** (Torres), along with their responses. For the most part, the respondents answered my questions by annotating the respective questionnaire in contrasting font or font color and emailing it back to me. In one case, Masasso answered first in a letter mailed to me, after which he telephoned me, and then he annotated two sets of written questions from me with his own responses. (Masasso alone reached out to me by telephone and we talked, with his stipulation that the call not be recorded. The conversation and his written responses to written questions are summarized below.)

1) Kenneth Masasso: In response to two letters of introduction and a voicemail message that I left on Masasso's work telephone, Masasso called me on 16 January 2018 and spoke with me for sixteen minutes. He had written a letter to me that I had advised him in a voicemail message early on the morning of the 16th was appreciated but not sufficiently informative. During the call he advised me that he would respond to written questions only, and would not agree to a face-to-face interview, recorded or otherwise. Nonetheless, he answered questions of critical importance in the telephone call when I pressed him. I advised him that in my written questions I would be asking him the precise meaning of the passage in the 25 October 2017 *Modesto Bee* article (**Tab 1**) that ". . . on some occasions [Masasso] had increased the amount of contracts or he had extended them without authorization." Masasso quickly said that by "without authorization," he meant that he had advised neither his supervisor, Mark Averell, nor the city council that he was augmenting or extending an agreement without the requisite city council approval and without Averell's knowledge. I told him, further, that in my written questions I would be asking him how he had accomplished that, since the improper revisions all had the name, "Mark Lee Averell" in the "approve" action field of the Oracle accounting system. Masasso, after ensuring that I was not recording the conversation, said that when Averell was absent from work, he would take advantage of the fact that approval authority was delegated to him in Averell's absence. Using the delegated authority, he would approve the item that he had submitted and forwarded to Averell for approval. The approval would have Mark Averell's name associated with it, not Masasso's.

After explaining this practice, Masasso stated that he had always worried about it, since it was a violation of procedure. He said he felt he had to do it on those occasions when a client department could not wait up to ninety days for a formal bid process to be completed before continuing to receive the requested service or supplies. In a later written response to one of my

questions, he stated that after reductions were made in the senior buyer ranks of the purchasing division in 2010 and 2012, he began the practice in order to keep vital services running without interruption. By implication, the practice had been in place for approximately five years before it was discovered by Medley and Genereux and brought to the attention of City officials.

Following the telephone conversation, I emailed questions and follow-up questions to Masasso, who answered them as annotations to my questions (**Tab 9**). In his written responses, Masasso reiterated that in Averell's absence he had approved the improper revisions in Averell's name. He also clarified a few ancillary matters. He failed, however, to explain adequately how he managed to enter Averell's name as the approving authority on the improper revisions. He stated that he did not have Averell's password; rather, that he had the delegated authority to approve actions in Averell's absence. Without Averell's password, however, finance director DeAnna Christensen advises that the only way for Masasso to exercise the delegated authority is for Averell to have entered "delegate" (the verb, not the noun) in the action history with his own password and name. After that step, Masasso would then enter "approve" under Masasso's own name. This is the proper procedure for an employee with delegated approval authority. Masasso's answers to my query about this puzzle were inadequate, since the evidence suggests that either Averell did enter the approvals in the improper revisions, or Masasso did have access to Averell's password.

In light of this ambiguity, four agreements² with known improper approvals by "Mark Lee Averell" of revisions prepared and submitted by Masasso were selected for preliminary analysis. The dates of the "Averell" approvals of improper revisions reflected in the Oracle accounting system were compared with Averell's and Masasso's attendance records for those dates (**see table at Tab 10**). The purpose of the analysis was to establish whether there is face validity to Masasso's claim about having falsely represented in the Oracle record that Averell had given his approval on days Averell was not at work. It does. On ten, or seventy-one per cent, of the fourteen improper approval dates with Mark Averell's name on the approvals, Averell was not at work. A random sample of 137 work days between 27 September 2011 and 19 February 2016 (Averell's last day with the city) indicated that on average, Averell was off work on approximately twenty-five per cent of his possible work days. Put differently, Averell's absences on ten of the fourteen days improper approvals were made in his name in these four contracts constituted more than twice the proportion of absences we would expect if there were no correlation between Averell being absent and improper approvals being made in his name. The comparison lends a measure of preliminary support to Masasso's narrative, as does the finding that Masasso, by way of contrast, worked a full shift on all fourteen days.

A number of explanations, some involving Averell's complicity with Masasso's practice and some not, could be advanced regarding the four days of the fourteen on which Averell was

² Rank Investigations; Burton Fire; Noonan Investigations; and McPrint Direct.

recorded as working a full shift. Averell cut off communication with me on 24 January 2018, so any explanation would be speculative.³

2) Mark Averell: Averell's first responses to my questions were brief and, for the most part, uninformative (**Tab 11**). They can be summarized as denying ever having knowingly or willingly violated any provisions of the Modesto Municipal Code or the Modesto City Charter; citing the shortage of purchasing staff despite his requests for additional positions; and noting that if any approvals are in doubt, his supervisor (the finance director, Genereux) had final approval of revisions. The latter point stands in contrast to Averell's resignation letter to Genereux, in which he stated, in part, "I would like to personally thank you for allowing me autonomy to do my 'purchasing thing'" (**Tab 12**).

In an email exchange, Averell wrote that he would consent to an interview if I sent him the documentation and screen shots from agreements that were allegedly improperly revised. Absent that material, he stated, he could not comment on the allegation by the city that some agreements had been improperly revised without city council approval. Upon receiving exemplar file documents and screen shots from me regarding the Rank Investigations contract and the Hotpatch contract, however, Averell did not agree to an interview, as he had written; rather, he wrote only the following two sentences and then advised me that he had retained counsel and would no longer communicate with me (**Tab 11**):

"Standard practice was when a transaction would exceed CM [city manager] authority, either a verbal or written verification of prior authorization would take place. I see there were many Reso. [council resolution] numbers listed in the transactions."

It is difficult to know what Averell meant in these two sentences, when they are considered as a single observation. One interpretation is that if the city manager approved, verbally or in writing, an augmentation or extension of expiration date that otherwise would have to be approved by the city council, the augmentation or extension could be implemented without approval by the council. Alternatively, Averell might be asserting that if a revision exceeded the city manager's authority, verbal or written verification of prior authorization from the *city council* would be obtained prior to implementation of the revision. Other alternative interpretations of these two sentences do not occur to me. Four difficulties arise in accepting either of the interpretations:

³ It should also be noted that in addition to the fourteen revisions reflected in the table at **Tab 10**, four revisions to the Rank Investigations contract were made in Averell's name that extended the expiration date of the contract by varying lengths of time but did not augment it. The revision dates were 10/07/11, 10/04/12, 10/25/13, and 09/12/14. This requires a justification in the contract file, but according to DeAnna Christensen it does not require city council approval. No such justifications were located in the Rank file by Finance Department staff who were recruited to search. Of these four revisions in Averell's name, two were made in Averell's absence.

- Neither procedure, whether it be verbal or written authorization from the city manager or from the city council (without a resolution), appears in the Municipal Code as an acceptable alternative to obtaining city council approval for increases to an existing agreement beyond the approved cap, or for extending the expiration date of the agreement beyond the final optional extension.⁴

- There is no indication in the physical or digital files of the agreements that were revised improperly in the Rank Investigation and Hotpatch contracts that verbal or written authorization was, in fact, obtained from the city manager or the council.

- The mention of “many Reso [resolution] numbers listed in the transactions” is a deflection. Where council resolutions were obtained, the corresponding revisions were not considered improper. It is the revisions without requisite city council resolutions in those same contracts that are at issue.

- Masasso likely would have defended his practice to me by referring to verbal or written approval from the city manager or the city council, instead of stating that what he did was unauthorized and that he worried about being discovered.

3) Meagan Torres: Torres is not implicated in any of the improper revisions that have been discovered, but she acknowledged having known it was occurring and not being surprised by the revelations in the *Modesto Bee* articles that I forwarded to her (**Tab 13**). She strongly defended the practice as being necessitated by both understaffing of the purchasing division and by the spotty handling of contractual matters at the client department level. Specifically, she wrote that client departments routinely overspent; overused inventory; failed to realize that other departments were spending against their own contract; and were afraid to go before the council repeatedly for more funds.

The following passage from Torres’s answers to my questions (**Tab 13**, question #8) is exemplary:

“The using department would estimate spend and that is what Procurement services [i.e., purchasing division staff] would bid and put a contract in place for Council approval. The contract was then turned over to the end

⁴ Some agreements are written so that their original one- or two-year approval can be extended for two or three more years at the City’s discretion.

using department to manage and stay within scope of what they estimated for Council. Purchasing did not manage their spend or when they were overspending. It usually came to me at the last minute when they had bills to pay and they overspent or other departments were using the contract without Council approval and it would change the estimated spend. The end users did not manage their contracts to ensure compliance with what they estimated to Council.”

D. Background Information

Fraud by an employee often, but not always, is signaled in one of two ways. When the fraud is used to support a personal addiction of their own or of a loved one (e.g., gambling, alcoholism, or illicit drug use), they tend to use the illegitimate cash immediately, so their lifestyle does not reflect unexplained wealth. Their interpersonal behavior on the job or a pattern of frequent, poorly explained absenteeism or neglect of duty can signal the problem, sometimes along with unexplained personality changes. If the employee craves adulation and the appearance of high status, a pattern of lavishly entertaining the employee’s colleagues sometimes is seen.

When the perpetrator is rational and unencumbered with wasting addictions, able to plan and expend the extra income, often this is accomplished through various means: creation of a front company or sole proprietorship that receives and disburses the illegitimate income (i.e., money laundering); the accumulation of real properties in addition to their own residence; collection of “toys” (art collections, expensive firearms, exotic martial arts implements and artifacts, custom erotica, and high-end micro-mini electronic racing vehicles are examples from past cases).

When more certain methods of tracing a possible fraud are unavailable, as is the case here, one can make use of these patterns to assess the relative probability that an employee who has decision-making authority over contracts and purchase agreements is merely easing the burden of the job, or instead is using the practice for personal enrichment.

Genereux, Medley, Torres, Masasso, and Averell were backgrounded using sources that are legally available to me, in order to determine whether either of these patterns of behavior was displayed.⁵ The backgrounds have been accomplished through access to public and governmental databases, and by way of discreetly asking a limited number of witnesses about the behaviors and visible lifestyles of the employees. The information gathered includes the following: the employees’ annual and leaving-office “700” economic disclosure forms; an historical record

⁵ I have not backgrounded the two half-time buyers in the division. They are recent hires, and as of this writing neither of their names has appeared in the accounting records of known improperly revised agreements. For reasons explained in the text, I did not background Quiroz.

from recorders' and tax assessors' records of their residencies and, in the case of home ownership, any mortgage(s); accumulation of real property beyond that of their own residences; vehicle ownership and presence/absence of a lienholder; evidence of a private business entity; publicly available court records of criminal or civil court involvement, bankruptcies, liens, judgments, or child support actions that would strain incomes; changes in perceived interpersonal behavior on the job or in patterns of absenteeism; the appearance of atypical affluence; and the presence of an employed or pensioned spouse or domestic partner/roommate in the home who contributes to the income stream.

In light of the possibility that this report will be made publicly available in some form, I only summarize the results of the background investigation, without naming the employees. The original source material will be maintained in the investigative file.

Liens, Judgments, Collection or Child Support Actions, Bankruptcies

- One of the employees filed for bankruptcy in the 1990's, as did the spouses of two of the employees. The three bankruptcies were resolved by legal action, and none of them occurred during the employment period of any of the employees. Additionally, the spouses' bankruptcies occurred prior to their marriage to the two respective employees. As of this writing, I have found no instances of liens, collection actions that have resulted in court filings, contested child support actions, prosecutions for failure to pay child support, or UCC filings among any of the employees or their known spouses. No criminal actions were filed against any of the employees in Stanislaus Superior Court, nor have I found evidence of such in surrounding areas. One employee and his spouse were cited once each for minor traffic violations, one in 2009 and the other in 2010. Those actions were cleared and the fines were dismissed after attendance at traffic school. None of the employees or spouses has a history of DUI arrests. There were dissolutions of marriage in the case of two of the employees. One occurred long before employment with the city, and the other occurred in 2015. Neither filing appears to have been contested.

Real Property Ownership

- One employee has been the legal owner of four modest single-family homes which were purchased serially in his hometown. Each purchase was made using the maximum mortgage available. All purchases were made prior to being employed by the City of Modesto, and the employee did not accumulate the properties; rather, he used the sale of one property to afford purchase of the next.
- A second employee owns a timeshare in addition to the family home. Both properties were bought at low prices that are within the employee's income.

- The remaining employees have purchased modest homes or condominiums and do not have a history of owning investment property or a second home in their own names.

Vehicles

- The employees own, and have owned in the past, vehicles that are low to modest in their price and whose value and number are consistent with their income stream.

“Toys”

- If any of the employees own art collections, expensive firearms, high-end hobby items, etc., that are beyond their legitimate means, there is no way to know that without access to their residences and to financial records which are not available to me.

Unexplained Changes in Appearance, Dress, Personality, Attention to the Job, or Apparent Affluence

No one I interviewed noted any changes in attitude, dress, apparent affluence, interpersonal behavior, or attention to the job on the part of any current or former employee of the purchasing division who was known to have been involved in the improper revisions of agreements. The same observation is true for confidential HR employees I spoke with informally about the employees. The impression all witnesses had of the employees was that they did not stand out in any way as to their apparent standard of living.

Secondary Businesses and Sole Proprietorships

None of the employees ever sought permission from their city employer to operate a secondary business or work a second job. One employee is a director in a family business that was incorporated in 2005. The business is headquartered in the employee's home. A search of past and current vendors to the City of Modesto reveals no history of a business relationship between the company and the city, and the employee has reported the business in each annual Form 700 economic disclosure filing.

It is possible that one former employee has, or had, some association with a named company or DBA, but it seems unlikely to me. A single proprietary database picked this up from an unknown source. To date, I have been unable to find any evidence of the existence of such an entity anywhere in the US (there are two such businesses – but one is in Ontario, Canada, and the other is in Australia, and neither reflects an ownership interest by the employee). I have also determined from appropriate officials that no such entity has ever filed a bid or obtained a contract or purchase agreement with the City of Modesto, Stanislaus County, or other governmental jurisdictions where the former employee worked. I have checked the records of all businesses in California with similar names, but none of them is associated with the employee, and none of them carry the identical business name. The former employee has denied in a written response to me that he has any knowledge of an entity with the name of the DBA.

IV. CONCLUSIONS AND RECOMMENDATIONS

- 1) Assuming that Kenneth Masasso's timeline is correct, the purchasing division's practice of occasionally implementing extensions to contracts and augmentations to encumbrances without requisite city council approval dates back to approximately 2012 or slightly earlier. Consequently, it is reasonable to assume that the forty-five current contracts/purchase agreements that were the subject of recent city council deliberations are only the most recent examples of the practice, and that an unknown number of long-since expired agreements may have been similarly revised.
- 2) By virtue of his supervisory position, Averell was implicated in the final approvals that led to the implementation of improper revisions. This is the case whether he only knew about them, prepared some of them himself, or did not know about them because he failed to review Masasso's actions on days Averell was absent from work. At the least, he neglected his duty as a supervisor. He is not subject to disciplinary action, inasmuch as he is not an employee of the city.
- 3) Belatedly, the former director of the Finance Department, Gloriette Genereux, recognized the pattern of improper approvals in her purchasing division and moved to stop them after she herself, in her new role as acting purchasing manager, inadvertently approved an improper augmentation of a contract (Aramark Uniform Services) that had a history of them. Her efforts in the fall of 2015 to modulate the use of sole-source contracts were laudable, as was her correction and mentoring of Cindy Medley once she realized what the former practices had been. Nonetheless, were she still a city employee, she could be subject to discipline for neglect of duty owing to her late arrival to an understanding of the long history of improper procedures in the purchasing division of her department.
- 4) Judging from his statement to the *Modesto Bee* reporter (**Tab 1**) and his verbal and written admissions to me (**Tab 9**), Masasso's motive for skirting proper approval procedures was innocent of corrupt purpose. By his own admission, however, Masasso was aware of the pertinent Municipal Code provisions and knew that his actions violated them. This worried him. He is not subject to disciplinary action, inasmuch as he is not an employee of the city. Whether his actions satisfy the elements of a charge of malfeasance by a public employee is a legal question beyond the brief of this investigation. As mentioned earlier in this report, Masasso was cooperative with the investigation as regards his own involvement and was the only current or former employee who provided a comprehensive description of the mechanism by which many of the improper approvals were accomplished. On the other hand, Masasso was not as forthcoming about Averell's role in the practices as he possibly could have been.
- 5) Cindy Medley, the only current purchasing division employee who participated in preparing improper revisions, was unaware until approximately the spring of 2017 that she had been involved in an improper practice. Upon realizing this, she followed proper procedure and also became valuable as a most knowledgeable person in the Oracle accounting system. In addition, it

was Medley who caught the problem with the Hotpatch contract that brought this improper practice to light (see text, pp. 5 and 20-21). No disciplinary action is recommended.

6) None of the employees at issue displays common signs of having benefitted from illicit income. This observation, while reassuring, does not constitute an absolute assurance that the improper revisions were without pecuniary advantage to one or more of the employees. The passage of time since the period at issue, and the lack of access to financial records in an administrative matter, prevent me from being more certain.

7) There is broad agreement among the former employees who either knew about or engaged in the violative practice, as well as among current management of the Finance Department, that understaffing of the division, poor compliance with procurement guidelines and expenditure monitoring by client departments, and the length of time to go from bid to council approval, all contributed to pressure on purchasing staff to implement revisions quickly in order to avoid critical shortages of supplies or services. The new purchasing manager stated that at the time she was hired, the purchasing division was understaffed and the procurement function needed to be improved at both the purchasing division and the client department levels.

T.A.