



City of Seattle

Ethics & Elections Commission

Memo

To: Mayor Greg Nickels
City Council President Richard Conlin
Seattle Fire Department Chief Gregory Dean

From: Wayne Barnett

Date: March 18, 2009

Re: Case No. 08-WBI-1017-1

Attached is a report detailing improper governmental actions that occurred at the Seattle Fire Department. The report is the result of a five-month investigation initiated by this office upon our receipt of a whistleblower complaint. If you have any questions concerning the report, do not hesitate to let me know.

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Case No. 08-WBI-1017-1
Investigative Report

In October 2008, the Ethics and Elections Commission (SEEC) received a complaint under SMC.4.20.800, the Whistleblower Protection Code. The complaint contained two allegations:

1. Lieutenant Milton Footer, a member of the Seattle Fire Department's Fire Marshal's Office (FMO), caused a gross waste of public funds when he failed to submit paperwork to the Fire Department's fiscal administration unit, resulting in the failure to collect from First and Goal, Inc. (F&G) approximately \$200,000 in fireguard services provided to them by the Seattle Fire Department (SFD), and

2. Lt. Footer misused his official position as a Lieutenant Inspector in the Special Events section to acquire an all-access pass to a concert for his fiancée.

The Whistleblower Protection Code governs investigation of these complaints. Under SMC 4.20.830, the SEEC's Executive Director investigates complaints alleging a violation of the Ethics Code. SMC 4.20.830 also gives the Executive Director discretion to investigate most other allegations of improper governmental conduct. In this instance, after completing a preliminary investigation, the Executive Director launched a formal investigation into both allegations.

When the Executive Director determines that improper governmental conduct, as defined by SMC 4.20.850.C.1, has occurred, he is required to provide a written report detailing the determination to the complainant(s), the department head, and to such other officials as he deems appropriate. Since Fire Chief Gregory Dean already has knowledge of Lt. Footer's procurement of a pass for his fiancée and his role in the City's failure to collect approximately \$200,000 from F&G, and because the Chief did not in the Executive Director's opinion satisfactorily discipline the lieutenant for his breach of the public trust, this office is also providing this report to the Mayor and the City Council.

SUMMARY CONCLUSIONS

1. Lt. Footer's failure to do his job led to a gross waste of \$195,697 of public funds when, from 2002 to 2007, he failed to provide documentation to SFD's fiscal administration unit, which then did not bill F&G for reimbursable services provided to F&G by SFD. This gross waste of public funds is an improper governmental action under the Whistleblower Protection Code.

2. Lieutenant Footer committed an improper governmental action when he violated SMC 4.16.070.2.a, a City law, by misusing his official position as a Fire Inspector to acquire an all-access pass for his fiancée to the Hannah Montana concert at Key Arena in October 2007.

3. The verbal counseling issued by Fire Marshal Kenneth Tipler, with Chief Dean's consent, to address Lt. Footer's violation of SMC 4.16.070.2.a was an unsatisfactory response given both the power and the public trust vested in an SFD Inspector.

4. Each of the three SFD Fire Marshals who served between 2002 and 2008, having the duty and obligation to be effective stewards of public funds, failed, despite warnings, to ensure that the Lt. Fire Inspector position at F&G was appropriately supervised, and each bears responsibility for the failure to collect \$195,697 of reimbursable expenses due from F&G from 2002 through 2007.

DISCUSSION

1. Lt Footer's failure to submit routine paperwork led to the failure to bill \$195,679 of City services provided to F&G.

In 2002, Lt. Footer was assigned to be the dedicated Special Events Fire Prevention Inspector working with Qwest Field under the terms of a 2001 contract between SFD and F&G. In this position he became responsible for the day-to-day management of all SFD activities at Qwest Stadium.

The Seattle Seahawks began to play home games at Qwest Field in September 2002. During the football games, F&G would disengage the stadium's fire alarm system from the automatic alarm reporting program – a procedure known as putting the stadium in “event mode” – bypassing the automatic emergency reporting system. In “event mode” the stadium's fire alarm system routes all alarms to a central fire control panel located within the stadium, and on-site personnel have a short period of time to investigate and verify whether an emergency in fact exists. During professional and college football games this process avoids disruption of the event or evacuation of the stadium due to a false alarm.

When SFD was informed by F&G that the stadium would be placed in “event mode” for football games, SFD required F&G to staff all games with a contingent of firefighters, known as “fireguards,” all of whom were trained fire personnel. Fireguards were stationed in the central fire alarm control room and in various parts of the stadium. The fireguards were to investigate the source of any alarm and determine if an emergency existed. F&G accepted this condition and fireguards have attended both college and professional football games since 2002.

Fireguard duty is overtime duty. Fireguards have been used at various venues throughout the City of Seattle, including Bumbershoot, raves, and pyrotechnic displays. SFD treats fireguard overtime costs as reimbursable expenses, and bills them to the organization/individual using the service. Payments are made to the City of Seattle general fund.

It is common knowledge within the FMO that all fireguard activities are billed to the requesting party. The procedure for billing fireguard services has been the same for over a decade and is well known to members of the FMO Special Events section where the majority of fireguard activity take place. Lt. Footer told us that he understood that fireguard services were to be billed.

On Qwest Field game days, usually six firefighters and a supervising lieutenant work as fireguards. Upon arriving at the stadium, each fireguard signs in by writing their name on a

fireguard activity sheet.¹ (An example is attached as Exhibit A.) Lt. Footer is responsible for completing the form and ensuring that it is routed to SFD's fiscal administration unit. Ideally, he obtains the signature of someone at F&G before submitting it. Since 2002, Ms. Sue Skaggs has been the person responsible for billing fireguard services.

From 2002 until the end of the 2007 season, F&G used fireguards for football games on 76 occasions. The total amount of the services provided at football games to F&G for these services was \$189,811. Of this amount only \$26,798 was billed by SFD to F&G.² Lt. Footer was the supervising officer in charge of submitting the fireguard activity sheets during this period with the exception of October 2005 when he was on medical leave.

In 2002 – 2007 there were 39 other occasions when reimbursable SFD services were provided to F&G and not billed. These “other services” totaled \$16,353. Lt. Footer was the supervising officer in charge of submitting the fireguard activity sheets for these additional events.³

The failure to bill F&G came to light in early spring of 2008, when Special Events Captain Chris Greene began exploring whether he could recapture money for Special Events to support his budget and an increase in permit inspections. He discovered that F&G had not paid for fireguard services.

Captain Greene spoke with Ms. Skaggs, who said she had not seen fireguard activity sheets and did not bill F&G for the expense. He also spoke with Ms. Kathy Veasley in SFD's fiscal administration unit who is in charge of payroll and overtime. She told him she had rarely seen fireguard activity sheets and when she did she handed them directly to Sue Skaggs for processing. Both confirmed this with SEEC staff.

Captain Greene then talked with Lt Footer. When told that Ms Skaggs had not seen the fireguard activity sheets for F&G football games and asked why this had occurred, Lt. Footer shrugged his shoulders. When asked if he had copies of fireguard activity sheets, he told the Captain he did not. He offered no explanation as to why invoices had not been processed.

Lt. Footer was interviewed by SEEC staff. In answer to questions regarding the fireguard activity sheets he said that he knew they were to be sent to Ms. Skaggs, and that he understood the services were to be billed to F&G as reimbursable expenses. He told SEEC staff that he “[didn't] know what happened,” that he submitted the sheets as required through interoffice mail, and that he “didn't know where they went.” He told us he “had no idea why [F&G] didn't get billed.”

¹ The attached activity sheet – formerly called an invoice – states, “This is not a bill. You will be billed at a later time.” SEEC interviews with three members of F&G staff have found that F&G expected to be billed for fireguard services from the time they were first provided.

² Of the amount billed, \$10,486 was collected.

³ The amounts on the attached DEA/SFD Audit Findings are the product of work performed by DEA, which audited SFD's billings of F&G after these allegations came to light.

We find Lt Footer's answers to our questions lacking in credibility. We find implausible the claim that Lt. Footer placed approximately 70 envelopes in the interoffice mail and that all but six were lost. Such a failure rate is belied by the following evidence.

In the fall of 2004, at a time when F&G and the FMO were renegotiating the 2001 Agreement which funded Lt Footer's dedicated position – a time when Lt. Footer's work was under a microscope, so to speak – Lt. Footer successfully sent six fireguard service activity reports to Ms. Skaggs, which she billed to F&G. The fireguard activity sheets were for five Seattle Seahawks games and one college football game. Each sheet was signed by Susan Darrington, Vice President of F&G, and Lt. Footer. Four copies of these six fireguard activity sheets were found by SEEC in Lt. Footer's files.

And then in the fall of 2005, when Lt. Footer was on extended medical leave, Fire Inspector Lt. Ralph Siu filled in for him at four Seattle Seahawks home games. Lt. Siu submitted two activity sheets and, as he told SEEC staff, was told by Lt. Footer that Lt. Footer would take care of the remaining sheets when he returned to work. Lt. Siu told SEEC that he left them on the Lt Footer's desk. The two sheets that Lt. Siu submitted reached Ms. Skaggs and resulted in billings to F&G.

SEEC staff also interviewed Chris Santos, Kathy Veasley and Sue Skaggs in SFD's Fiscal Management unit. We found credible their claims that they billed for all activity reports that they received.

2. Lt Footer's misuse of his official position and SFD's response.

a. Background on Permits and Fire Inspections

The FMO⁴ is one of three SFD units that are not devoted to fighting fires. The FMO is made up of five sections, all of which oversee compliance with legislatively enacted codes to insure public health and safety. The breadth of the FMO's inspection activities spans from the storage and use of hazardous materials to issuing permits allowing open flame cooking at large catered events.

Special Events is one of the FMO sections, and its captain⁵ reports directly to the Fire Marshal. The captain is responsible for the administration of the section and the supervision of three Lt. Fire Inspectors.⁶

The Special Events section issues "temporary place of assembly permits," which ensure the safe operation of public events. Acquiring a temporary permit is mandatory when a building space will be used in a manner not authorized by the occupancy permit, or involves a hazardous

⁴ Fire Marshals: 2000-2003, [then] Assistant Chief Gregory Dean; 2004 – 2005 Assistant Chief John Nelsen; 2006 – present, Assistant Chief Kenneth Tipler.

⁵ DELETED. The original version of this report contained incorrect dates of service for several special events captains.

⁶ Lt. Inspectors: Lt. Janet Beale, 1998 – present; Lt. Tom Heun, 1999 – present; Lt. Milton Footer, 2002 – present.

activity requiring a permit. For example, a concert venue needs to obtain a temporary permit when an indoor concert will include a fireworks display.

To obtain a permit, an event organizer first submits an application to the FMO and pays a permit fee in an amount set by City ordinance. Depending on the nature of the permit, the applicant might be required to submit a floor plan for the event, a proposed exiting plan, or other details. The permit fee covers the cost of one initial inspection by a Lt. Fire Inspector. These inspections are performed to assure compliance with the fire code and any permit conditions.

An inspection which occurs during work hours or during overtime is not billed to the permit holder.⁷ Permit fees are set taking into consideration the possible overtime costs. Inspectors who perform inspections during overtime hours are paid at least the contract minimum of four hours, and inspections rarely take more than the four hours.⁸

Once submitted, the permit application undergoes review by a Lt. Fire Inspector. If the inspector determines that the plan is not adequate under the fire code, the inspector can require the applicant to submit an amended plan. The permit, if issued, may have additional conditions, such as a requirement that a fire department representative be on site during indoor fireworks displays.

Once a permit is issued, failure to comply with its terms and conditions, as judged by a Lt. Fire Inspector who inspects the event, invalidates the permit. If an inspector finds a violation of the permit or the fire code, he or she has nearly unfettered discretion⁹ to decide how the violation will be addressed. An inspector can discuss a violation with the event organizer and allow the defect to be cured at any time before or during the event; the inspector can issue a written Notice of Violation (NOV) but allow the event manager to cure the violation without disrupting the event; or, an inspector can issue an NOV and prevent organizers from opening the doors, or, if the event is in progress, they can suspend or close down the event.¹⁰

From speaking with event managers, promoters and venue operators, it is clear that the event organizers are fully cognizant of and respect the power exercised by the Lt. Fire Inspectors. With this background in mind, we turn our attention to Lt. Footer's demand for a pass, and the Fire Chief and the Fire Marshal's election of a non-disciplinary sanction.

⁷ Special Events issued 1,432 permits in 2008, approximately 54% were inspected.

⁸ There is one exception and that is when an inspection is scheduled a half-hour or less before or after an inspector's shift begins or ends.

⁹ Event organizers can appeal an inspector's decision to the Special Events Captain. Most captains come to the position with no experience in Special Events and no training. They are, as one Captain stated, "supervising people who have years of experience in the department. You can't really second guess them." After appealing to the captain, the only remaining avenues of appeal are to the Fire Marshal and the Fire Chief.

¹⁰ As an example of a rare occasion on which an inspector "held the doors," one inspector related to us the story of a Convention Center trade show at which an exhibitor's booth was tented and the tent would block the automatic sprinkler's distribution of water in the case of a fire. NOV's are most commonly used to cure noncompliant behavior and are issued for record keeping purposes by the FMO Special Events staff to track event managers who may be repeat offenders.

b. Lt. Footer's demand for two all-access passes.

On October 29, 2007, Miley Cyrus (performing as Hannah Montana) performed at Key Arena. Lt. Footer worked the concert as the Lt Fire Inspector. On the day of the concert, he attended the pre-performance meeting held between Key Arena management, concert promoters and security staff.

At the conclusion of the meeting, Lt. Footer approached Key Arena employee Scott Marshall and asked for two all-access passes. Mr. Marshall questioned why the lieutenant needed two passes. Lt. Footer replied: "I'm the Fire Marshal for this event. I need two passes."

Mr. Marshall called his supervisor, Edie Burke. Ms. Burke, Director of Operations for Key Arena and a City of Seattle employee, came down and met both Lt. Footer and Mr. Marshall. Ms. Burke asked Lt. Footer why he needed two passes. Lt. Footer refused to elaborate, and restated his demand for two passes.

In an interview, Ms. Burke described Lt. Footer's tone as terse, arrogant and threatening. She told us: "I felt I didn't have a choice." She gave Lt. Footer two all-access passes. Later that evening, she and others saw Lt. Footer backstage with a woman. Lt. Footer confirmed for us that this person was his fiancée.

Ms. Burke made a note in the Key Arena Event Comment Log regarding the demand for all-access passes. After considering reporting the incident to the SEEC or directly to the FMO, and after discussing the incident with her boss, Ms. Burke told us that she elected not to report the incident for two reasons. First, Lt. Footer rarely worked at the Key Arena, and she and her staff had not experienced this type of behavior from either of the other two Fire Inspectors with whom they regularly dealt. And second, Ms. Burke told us that she understood from others that you "take care of Milt or you will have problems."

Special Events Captain Chris Greene, to whom Lt. Footer reports, told SEEC staff that he became aware of the Key Arena incident when he spoke with Ms. Burke in July 2008. He asked Ms. Burke to put her account into writing. In the meantime, Captain Greene spoke privately with Diane Hansen, a strategic advisor with the FMO. Ms. Hansen urged him to report the matter to the Fire Marshal, Assistant Chief Kenneth Tipler. Captain Greene decided to wait for Ms. Burke's written account before either confronting Lt. Footer or speaking with the Fire Marshal.

Ms. Burke had yet to reduce her account to writing by the end of August, when, according to Captain Greene, he was summoned to Fire Marshal Tipler's office. There he was met by the Fire Marshal and Lt. Footer. Lt. Footer reported to the Fire Marshal that Captain Greene was "spreading rumors" about him, specifically that he was under investigation. Captain Greene denied this and relayed to the Fire Marshal Edie Burke's account. According to Captain Greene, Lt. Footer admitted asking for the passes and using them for entry into the concert. At one point, Lt. Footer asked, "Is this a problem?" According to Fire Marshal Tipler, Lt. Footer compared securing a concert pass for his fiancée with a firefighter arranging for a "ride along" on a fire truck responding to a 911 call.

Later that day, Captain Greene called the Fire Marshal and told him: “We have an issue – misuse of official position. I don’t know what you want to do but he used his badge in an official capacity.” The Fire Marshal told the Captain to put a recommendation in writing. Captain Greene wrote a memo describing the incident and recommending a five day suspension. Fire Marshal Tipler told Captain Greene that he would take the matter up with Chief Dean.

Before taking the matter up with Chief Dean, Fire Marshal Tipler discussed the matter with Lt. Beale, the longest serving Special Events lieutenant. Lt. Beale confirmed to us that she told the Fire Marshal that Special Events captains had secured tickets to events in the past. When we asked Lieutenant Beale for details, she told us that the captain of the unit between 1999 and 2001 had secured a ticket for his spouse to a football game at which he was working overtime. She told us of no other instances in which a captain had sought or received passes for friends or family to events.

After consulting with Lt. Beale and Chief Dean, Fire Marshal Tipler told his senior staff that he had decided to provide Lt. Footer with verbal counseling. Deputy Fire Marshals Gary English and James Woodbury, Ms. Hansen, and Captain Greene all told Fire Marshal Tipler of their strong opinion that verbal counseling set a poor precedent, and that it did not reflect the egregiousness of the conduct or its effect on the integrity of the FMO. Deputy Fire Marshal Woodbury renewed a recommendation that had been raised over the years; that Lt. Footer should be rotated out of his position as a Lt. Fire Inspector assigned to F&G.¹¹

Fire Marshal Tipler told the staff that he would have another conversation with Chief Dean. At a subsequent meeting, one in which the Fire Marshal was moved by concerns about his effectiveness to tender his resignation, Chief Dean relented, telling the Fire Marshal that he would allow him to discipline Lt. Footer or rotate him out of his position, but not both. Chief Dean told the Fire Marshal that he could “do what he wanted to do” but cautioned that discipline or rotation would cause a “shit storm” and that the Fire Marshal would “own it.” Chief Dean explained to SEEC staff that he was referring to the union grievance that he was sure would follow, and that he felt that several members of the Fire Marshal’s office were “out to get Milt” [Footer]. Chief Dean told SEEC staff that he been aware of the past recommendations of those who urged rotating Lt. Footer and had asked that they provide him with a business reason for a rotation, but none was ever forthcoming.

In October 2008, Fire Marshal Tipler informed his staff that Lt. Footer would receive formal counseling for obtaining the pass for his fiancée. The staff again pressed him for a stronger penalty. Chief Tipler replied that “the decision was made.” A note that formal counseling was given to Lt. Footer was entered into the lieutenant’s personnel file on October 8, 2008.

In an interview with SEEC staff, Lt. Footer admitted to obtaining the passes, working the concert, and having his fiancée use one pass to accompany him. Lt. Footer reiterated his belief that obtaining a pass for his fiancée was allowed under SFD’s “ride-along” policy, and said that

¹¹ Each Captain assigned to the Special Events section of the Fire Marshal’s Office from 2000 – 2008 told SEEC staff that they had expressed concern to their chain of command about the difficulty in managing Lt Footer in the F&G position.

now that he had been informed otherwise he would no longer obtain passes. He denied speaking to Ms. Burke in a threatening tone.

ANALYSIS

Gross Waste of Public Funds

A “gross waste of public funds” is not defined in the City’s Whistleblower Protection Code, and therefore we look to state law, which defines the term to mean “spend[ing] or us[ing] funds or to allow[ing] funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.” RCW 42.40.020(5).

We find that Lt. Footer grossly wasted public funds when he failed to submit fireguard activity forms on one hundred fifteen occasions. The total expenditure made by SFD through payment of overtime to the firefighters totals \$206,165. Of that amount, approximately \$195,679 was not billed to F&G. All of the unbilled fireguard services should have been reimbursed to the City of Seattle general fund. Billing of F&G depended on Lt. Footer initiating the billing process by submitting the fireguard activity sheets to SFD Finance. This was not done. Lt. Footer substantially deviated from the standard of care that a reasonable person in his situation would have observed, resulting in a loss to the City of Seattle general fund of \$195,679.

Misuse of position

Violations of City ordinances or rules constitute improper governmental actions under the Whistleblower Protection Code. SMC 4.20.850.C.1.a. Both the Ethics Code and SFD’s Policies and Operating Guidelines (POG) prohibit using one’s official position for private benefit. Specifically, SMC 4.16.070.2.a says that no City employee may “[u]se his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the officer or employee, rather than primarily for the benefit of the City; or to achieve a private gain....”

Along these same lines, POG 3004 says that “[e]mployees of the Fire Department are prohibited from using their official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of themselves or another person.” The POG lists several examples, including the following: “Using your office or official position to gain free admission to an event....”

Lt. Footer demanded two concert passes to allow him to bring his fiancée to a concert. This is a violation of both the Ethics Code and the POG. While Ms. Burke’s testimony regarding the way in which the demand was made exacerbates the problem, the reality is that even if we accept Lt. Footer’s denial that he was threatening, his mere act of requesting the pass for his fiancée constitutes a violation. Lt. Footer has tremendous power, power that those he deals with are acutely aware of. He violated the Ethics Code when he solicited the pass.

As the result of a 1995 PERC opinion,¹² the authority to sanction Lt. Footer for improperly using his official position falls to Chief Dean, not the SEEC. In 1995 PERC held that the SEEC could not levy fines against represented employees unless those employees' unions had affirmed in their collective bargaining agreements the SEEC's authority to issue fines. Local 27, to which Lt. Footer belongs, has not agreed to such language.

Disciplinary procedures within SFD are memorialized in POG 3011. The POG outlines pre-disciplinary and disciplinary sanctions. Pre-disciplinary actions include informal and formal counseling, such as the counseling provided to Lt. Footer. According to POG 3011, formal counseling is not discipline. "Formal Counseling takes place at a formal meeting between the employee and the supervisor to review expectation, specific department rules, policy ... A counseling form (Form 250) shall be used to document the meeting and that form shall be included in the employee's personnel file. Formal counseling is not discipline and Form 250 is not a statement of offense. Form 250 will only be used to document that an employee has been made aware of expectations. "

When speaking to SEEC staff regarding why they decided that counseling was appropriate, Chief Dean and Fire Marshal Tipler both said that they had information that having a spouse at events was a "practice" in the department. The source for this claim, as noted above, is Lt. Beale's conversation with the Fire Marshal. As noted above, in our interview of Lt. Beale she related one instance – which occurred between 1999-2001 – in which a captain brought his wife to a football game without buying a ticket when he was working overtime. We find this to be insufficient support for the claim that soliciting event passes is a practice in the Fire Marshal's Office. Even if we did, we would not be inclined to treat this incident as anything less than a serious breach of the public trust.

A fire inspector wields a tremendous amount of power. Keeping upwards of 17,000 concertgoers safe at the Key Arena, or approximately 70,000 football fans safe at Qwest Field, is very serious business and inspectors need the authority to deal swiftly and severely with event organizers who endanger the public. But with such tremendous power comes the duty to ensure that the power will only be used to protect the public's health and safety, never for one's own private benefit. For Lt. Footer to abuse this trust and use his official position to gain a personal benefit undercuts the public's trust in every City officer who exercises regulatory power. For the Fire Chief and the Fire Marshal to treat Lt Footer's demand for passes with a stern warning is to further demean this trust, which is why I make the determination under SMC 4.20.850.C that SFD's response to this episode is unsatisfactory.¹³

OTHER ISSUES

In the course of this investigation, many of the men and women of the SFD shared information with us about conduct that does not necessarily meet the definition of "improper

¹² DECISION 4851-A: CITY OF SEATTLE, IFPTE, Local 17 v. City of Seattle

¹³ Generally, this is a determination made following a department's follow-up to a report issued by our office. But in this case, all of the facts discussed here are already known by SFD. Waiting to announce this determination to the Mayor and the City Council serves no legitimate City purpose.

governmental action” under the Whistleblower Protection Code, but which staff nonetheless believes to be worthy of attention. Those issues are as follows:

1. Inadequate controls on overtime

FMO inspectors are responsible for everything from inspecting hazardous waste, to open flames at large catered events, to sprinkler systems in newly constructed buildings. When an inspector conducts an inspection during his or her normal work hours, the inspector received no extra compensation. If, however, that inspection early in the morning or in the evening or on a weekend, the inspector is paid four hours of overtime. To be sure, there are inspections that simply cannot be scheduled during work hours or as an extension of an inspector’s shift. But the powerful financial incentive to schedule inspections on weekends cannot be dismissed, and we heard from several people who told us that some inspectors manipulate their schedule so that they are paid four hours of overtime for conducting a half-hour inspection. We urge SFD to develop strong controls to ensure that all overtime assignments are essential, and urge the Mayor and the City Council to ensure that such controls are put in place. The suspicion that overtime is abused is damaging to morale within the department, and will lead to a loss of public confidence unless controls are put in place.

2. Systematic failures in SFD’s dealings with F&G that go beyond the failure to bill almost \$200,000 in services rendered.

In July 1999, the City required that F&G’s precursor, Football Northwest, fund a full-time Seattle Fire Department Special Events Coordinator Position as part of the Master Use Permit for the construction of Qwest Field.

In the fall of 2001, as stadium construction was drawing to a close, the City Council, at SFD’s request, allocated funding to create a new position in the FMO Special Events section. The budget states that approval for the new position was, “pursuant to an agreement with Football Northwest that will be assigned to Stadium construction site and the adjacent exhibition center.”

A contract entitled, “Agreement between The City of Seattle and First and Goal, Inc, regarding Lieutenant Fire Prevention Inspector Services,” (hereafter, “the Agreement”), was signed by then interim Fire Chief Gregory Dean and Buster Brown, F&G’s CFO. The contract was effective January 1, 2001.

The Agreement’s term was “for as long as the SEC [Seattle Exhibition Center] and the Stadium remain in existence or this Agreement is terminated whichever occurs first.” The salient terms of the contract were:

- The Lt. Fire Inspector was to “work with F&G and its Lessees on a client-priority basis to advise F&G and it Lessees regarding the requirements for compliance with the Seattle Fire Code. Such Lt Fire Prevention Inspector may develop Standard Operating Procedures and other such guidelines to facilitate compliance with the Fire Code;

- F&G was to provide office space for the Lt Fire Inspector;

- Reimbursement for the salary and benefit costs associated with the position were to be paid by F&G. Those costs were estimated to be \$85,850 in 2001 and \$85,946 for 2002 with provision for yearly review and adjustments;
- F&G was not relieved of any fees associated with required permits,.

On February 20, 2004, Jeff Klein, then F&G's Vice President of Facility Operation and General Manager gave written notice of F&G's intent to terminate the 2001 contract. Mr. Klein told the SEEC that F&G, after internal discussion regarding the cost of the dedicated inspector, decided that F&G had the ability to operate without the services of the full-time inspector and decided to terminate the Agreement.

After receipt of this letter, SFD contacted Mr Klein to talk about changes which would occur if the dedicated position was eliminated. In a telephonic interview with SEEC staff, Mr Klein said that he discussed with then Fire Marshal John Nelsen and separately with Lt. Footer the effects of terminating the Agreement.¹⁴

Mr Klein recalled one conversation in which Lt. Footer commented about the "doors not opening if [we] couldn't get SFD down" to do an inspection. Mr Klein took this and other aspects of the conversations to be arm twisting.¹⁵

The perspectives of Mr. Klein and other F&G staff and SFD command officers differ on both the reasons for the termination and its potential consequences. What is known, though is that on June 29, 2004, Mr. Klein sent an e-mail to Fire Marshal Nelsen rescinding the February termination letter.

Mr Klein and Chief Nelsen agreed that an amendment to the 2001 Agreement should be made. Chief Nelsen handed off responsibility for the negotiation to Deputy Fire Marshal Woodbury and Special Events Captain Darnell Factory.

Deputy Fire Marshal Woodbury and Captain Factory began talking to F&G about an amendment to the Agreement. By July 27, 2004, F&G and SFD had agreed to certain amendments, including F&G paying all of Lt. Footer's overtime.

The agreed terms were memorialized by Deputy Fire Marshal Woodbury in a July 27, 2004 memo sent to Mr. Harry Laban, SFD Grants and Contract Manager, who was assigned the responsibility to draft the contract. The memo notes, "F&G agree to pay for 100% of the overtime costs associated" with the position. To facilitate the accounting of overtime, Deputy Fire Marshal Woodbury asked that a special payroll code be created for Lt. Footer to enter overtime worked for F&G.

¹⁴ Attached is a document entitled "Contract Termination Changes at FGI," which was found in Lt. Footer's files.

¹⁵ It should be noted the once a permit is issued, the permit holder is free to begin their event. "Doors can open" without an inspection. An inspector can provide the initial inspection just prior to the event or after the event is in progress.

In September 2004, Mr. Klein left F&G, and F&G’s CFO, Ms. Martha Fuller, took over the negotiations. Ms. Fuller wanted the amendment to provide F&G with some control over the total cost associated with the Lt. Fire Inspector position. She needed to be able to budget for the expense.

Ms Fuller recalls meeting with Chief Woodbury on one occasion in late December 2004 or early 2005. By memo dated February 16, 2005, she forwarded her suggestions to Deputy Fire Marshal Woodbury who forwarded them to Mr. Laban.

Mr. Laban drafted an amendment to the Agreement and in March 2005, the amendment was reviewed by John Groh of the City’s Law Department in a meeting with Chiefs Nelsen and Woodbury. By e-mail, on March 29, 2005, Mr. Laban forwarded the draft, “with changes we discussed last week” to Mr. Groh, who recalled when interviewed by SEEC staff, that the amendment still needed to address the fireguard issues.

From March 2005 until the fall of 2008, no further negotiations are known to have taken place. Ms. Fuller, told SEEC staff that she called or e-mailed “a couple of times” to check on the status of the amendment but received no new draft. No amendment to the 2001 Agreement was ever executed.

3. Potential mismanagement of overtime billing

Even though there is no signed amendment to the 2001 Agreement addressing billing Lt. Footer’s overtime, SFD began billing F&G for a portion of the overtime SFD paid Lt. Footer. The first billing was made in 2006, and it recovered a portion of the overtime paid to Lt. Footer in 2005. Under what SFD calls a “gentleman’s agreement” – a characterization Ms. Fuller disputes – the billings resulted in a total of \$65,446 being paid by F&G for Lt Footer’s overtime between 2005 and 2008. In actuality, Lt. Footer’s overtime expense on behalf of F&G which was paid by SFD – even if figured conservatively – totaled slightly more than \$101,000 over that period.

The history of SFD’s dealings with F&G suggests several problems. First, SFD is billing F&G for an expense that has no basis in a written contract, and in fact seems to go beyond the terms of the 2001 Agreement. Since no amendment was ever signed, that agreement remains in place.

Second, SEEC staff is troubled by the lack of any documentation that would connect the overtime that Lt. Footer worked at F&G and the amount that SFD billed to F&G.¹⁶ Although Lt.

¹⁶ The following amounts represent what was billed to F&G by SFD and what SFD paid Lt Footer in overtime wages:

	OT Billed to F&G by SFD	Actual OT Paid to Lt. Footer by SFD
2003	0	\$13,435.72
2004	0	\$31,800.63
2005	\$14,689	\$23,396.27
2006	\$14,052	\$25,726.20
2007	\$21,906	\$26,722.82
2008	\$14,745	\$25,499.89

Footer spends virtually all of his time at F&G, SFD failed to recoup approximately \$35,000 in overtime paid to Lt. Footer between 2005 and 2008. And Lt. Footer does not appear to use the codes created to track overtime associated with his dedicated position, nor does SFD appear to use those codes when billing. None of the amounts paid to Lt. Footer using *any* overtime codes matches the amount billed by SFD to F&G.¹⁷

Third, there is no coherent system to distinguish between overtime worked by Lt. Footer at Qwest Field under F&G permits, and overtime worked by Lt. Footer at Qwest Field under permits obtained by third parties holding an event permit.

A permit holder, by virtue of paying the permit fee, pays for an overtime inspection. If the overtime inspection at the F&G facility is billed to F&G and is related to an event permit paid for by a F&G client, then F&G should not be charged. By charging F&G for overtime expenses associated with Lt Footer's inspections of events at the Exhibition Hall for example, SFD could be "double dipping," charging F&G for an overtime inspection that has already been paid by F&G client's permit fee. Currently there appears to be no reliable and accurate accounting available to make these distinctions.

4. SFD has shown no regard for the conflicts of interest inherent in having a regulatory position funded by the regulatee.

When an employee is placed in a position where they have (1) minimal supervision, (2) no colleagues at the job site, (3) broad discretionary power, and (4) abundant opportunities for self dealing, the potential for misconduct is extremely high. Immersing a regulator in an environment where those he works most closely with are the very people he is charged with regulating is a recipe for serious problems. Leaving him there for seven years can only compound the problem.

Clearly, this dedicated position allows the long-term dedicated Lt. Fire Inspector to build strong relationships. Some in SFD, the Chief among them, see this as an asset. Lt. Footer knows the venue, knows the people, and knows the issues, all of which we were told help him to function effectively. SEEC staff heard from several other people, however, who see Lt. Footer's long tenure at F&G as a liability. Lt Footer is regulating the company that not only pays his salary but also has the power to cancel his contract.

SEEC staff spoke with each of the captains who has supervised the Special Events section from 2002 through the present. Each spoke about the "minimal supervision" that takes place, the "isolated nature" of the position, the schedule which keeps Lt Footer "really not around much," all of which makes effective supervision of the F&G position nearly impossible. From two of the four captains we heard that Lt. Footer sometimes told them: "You work for SFD, I work for First and Goal." One captain termed it "a constant conversation" about "who does he work for?" All of the captains had voiced these concerns to their superiors.

¹⁷ We understand that allocated budget amounts play into the calculations but are concerned that overtime costs that could be reimbursed to the general fund are not being pursued.

Other SFD employees, from the Deputy Chief level down have voiced their concerns about Lt. Footer's long tenure in the F&G position. These concerns have been communicated to both the past and present Fire Marshal and to Chief Dean over a number of years. The response to their concerns has been varied; "the contract precludes us from moving him,"¹⁸ or "give me a business reason," or "you have it out for Milt."

SUMMATION

Lt. Footer's misuse of his position has been a tipping point for many in SFD. These people pressed their leadership for action, and ultimately a complaint was filed with the SEEC. Employees tell us that they see SFD's response as dismissive of the values underlying not only the employees' concerns, but the values of the fire service.

SEEC staff has found the concerns of these SFD employees to have merit. We have also found the members of SFD to be a loyal, committed and concerned group of employees, whose main objective is to ensure the public's safety and maintain the integrity of SFD. There is much work to be done to restore confidence in the Fire Marshal's Office, and by making this report, SEEC staff hopes to encourage SFD, the Mayor's office, and the legislative department to work together to see that the public can have confidence in the work of the FMO.

¹⁸ There is nothing in the contract that precludes moving Lt Footer. In fact, there is nothing in the contract that requires the dedicated position to be held by one Lt Fire Inspector.

Seattle Fire Department FIREGUARD INVOICE

#407

(Invoice is not a bill. You will be billed at a later time)

Firm Name: <u>First & Goal</u>			
Firm Address: <u>800 Occidental Ave Ste 200</u>			
City: <u>Seattle</u>	State: <u>WA</u>	Zip Code: <u>98134</u>	Telephone #: <u>206 381-7555</u>
Billing Address (If different from above):		Event Name: <u>Seahawks / Arizona</u>	
City:	State:	Zip Code:	Occupancy/Venue: <u>Quest Football Field</u>
Firm representative/ Requesting party: <u>Juan Darrington</u>		Title/Position: <u>VP</u>	Event/Inspection Date(s): <u>9-25-05</u>

Name of Inspector/Rank	Hourly Rate	Extension of shift: Y/N	Date	Billable Hours (4 Hours Min.)	Total
<u>Samuel Corbin - 1146</u>	<u>54.52</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>368.01</u>
<u>JOE CRIVELLO - 1117</u>	<u>54.52</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>368.01</u>
<u>JOHN CRIVELLO - 1117</u>	<u>54.52</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>368.01</u>
<u>CHARLES C. HAWKINS JR. - 1117</u>	<u>54.52</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>368.01</u>
<u>STANLEY SMITH - 1747</u>	<u>54.52</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>368.01</u>
<u>JOE MILLER - 1052</u>	<u>54.52</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>368.01</u>
<u>Reginald Ball - 1110</u>	<u>61.49</u>	<u>NO</u>	<u>9-25-05</u>	<u>6:45</u>	<u>415.06</u>
<u>Ralph Siu #1379</u>	<u>61.49</u>	<u>NO</u>	<u>9-25-05</u>	<u>9:15</u>	<u>568.78</u>
Total					<u>3,191.90</u>

For The City of Seattle:

For the Requesting Firm/Venue:

(Signature)

(Signature)

(Print Name and Title of Signer)

(Print Name and Title of Signer)



City of Seattle

Invoice

PAGE 1

Gregory J. Nickels, Mayor
Seattle Fire Department
Gregory M. Dean, Fire Chief

Invoice No.
00000407

Invoice Date
10/04/05

Sold

To: FIRST & GOAL, INC.
800 OCCIDENTAL AVE. S
SUITE 200
SEATTLE, WA 98134

Purchase Order Number	Date Ordered	Date Shipped	Payment Due	Salesperson
		10/04/05	11/03/05	

Terms	Notes
0 00/0 NET 30	QWEST FOOTBALL FIELD 9/25/05

Reference	Description	Amount
	SEAHAWKS/ARIZONA	
	INSPECTOR CORBIN	368.01
	INSPECTOR CRAWFORD	368.01
	INSPECTOR CROTHERS	368.01
	INSPECTOR HAWKINS	368.01
	INSPECTOR SMITH	368.01
	INSPECTOR MILLER	368.01
	INSPECTOR BALL	415.06
	INSPECTOR SIU	568.78

PAID

NOV 17 2005

invoiced	10-4-05
30 day Letter	_____
60 day Letter	_____
Sent to Collections	_____

Message

Questions? Call (206)386-1467

SubTotal

Sales Tax

Shipping

TOTAL

3,191.90

301 Second Avenue South, Seattle, WA 98104-2680

Tel: (206) 386-1400, Fax: (206) 386-1412, www.cityofseattle.net/fire

An equal employment opportunity, affirmative action employer Accommodations for people with disabilities provided upon request.

Contract Termination Changes at FGI

These are some of the general changes that will occur at First and Goal, Inc. as a result of contract termination. The list is not an all-inclusive list and other requirements may be implemented.

Game Day

1. There will no longer be attendance at Game Day ops meeting by the Fire Marshals Office.
2. Pre-game production meetings and ongoing consultation with Seahawks Marketing will end except on a case by case basis.
3. Casual consultation regarding game day issues with Seahawks or FGI staff will no longer occur.
4. There will be no further pre-game production meetings for the Tailgate Party.
 - a. Floor plans for the party must be submitted for approval at least ten business days prior to Tailgate.
 - b. Last minute changes and day of game changes will be approved on a case by case basis. Unapproved changes may result in permit suspension.
 - c. Inspections will only be done on Game Day. Discrepancies on the show floor will result in doors held until they are resolved.
5. Inspections of the Stadium will be done day of game.
 - a. There will no longer be a week of game review of stadium dead space use, vehicle display, Team Store displays, Seahawks marketing or exiting configurations.
 - b. If discrepancies are found gates will be held until they are resolved.
6. Temporary Suite build outs will have to be done with approval from DPD and approved through FMO Engineering.
 - a. Written approval will be needed for each build out.
 - b. Documented approval must be on hand whenever the suite is in use.

Shows

1. All events in the Stadium, regardless of size, will need to have a Temporary Place of Assembly permit.
 - a. Exiting must be configured for each event.
 - b. A floor plan showing the event and exiting configuration must be submitted for approval.
 - c. Areas of the Stadium not in use must be barricade closed and shown on the floor plan.
 - d. Verbal permission will be the exception and not the rule.

*THIS YEAR APPLY TPA
NEXT MUST GO "PERMIT" THROUGH DPD*

2. Permits will no longer be applied for at the Stadium or SEC.
 - a. Applications will be made by the Show, the Decorator or the Event Manager.
 - b. Applications will have to be made in person at the Fire Marshal's Office or by mail.
3. There will be no FMO attendance at show production meetings.
4. Production consultation will be on a case by case basis.
5. Shows and Events will receive their inspection prior to doors on the day the show opens.
 - a. Shows that are out of compliance usually will mean doors held until the discrepancies are corrected.
 - b. Large shows may be inspected the day before and the day of opening.
 - c. The cost of repeated inspections may be billed to the show or stadium.
6. Modifications to the building to accommodate a show or event will need written approval from DPD as petitioned by FGI or the Event.

Concerts

1. Concerts will need a complete set of plans submitted for approval with the permit application. Verbal approval will no longer substitute for written plans.
 - a. Floor plan
 - b. Exiting configuration plan
 - c. Back of house configuration plan
 - d. Security plan.
 - e. Crowd control plan.
2. There will be no FMO attendance at concert production meetings. Any issues would be on a case by case basis.
3. A security meeting will have to be scheduled for FMO attendance. Security plans must be approved.
4. Most inspections will occur day of concert only.
 - a. Gates will be held until any discrepancies are corrected.
 - b. Incomplete permitting at any Municipal level may result in the show being suspended.
 - c. Loss of crowd control, loss of exiting or exceeding the occupancy load may result in gates being closed, the concert suspended, permit cancellation or all of these.

Non Football Events in the Bowl

1. These events will be reviewed on a case by case basis to determine permit need.
 - a. FGI will need to initiate the request.

- b. FGI will be responsible for insuring that permit requirements are met.
2. Exiting and crowd control plans will need to be developed by FGI for these events and submitted for approval.
3. Production consulting will no longer be available.
 - a. Written proposals would have to be submitted instead.
 - b. Proposals would include plan changes, floor plan designs, changes in exiting configuration and occupancy loads for approval.

General

1. All permits issued to the Stadium will change to a fee basis which includes permits to the Seattle Seahawks and First and Goal, Inc.
2. Formal application or inquiry will now have to be made by FGI department heads to the appropriate regulating agency for changes to the building or method of doing business.
 - a. Department of Planning and Development
 - b. FMO Engineering section
 - c. FMO Hazmat section
 - d. FMO compliance
 - e. City Special Events Committee.
3. Show or Event proposals will no longer be entertained on a casual basis. Application with written plans will need to be submitted for approval.
4. Annual inspections will begin by the local fire station.
 - a. Fire extinguisher issues, building fire protection and Code compliance will be addressed at that time.
 - b. Notices of Violation will need to be resolved by the building through the local fire company.
5. Stadium and FGI staff will find that requirements for building inspections, show inspections and permit inspections can vary by inspector.
 - a. The Fire Marshal's Office has a variety of inspectors in several different sections.
 - b. The local fire company inspections vary by the shift working and officer in charge. Re-inspections also vary by the firefighter assigned.

INVOICE #1 - Fire Guard Services for Seahawks Games by Year

Year	# Games	Total Cost	Invoiced	Non-Invoiced	Total	Paid	Unpaid
2002	8	13,891.17		13,891.17	13,891.17		13,891.17
2003	10	14,893.82		14,893.82	14,893.82		14,893.82
2004	9	24,831.12	13,374.98	11,456.14	24,831.12		24,831.12
2005	12	35,167.09	6,117.51	29,049.58	35,167.09	6,117.51	29,049.58
2006	12	36,998.21		36,998.21	36,998.21		36,998.21
2007	12	39,704.62		39,704.62	39,704.62		39,704.62
		165,486.03	19,492.49	145,993.54	165,486.03	6,117.51	159,368.52

INVOICE #2 - Other FireGuard Services for Qwest Field by Year:

Year	# Events	Total Cost	Invoiced	Non-Invoiced	Total	Paid	Unpaid
2002	0	-		-	-		-
2003	4	4,285.17		4,285.17	4,285.17		4,285.17
2004	1	2,312.81	2,312.81	-	2,312.81		2,312.81
2005	3	6,884.47	4,112.38	2,772.09	6,884.47	3,488.28	3,396.19
2006	3	6,585.64		6,585.64	6,585.64		6,585.64
2007	2	4,257.42	880.00	3,377.42	4,257.42	880.00	3,377.42
		24,325.51	7,305.19	17,020.32	24,325.51	4,368.28	19,957.23

INVOICE #3 - Other FMO Services Rendered to First & Goal:

Year	# Events	Total Cost	Invoiced	Non-Invoiced	Total	Paid	Unpaid
2002	2	429.04	-	429.04	429.04	-	429.04
2003	4	1,967.77	-	1,967.77	1,967.77	-	1,967.77
2004	8	4,503.69	-	4,503.69	4,503.69	-	4,503.69
2005	9	3,483.65	-	3,483.65	3,483.65	-	3,483.65
2006	7	2,597.36	-	2,597.36	2,597.36	-	2,597.36
2007	9	3,371.82	-	3,371.82	3,371.82	-	3,371.82
		16,353.33	-	16,353.33	16,353.33	-	16,353.33