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DIVISION OF MUNICIPAL AUDIT

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June 16, 2006

**Exhibit #**  
2-16-06

Honorable John W. Carney, Jr.  
District Attorney General  
19<sup>th</sup> Judicial District  
101 North Third Street  
Clarksville, TN 37040

Dear General Carney:

Pursuant to a request by the Clarksville City Council, we have completed our investigative audit of selected records of the City of Clarksville. This investigative audit focused on certain relationships, associations, and contracts between the City of Clarksville, Clarksville Department of Electricity, American Infrastructure Management, LLC, and employees and officials of those entities. However, when the examination warranted, this scope was expanded.

Our review consisted primarily of making inquiries, examining selected documents and financial records, and performing tests and other procedures as deemed necessary.

Background

American Infrastructure Management, Inc., was chartered in Tennessee in August 2004. All of American Infrastructure Management, Inc.'s original board of directors had some relationship with the City of Clarksville. The founder, Darrell James, was president of James + Associates, an engineering firm. Paul Moore was president of Moore Construction and also had an interest in Moore Design Services. All three of those companies at one time or another held contracts with the City of Clarksville. Don Trotter was mayor of the City of Clarksville, and Dwight Luton was general manager of the Clarksville Gas and Water Department. David Nussbaumer served on the board of the Clarksville Department of Electricity (CDE). American Infrastructure Management, Inc., never moved past the start-up phase. However, in December 2004, pursuant to a joint merger agreement, American Infrastructure Management, Inc., became a limited liability company, American Infrastructure Management, LLC, chartered in Louisiana. That company was able to raise substantial investment from a number of Louisiana investors.

Mr. Moore was the only Tennessee investor. Mr. James, Mr. Trotter, and Mr. Luton each received a 10 percent share in the new company without making cash investments. According to company officials, their shares were in exchange for their specific areas of expertise and talent. Mr. Nussbaumer was the only original board member from American Infrastructure Management, Inc., whose participation did not continue with the formation of the new company.

American Infrastructure Management, LLC (AIM) offered contracting and consulting services related to the acquisition and maintenance of federal contracts for the privatization of utilities on United States military bases. In at least one instance, AIM partnered with a local government, Hopkinsville Electric System, in a proposal to the federal government. In that instance, AIM and Hopkinsville Electric System were competing with Clarksville Department of Electricity for the contract to operate the electric system on the Fort Campbell base.<sup>1</sup>

Certain city officials apparently had concerns that the participation of Mr. Trotter, Mr. Luton, and Mr. Nussbaumer in AIM did or could result in violations of state or local laws or result in conflicts of interest. In addition, city officials were apparently concerned that, since several of the AIM participants operated companies that did business with the City of Clarksville, they could receive preferential treatment when city contracts were awarded.

#### Methodology

Division staff, in conjunction with the Montgomery County District Attorney General's Office, interviewed all former board members of American Infrastructure Management, Inc. In addition, others interviewed as a part of this examination were Misty Cutshall, former internal auditor for the City of Clarksville, Johnny Piper, former mayor of the City of Clarksville, Ken Spradlin, president of the Clarksville Department of Electricity, Austin Carroll, general manager, and Angela Gibbs, controller, of the Hopkinsville Electric System and employees with the gas and water department. Division staff also reviewed selected AIM financial information, selected city records, audio tapes of City of Clarksville and Benson, Arizona, meetings, state and local laws, and considered all other information provided by interested parties.

#### Potential Conflict of Interest

Section 12-4-101, *Tennessee Code Annotated*, states:

- (a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any

<sup>1</sup>On March 15, 2006, the U.S. Army cancelled in its entirety the solicitation for service for Fort Campbell.

municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation....

(b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

Article IV, Section 12, of the City of Clarksville's charter states, "No officer or employee of the city shall profit personally, directly or indirectly, from any contract, purchase, sale, or service, between the city government and any person or company." The City of Clarksville *Purchasing Manual* contains a conflict of interest clause which states:

No employee shall have any financial interest in the profits of any contract, service or other work performed for the City. He/she shall not personally profit directly or indirectly from any contract, purchase, sale or service between the City and any person or company. Any employee violating provisions of this rule shall be subject to appropriate disciplinary action including dismissal.

"Direct Interest" means any contract with the employee himself or with any business in which the employee is the sole proprietor, a partner, or the person having at least 5% ownership interest in the business.

"Indirect interest" means any contract in which the employee has no direct interest however a spouse or relative has an interest in the contract. A conflict of interest exists in the spouse or relative commingle their assets.

In each provision, the potential conflict is created by a contract between the city and a company controlled by the public official. Our review revealed that AIM never had business dealings with the City of Clarksville or the Clarksville Department of Electricity. As a result, as to AIM, there does not appear to be a violation by city officials or employees of the state statute, the charter provision, or the purchasing manual restriction.

### Potential Preferential Treatment on Contracts

Our examination produced no evidence that, since the formation of AIM, Mr. Trotter, Mr. Luton, or Mr. Nussbaumer exercised any influence over the awarding of City of Clarksville contracts to James + Associates, Moore Construction, or Moore Design Services.

Our audit revealed that James + Associates had not been awarded a contract by the city since May 2004. Since James + Associates provided engineering services, contracts awarded to them would have been exempt from the competitive bidding requirements set forth in the city's purchasing policy under the professional services provision. Likewise, contracts awarded to Moore Design, also for engineering service, were exempt from the competitive bid practice. Our audit revealed that Moore Construction was awarded a no-bid contract in 2000. A partial transcript of the meeting of the mayor and council indicated that Mr. Luton advocated awarding the contract to Moore Construction. However, the entire city council considered the contract and voted to award it to Moore Construction. All other contracts awarded to Moore Construction were by competitive bid. In his role as utility management representative, Mr. Luton *could*, in the future, be in a position to advocate contracts with those vendors.

### Other Concerns

The audit determined that Mr. Nussbaumer broke ties with the company when it became a limited liability company in December 2004. Our audit revealed no evidence that Mr. Nussbaumer possessed or passed on CDE information related to the Fort Campbell proposal to AIM.<sup>2</sup>

<sup>2</sup>According to the December 15, 2004, minutes of the Clarksville Electric Power Board, President Spradlin informed board members that "CDE will probably be putting a proposal together" to privatize Fort Campbell electric facilities. Mr. Spradlin told auditors that he never shared details of the proposal with any CDE board members or the mayor.

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It appears that Mr. Trotter and Mr. Luton, as public officials, first owe their duty of loyalty to the City of Clarksville. However, due to their business relationships with vendors through their association with AIM, both city officials potentially could be placed in a position of conflicting loyalties.

The Tennessee Comptroller of the Treasury's office has no authority to, and did not audit the federal request for proposal (RFP) processes.

The investigative audit produced no evidence or other information that would indicate possible criminal conduct.

If you have any questions concerning the above matter, please contact me.

Sincerely,



Dennis F. Dycus, CRA, CFE, Director  
Division of Municipal Audit

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