



# **Nebraska Department of Justice**

Attorney General Douglas J. Peterson

## **Report on Investigation of Goodwill Industries, Inc. and Goodwill Specialty Services, Inc.**

Issued June 26, 2018

## INTRODUCTION

In November of 2016, the Nebraska Department of Justice began an investigation of Goodwill Industries, Inc. and Goodwill Specialty Services, Inc. (hereinafter collectively “Goodwill Omaha”). This investigation was prompted by a series of articles published in the Omaha World-Herald that highlighted issues related to whether Goodwill Omaha was properly operating as a nonprofit corporation under Nebraska law.

Under the Nebraska Nonprofit Corporation Act, the Nebraska Attorney General is entrusted with regulating nonprofit corporations and safeguarding charitable proceeds. Neb. Rev. Stat. § 21-1901, et seq. As nonprofit corporations do not have shareholders, the Attorney General plays an important role in ensuring that nonprofit corporations are operated appropriately and consistent with Nebraska law. “The privileges provided by law to public benefit corporations, and other charitable institutions, carry a corresponding obligation to be accountable to the public for the actions such institutions undertake.” *Gilbert & Martha Hitchcock Found. v. Kountze*, 272 Neb. 251, 259, 720 N.W.2d 31, 37 (2006). In the case of public benefit corporations such as Goodwill Omaha, the Attorney General is tasked with making sure that funds donated to a nonprofit corporation are spent on the public purpose the nonprofit has committed to serve. Donors trust that the money, time, and other contributions they make to the nonprofit will be applied to its charitable mission. It is important to note that under current Nebraska law, the Attorney General’s review is limited to the actions of the nonprofit board members and not the corporate officers.

Nonprofit corporations such as Goodwill Omaha are required to use their assets to further the public good, not the private gain of directors or officers. The Attorney General’s authority to regulate nonprofit organizations and to ensure they use charitable assets properly, is rooted in the common law of charitable trusts and organizations, as well as the *parens patriae* power of the State. Our investigation of Goodwill Omaha focused on the following areas of concern:

- 1) Whether Goodwill Omaha, as a charitable organization, was sufficiently devoted to its nonprofit mission of helping the disabled or disadvantaged find gainful employment (hereinafter “mission”);
- 2) Whether Goodwill Omaha’s President/CEO and other executives were receiving excessive levels of compensation based on the work they performed, the Omaha market, the nonprofit nature of the business, the performance of the business, and other factors;
- 3) Whether Goodwill Omaha was operating its retail stores and prioritizing the profits of those stores to benefit its mission;
- 4) Whether Goodwill Omaha engaged in schemes to mislead and defraud consumers by:
  - a) using the slogan “Donate Stuff. Create Jobs.” when very little of the revenue generated from sales of consumer donations was used to fund Goodwill Omaha’s job programs; and
  - b) taking products made outside the United States and repackaging those in bags labeled “Made in America”;
- 5) Whether Goodwill Omaha entered into business contracts with vendors that constituted a conflict of interest in violation of Nebraska statute.
- 6) Whether the members of the Board of Trustees of Goodwill Omaha provided appropriate oversight of, and fulfilled their fiduciary duties to, the organization; and
- 7) Whether additional areas of concern were present at Goodwill Omaha, which the Omaha World-Herald did not include in its reporting.

#### **A. SCOPE OF REVIEW**

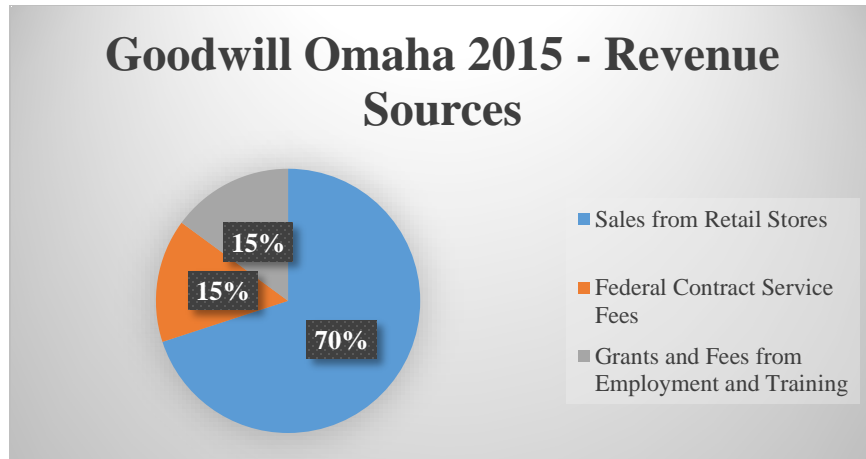
In conducting this investigation, the Nebraska Attorney General’s office subpoenaed numerous records from Goodwill Omaha and other parties, totaling in excess of 140,000 pages. Those records

included Goodwill Omaha's tax returns, financial statements, internal documents and correspondence, presentations, outlines, personnel records, and other relevant materials. Additionally, we interviewed and deposed former members of the Board of Trustees, current and former executives, and current and former employees. We also met with Goodwill Omaha's current leadership team to assess their commitment to the organization's nonprofit mission. Our office conducted a thorough and exhaustive investigation proportionate to the serious concerns about Goodwill Omaha raised by the series of stories published in the Omaha World-Herald.

## **B. BACKGROUND**

Goodwill Industries, Inc. was incorporated on November 17, 1933, and grew over time into one of Nebraska's largest and most well-known nonprofit corporations. As of this writing, Goodwill Omaha operates sixteen retail stores in Omaha and the surrounding area, as well as an online store. Goodwill Specialty Services, Inc. was incorporated on August 6, 1998, and serves as an affiliated corporation to separately manage Goodwill Omaha's grant and job training programs. Goodwill Industries, Inc. and Goodwill Specialty Services, Inc. function as two arms of a single organization collectively referred to as "Goodwill Omaha" throughout this report.

In 2015, Goodwill Omaha had total assets of \$47,463,217, gross receipts of \$36,736,769, and total revenue of \$25,384,136. The bulk of its revenue, \$19,926,754, came from sales made at its retail stores. It received \$4,303,177 in federal contract service fees and \$4,247,767 in grants and fees for employment and training. Goodwill Omaha employs between 500 and 600 individuals. Goodwill Omaha has three basic sources of revenue: sales from retail stores, federal contract service fees, and grants and fees from employment and training. The pie chart below illustrates the approximate percentage of its revenue Goodwill Omaha derives from each of those sources.



Goodwill Omaha defines its mission in several different ways. On its website, Goodwill Omaha says of its Mission, “Goodwill changes lives and strengthens communities through education, training and work.” A more expansive description is provided in Goodwill Omaha’s 2015 Form 990 Report, which states, “Goodwill strives to increase self-sufficiency of its participants and provides vocational evaluation, training, and opportunities for personal growth in the rehabilitation of disabled or disadvantaged individuals who cannot be readily absorbed in the competitive labor market. Goodwill also strives to assist such individuals attain the fullest development of which they are capable.”

Goodwill Omaha’s mission, vision, and values statements are posted on its website and read:



Goodwill Industries, Inc. is governed by a large Board of Trustees. According to its Articles of Incorporation, it can have as many as thirty-five members of the Board of Trustees. However, the Board typically has about fifteen (15) members. Trustees of Goodwill Omaha tend to be successful businesspeople, associated with some of Omaha’s largest businesses. Our investigation found that at least

some of the seats on the Goodwill Omaha Board are unofficially designated for representatives from the larger corporations in Omaha. In some cases, a particular company may have had an employee on the Goodwill Omaha Board of Trustees for decades.

Goodwill Omaha's Board of Trustees met every other month, typically over lunch. A consent agenda was presented to the Board members prior to Board meetings. The minutes from these meetings revealed that the consent agenda contained the bulk of the matters for which the Board has responsibility, including important decisions about the organization's finances and operations. Items on the consent agenda were not discussed by the full Board, but rather decided by the Executive Committee, which then recommended action that was included as part of the overall consent agenda. The Board usually summarily approved these consent agendas with no discussion.

The Executive Committee of Goodwill Omaha's Board of Trustees was comprised of the Chair, Vice-Chair, Secretary, Chairman Emeritus, and Chairs of the Internal Affairs and External Affairs Committees. Our review found that the Executive Committee had an outsized role in the oversight of the organization, with the Board itself often simply rubber-stamping the Executive Committee's decisions. The Executive Committee prepared the consent agenda and the regular agenda for meetings of the Board of Trustees. The Executive Committee also evaluated former Goodwill Omaha CEO and President Frank McGree's performance each year and made recommendations about his compensation package to the Board of Trustees. As to compensation for the other members of the Executive Management Team, including those making in excess of one hundred thousand dollars (\$100,000) per year, there was no evaluation or input by either the Executive Committee or the Board of Trustees. The terms of their salaries, bonuses, and other compensation were determined solely by Goodwill Omaha's CEO and President Frank McGree.

## **C. FINDINGS**

### **1) Goodwill Omaha's Leadership Lost Sight of its Primary Mission.**

Goodwill Omaha's mission, put simply, is to help the disabled and disadvantaged find meaningful employment. Goodwill Omaha's marketing and advertising campaigns publicly promote the message that if you make a donation, volunteer time, or drop off merchandise, funds raised from those contributions will help people find work who might otherwise have trouble doing so.

Goodwill Omaha's retail stores represent the largest public face for the organization. It was a common misconception that a typical Goodwill Omaha store employed a number of disabled or disadvantaged personnel involved in job training programs. In fact, very few of Goodwill Omaha's regular retail workers are themselves disabled or participants in the mission programs. The Douglas County Assessor's Office found that only 28 of Goodwill Omaha's 145 retail employees were members of its training programs. Our investigation further revealed that very little of the money Goodwill Omaha made from its retail operation was directed toward helping mission-based individuals find employment. The work that people identify as Goodwill Omaha's mission, that is, helping the disabled and disadvantaged find work, was almost entirely funded by federal, state, and local grants. Data provided by Goodwill Omaha itself shows that from 2011 through 2015, its mission-related programs actually generated a profit for the retail operation. It was not until 2016 that Goodwill Omaha's retail operations provided funding for the organization's mission work. Frank McGree stated that Goodwill Omaha had "a results-driven culture because results allow us to serve the mission." Goodwill Omaha's own financials revealed that this was rarely the case. Goodwill Omaha's "results," in the form of retail profits, seldom served its mission.

**Goodwill Omaha  
Mission Spending  
For Years 2012 through 2017**

	FY 2017	FY 2016	FY 2015	FY 2014	FY 2013	FY 2012
<b><u>Sources of Income</u></b>						
Federal Contracts Revenue	3,808,867	3,903,686	4,309,286	4,128,444	4,040,083	4,665,456
Employment and Training Revenue	1,971,498	2,640,425	4,248,809	3,269,507	3,418,489	4,125,816
Private Fundraising Revenue	99,335	373,001	412,170	300,082	252,160	213,715
Income from Goodwill Investments/Endowment	123,407	116,676	114,850	89,878	78,716	70,368
<b>Total Mission Revenues</b>	<b>6,003,107</b>	<b>7,033,788</b>	<b>9,085,115</b>	<b>7,787,911</b>	<b>7,789,448</b>	<b>9,075,355</b>
<b><u>Expenses</u></b>						
Federal Contracts Expense	3,781,813	3,737,761	4,103,002	3,835,470	3,704,342	3,999,978
Employment and Training Expense	2,685,454	3,573,503	4,896,394	3,745,886	3,789,945	4,528,956
<b>Total Mission Expenses</b>	<b>6,467,267</b>	<b>7,311,264</b>	<b>8,999,396</b>	<b>7,581,356</b>	<b>7,494,287</b>	<b>8,528,934</b>
<b>Mission Deficit covered by Goodwill Retail Store Operations</b>	<b>(464,160)</b>	<b>(277,476)</b>	<b>85,719</b>	<b>206,555</b>	<b>295,161</b>	<b>546,421</b>
<b>Goodwill cover costs from endowment, fundraising and retail store profits</b>	<b>686,902</b>	<b>767,153</b>	<b>441,301</b>	<b>183,405</b>	<b>35,715</b>	<b>(262,338)</b>
<b>Note: Costs for Accounting , IT, HR, Fundraising and other Administrative Expenses are additional costs covered by Retail Store Operations</b>						
Federal Contract profit	27,054	165,925	206,284	292,974	335,741	665,478

Goodwill Omaha’s employees noticed that the profits from the retail operation did not seem to be funding its mission programs. A senior human resources employee we spoke with stated:

**“We would sit in town hall meetings. And they would talk about, hey, we have got to get more in the stores and do this and that for the mission. And the more I got to looking around, I’m like pretty much everything is federally funded that we do mission-wise. I, from my perspective, didn’t see where retail money went to any mission programs. I know when we would lose federal funding for programs, they would cut the program for the most part instead of funding it themselves.”**

As Goodwill Omaha grew, it operated more and more like a for-profit business. In 2000, Goodwill Omaha operated a total of eight retail stores. Since 2000, Goodwill Omaha has opened eight new stores, moved seven stores into new or replacement facilities, and closed one store. In 2009-2010, Goodwill Omaha spent over \$12.3 million to construct a complex in Benson Park Plaza, comprising a large retail store and an expensive headquarters for its executives. As Goodwill Omaha’s retail operation

grew so substantially, additional members were added to the executive team and the compensation and benefits for its executives became ever more generous.

In 2005, IRS 990 records indicate that Goodwill Omaha employed five executives or managers who were each paid more than \$100,000, with total operational expenses of \$11,106,302. Over the next decade, Goodwill Omaha added more retail stores, hired more highly compensated executives and managers, and increased its compensation for its executives and managers. By 2015, Goodwill Omaha employed 14 executives or managers who were each paid more than \$100,000, and its annual operational expenses had more than doubled, reaching \$25,219,406.

Goodwill Omaha paid the majority of its retail workforce at or close to minimum wage, creating a large disparity in compensation between its executives and its front-line workers. It is typical for top executives of an organization to be compensated more generously than retail employees, based on differences in their education, experience, responsibility, etc. together with the need to pay executives at a level required to attract and retain them. However, such a glaring disparity raises questions when the stated goal of the organization is to benefit the disadvantaged and to assist those members of society struggling to find gainful employment.

As Goodwill Omaha's overhead increased due to higher executive compensation, there was no corresponding growth in the number of people served by the organization's programs. In 2010, Goodwill Omaha reported 1,361 "Total People Served." In subsequent years, the number of people served were as follows:

YEAR	SALARIES, OTHER COMPENSATION	EXPENSES	PEOPLE SERVED
2011	\$11,670,269	\$20,869,387	2,254
2012	\$13,136,913	\$23,420,047	3,294
2013	\$13,745,118	\$23,555,194	2,702
2014	\$14,100,725	\$24,783,735	1,360
2015	\$14,952,295	\$25,219,406	1,913
2016*	\$13,347,101	\$22,533,078	1,916

*\*Cost reduction efforts were implemented by Goodwill Omaha, both before and after the Omaha World-Herald's reporting.*

What Goodwill Omaha considered “People Served” could fluctuate greatly based on federal contracts and grant renewals. As the chart above illustrates, the number of people served by Goodwill Omaha did not increase as it continued to open stores. Goodwill Omaha’s continued focus on increasing revenues and profits, rather than on mission work and people served, was not lost on its employees.

There was an increasing disconnect between the executives and employees at Goodwill Omaha as the Executive Management team and number of stores grew and mission focus drifted. For the past several years, Goodwill Omaha has participated in the biennial Best Places to Work in Omaha survey, conducted by Quantum Workplace. The Best Places to Work survey requests that an organization’s employees answer a series of questions about the organization and offer feedback about the way it operates. Goodwill Omaha’s employees were critical of the organization’s top executives, with large percentages giving those executives failing grades for being honest and trustworthy, demonstrating integrity, and valuing or caring about employees. Many Goodwill Omaha employees believed Frank McGree and the other executives were out of touch, paid too much, and neglected the mission of the organization. Quantum Workplace regularly provided this feedback to the executives at Goodwill Omaha, highlighting the concerns noted here. Goodwill Omaha failed to take any meaningful action to remedy these problems within the organization, which progressively worsened between 2011 and 2016.

In 2011, Goodwill Omaha employees were asked about their feelings about Goodwill Omaha and its leadership. 68% of employees indicated they trusted the leaders of the organization to set the right course. 70% believed the leaders of the organization were honest and trustworthy. 71% of participants said the leaders of the organization demonstrated integrity.

# OMA-Goodwill Industries 2011 Employee Opinion Survey

## Detail Report



### Trust in Senior Leaders

1. Strongly Disagree      4. Somewhat Agree  
2. Disagree                5. Agree  
3. Somewhat Disagree    6. Strongly Agree

	Valid N	% of Respondents			Response Distribution by %						Avg. Score
		Favorable	Neutral	Unfavorable	6	5	4	3	2	1	
8. I trust the leaders of this organization to set the right course.	379	68	25	7	30	38	18	6	4	3	4.75
10. I trust the senior leadership team to lead the company to future success.	377	73	21	6	33	40	16	6	2	4	4.85
16. I believe the leaders of this organization are honest and trustworthy.	376	70	23	7	34	36	19	4	4	3	4.81
32. The leaders of this organization demonstrate integrity.	375	71	23	6	26	45	19	4	4	2	4.78

In 2014, the survey was repeated. Only 56% of employees indicated they trusted the leaders of the organization to set the right course. A mere 54% of employees believed the leaders of the organization demonstrated integrity, while 53% believed the leaders of the organization were honest and trustworthy. Quantum Workplace compared Goodwill Omaha's results to those of similar organizations and the differences were striking. As the percentage difference numbers on the right illustrate, Goodwill Omaha's results were markedly worse than those for similar companies.

## Items Benchmarked by Category:

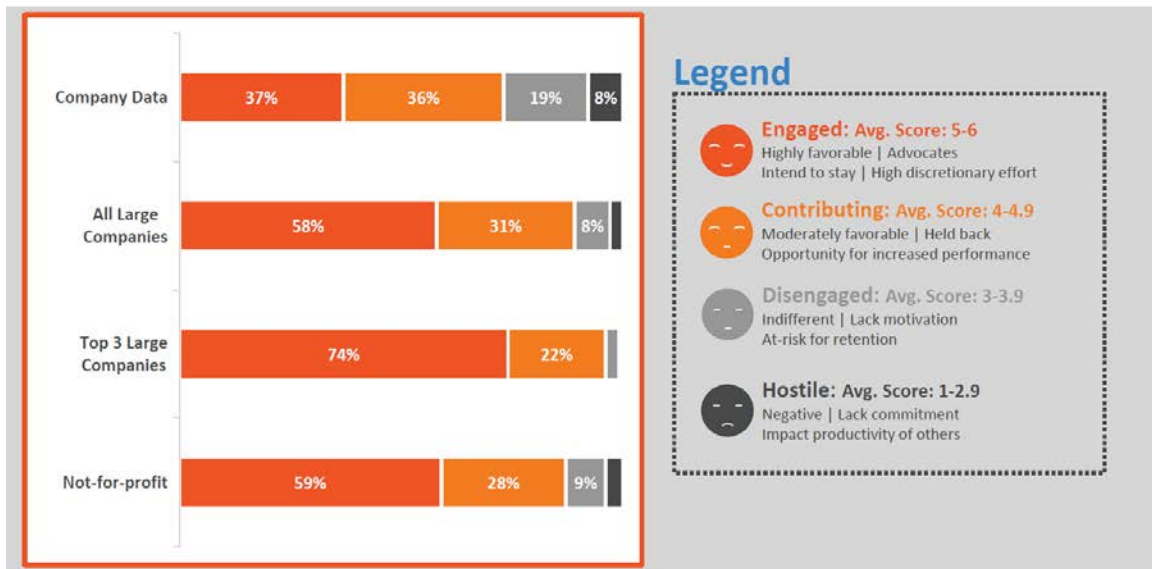
Trust in Senior Leaders		vs All Companies of Same Size w/in Region:		vs Top 3 Companies of Same Size w/in Region:		vs Not-for-profit:			
Item		% Favorable	% Difference	% Favorable	% Difference	% Favorable	% Difference		
I trust the leaders of this organization to set the right course.	<div><div>56</div><div>27</div><div>17</div></div>	77%	(-21%)	92%	(-36%)	74%	(-18%)		
I trust the senior leadership team to lead the company to future success.	<div><div>56</div><div>31</div><div>13</div></div>	80%	(-24%)	93%	(-37%)	75%	(-19%)		
The leaders of this organization demonstrate integrity.	<div><div>54</div><div>33</div><div>13</div></div>	81%	(-27%)	94%	(-40%)	78%	(-24%)		
I believe the leaders of this organization are honest and trustworthy.	<div><div>53</div><div>30</div><div>17</div></div>	79%	(-26%)	92%	(-39%)	77%	(-24%)		
<b>LEGEND:</b>		<div></div> Favorable	<div></div> Neutral	<div></div> Unfavorable	% Favorable	(% Above Benchmark)	(% Below Benchmark)		



**QUANTUM**  
WORKPLACE

Quantum Workplace provided a summary of the results from the 2014 Best Places to Work in Omaha survey to Goodwill Omaha. The survey measured whether employees felt “Engaged,” “Contributing,” “Disengaged,” or “Hostile,” with benchmarks comparing Goodwill Omaha’s results to those of similar organizations. As the graphic below shows, far fewer of Goodwill Omaha’s employees were engaged than employees of comparable not-for-profit organizations and Goodwill Omaha’s employees were far more likely to be “Disengaged” or “Hostile.”

## Employee Profiles: Benchmarked



Executive Report - OMA-Goodwill Industries, Inc.



In 2016, Goodwill Omaha again participated in the Best Places to Work in Omaha surveys. Goodwill Omaha's employees continued to express their lack of faith in the organization's leadership. They also expressed clear concerns about the integrity of Goodwill Omaha's senior leadership team.

### Trust in Leadership

23. The senior leaders of this organization demonstrate integrity.

Company Data	172	54	37	9	17	37	26	11	5	4	4.39
All Large Companies	7,492	82	15		42	40	12	3	2	1	5.14
Average Large Finalist	1,830	93	6		62	31	5	1	0	0	5.53
Top 3 Large Companies	1,092	94	5		66	28	5	1	0	0	5.59
Not-for-profit	15,428	78	18	4	43	35	13	4	2	2	5.06

As these charts demonstrate, Goodwill Omaha's senior leaders received scores that were significantly lower than other companies that the surveys measured.

LEGEND:	6. Strongly Agree 5. Agree		4. Somewhat Agree 3. Somewhat Disagree			2. Disagree 1. Strongly Disagree					
Standard Items	Valid N	% of Respondents			Response Distribution by %						Avg. Score
		Favorable	Neutral	Unfavorable	6	5	4	3	2	1	
Trust in Leadership											
Company Data	173	60	30	11	23	36	21	9	6	5	4.48
All Large Companies	7,532	82	15		45	37	12	3	2	1	5.15
Average Large Finalist	1,834	93	7		64	29	6	1	1	0	5.54
Top 3 Large Companies	1,094	94	5		69	25	4	1	0	0	5.62
Not-for-profit	15,581	77	18	5	44	33	14	4	3	2	5.04

Trust in Leadership

15. The senior leaders of the organization value people as their most important resource.

Company Data	176	45	37	18	20	25	26	11	10	9	4.09
All Large Companies	7,532	71	23	6	36	35	18	5	4	2	4.88
Average Large Finalist	1,834	87	12		57	30	10	2	1	0	5.39
Top 3 Large Companies	1,094	90	10		62	27	8	2	0	0	5.49
Not-for-profit	15,558	70	22	8	39	31	16	6	4	4	4.82

Frank McGree stated that he was aware of the poor results from these surveys, yet characterized the results as “overwhelmingly positive” in his deposition. He also could not remember taking any specific steps to address the concerns expressed in the survey. When asked whether the Board was made aware of the poor survey results, he testified:

- Q. Mr. Peterson** Do you recall, was the board ever given these specific details and told what the plan of correction was going to be?
- A. Mr. McGree** I don’t remember that being the case, no.
- Q. Mr. Peterson** Okay. Do you think that that’s something important that the board should have been aware of?
- A. Mr. McGree** Probably.

A senior financial executive testified in her deposition that these concerning results were something that Frank McGree should have brought to the attention of the Board. She noted,

**“And there – there’s some tough stuff in there and, you know, people being called out by name, and that information was never shared with the Board. The results of the survey were shared in a way that made it seem more positive than it was. And in my opinion, if that would have been given to a board member, I think different decisions would have been made at the time.”**

She also added, **“I think that by the board reading the comments, I think they would have a better feel for the culture in the organization and some of the employee morale challenges.”**

One senior management official was so concerned about Goodwill Omaha’s mission drift that he added the following comments to his 2016 annual review:

**“I try to live by our agency values, but if I’m being honest, I feel like they are not universally observed. Having to justify why we must use certain vendors, and making peace with the fact that we aren’t paying the folks in RePack while we make money off their work. Those decisions seem to be short on ethics and stewardship. This is an area of Goodwill that I struggle with from time to time. I just do. I still love Goodwill. But I look forward to a day when we can truly say we live up to these values. I do feel fortunate that I work in an area that puts stock in them, however.”**

Some executives also expressed that Frank McGree was not receptive to feedback or criticism, sharing their impressions that McGree had instilled a culture of fear at Goodwill Omaha. One senior financial executive told us, **“[The majority of the executive staff] feared for our jobs. We had seen in the past people that had questioned authority and were let go.”**

In one example of concerns about Frank McGree’s leadership, a senior human resources professional said that McGree had instilled a “no snitch policy” at Goodwill Omaha. She related that the

general perception was that McGree did not tolerate criticism of himself or other Goodwill Omaha executives and described how uncomfortable it was reporting executive misconduct to McGree.

A senior executive who managed Goodwill Omaha's finances said that McGree would simply not permit questioning about expenses she considered excessive. She described a situation where another senior executive submitted a mileage reimbursement request for a day that he was not in the office. She initially denied the reimbursement and was warned by McGree that she should "pick her battles."

Our office reviewed Goodwill Omaha's expenses and found that their food, drink, and entertainment expenses increased from \$235,872 in 2013 to \$345,567 in 2016. This senior financial executive agreed that those numbers seemed high and could not be explained. She said she "couldn't take it to Frank," that she "certainly" saw questionable expenses but had learned that questioning things was "not how we do business," and there was no one in the management structure willing to question Frank McGree's expenses. She also felt that those in the director-level positions in retail were receiving excessive bonuses, but had to "tread lightly" because Frank McGree's daughter held one of those positions.

She was then asked about whether she was permitted to have direct contact with Board members to express these concerns or if that was controlled by McGree and responded,

**"...I don't think Frank liked it when people had contact with board members. We didn't – like, as an example, in board meetings you didn't really ask questions. It was more you - if you have something to present, you're there to present it. Outside of that, you don't say anything. So I guess I never would have felt comfortable, you know, approaching a board member."**

After agreeing that her fear of approaching a Board member with her concerns was due to a culture created by McGree, she continued,

**“...Frank knew a lot of the folks on the board, and I didn’t feel comfortable taking anything to a board member because in my mind, if I say something, it’s going to get back to Frank, and then there’s my job.”**

The culture that McGree and some Goodwill Omaha executives created and allowed to fester strongly discouraged complaints about misconduct and damaged employee morale. Most employees at Goodwill Omaha worked there, at least in part, because they believed in and wanted to contribute to the organization’s mission. When those employees saw Goodwill Omaha’s leadership focus on store growth and revenue without a corresponding growth in mission, it created a significant amount of tension. The Board of Trustees failed in its oversight responsibility to insure that Goodwill Omaha’s operations were properly focused on its mission. Much of this was due to McGree both placing the organizational focus on store growth, and limiting information being presented to the Board regarding expenses, declining morale, and mission drift. However, Board Members acknowledged that they evaluated the Balance Scorecard, and were aware of the Best Places to Work survey results. Simple review of both sources should have prompted the Board to evaluate the operations problems depicted in those two sources.

Goodwill Omaha’s Board of Trustees had committees tasked to handle internal affairs and external affairs. Those two committees had a joint meeting on September 8, 2015, where they discussed Goodwill Omaha’s poor scores in the Best Places to Work in Omaha surveys. The Internal Affairs Committee met again on May 18, 2016, and discussed ways to increase and enhance employee engagement. Goodwill Omaha’s Board was thus on general notice that there were significant problems with the culture and level of engagement at the organization. Yet the Board failed to take appropriate corrective action. There were some changes made to the organization’s leadership structure, but those were designed to reduce costs, as Goodwill Omaha’s retail sales were lagging. It appears from the record that McGree never specifically addressed the morale problem demonstrated in the surveys with the Board. While the Board made general references to the poor survey results both in 2015 and 2016, it appears that they ultimately relied on McGree to address those issues. It would have been appropriate for both

Goodwill Omaha's internal and external committees to address and correct these important issues of poor morale and mission drift. Inexplicably, the Board chose to disband both the Internal and External Affairs Committee. Our review concluded that Goodwill Omaha had lost focus on its nonprofit mission of helping the disabled and disadvantaged to find meaningful work.

**2) Goodwill Omaha's executives received excessive levels of compensation based on the work they performed and other market factors.**

In 2016, Goodwill Omaha had 14 executives receiving compensation over \$100,000.00. The IRS requires that a nonprofit's earnings do not inure in whole or in part to the benefit of private individuals. Nonprofits that pay excessive compensation to officers can expose themselves to the revocation of their federal tax-exempt status and to fines, known as excess benefit transaction excise taxes, or more informally as excise taxes. Nebraska law does not have similar penalties, nor does it have specific enforcement of the IRS excessive compensation determination. But it is germane to our duty that Board members responsible for nonprofit organizations undergo similar scrutiny as to their compensation decisions. This scrutiny is best accomplished by considering relevant market salary information, and determining whether performance measured warranted such compensation.

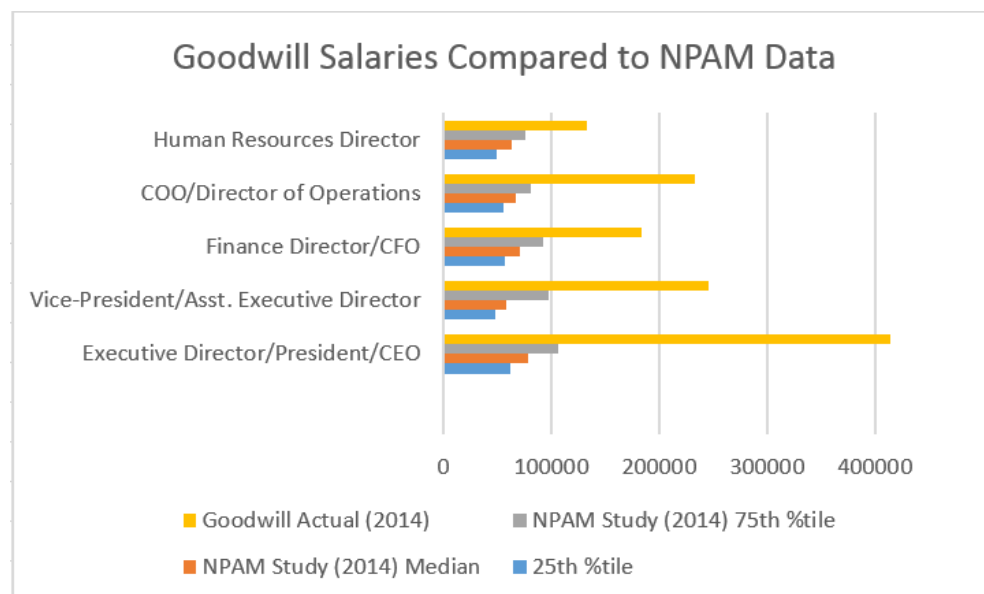
**a) Executive Management Compensation**

In order to evaluate whether the compensation Goodwill Omaha paid its executives and managers was appropriate, we compared their compensation to the compensation other nonprofit executives receive in the Midwest. A relevant source of that information is a salary and benefit survey conducted by the Nonprofit Association of the Midlands (NPAM), an association of 513 nonprofit organizations in Nebraska and Western Iowa. NPAM serves as a resource for its nonprofit members, with a focus on education, management, and best practices. NPAM surveys its members for information about salary and benefits, which then serve as a tool nonprofit organizations use for determining reasonable levels of compensation. Other relevant sources for determining appropriate compensation include private sector

executive compensation surveys, and the Goodwill International survey, which were the primary survey sources utilized by the Executive Committee.

In some cases, the particular titles assigned to Goodwill Omaha executives made it difficult to compare their specific roles with those studied in the NPAM survey. Goodwill Omaha used a variety of titles for its executives which did not appear in the NPAM survey, complicating an apples to apples comparison of their compensation. The comparison of compensation for jobs with titles that did match the NPAM survey revealed, as shown in the chart below, that in 2014 Goodwill Omaha's top executives received compensation that was well in excess of what is customary for a nonprofit organization in the Midwest area.

	25 <sup>th</sup> %tile	NPAM Study (2014)		Goodwill Actual (2014)
		Median	75 <sup>th</sup> %tile	
Executive Director/President/CEO	\$62,000	\$77,912	\$106,000	\$414,354
Vice-President/Asst. Executive Director	\$47,500	\$58,320	\$97,275	\$245,595
Finance Director/CFO	\$57,121	\$71,225	\$92,356	\$183,245
COO/Director of Operations	\$55,300	\$66,837	\$81,551	\$233,323
Human Resources Director	\$49,500	\$63,000	<u>\$76,305</u>	<u>\$132,707</u>
			\$453,487	\$1,209,224



Executives at a nonprofit should not be expected to take a vow of poverty for their work, but nor should they be receiving excessive salaries at the expense of those they are purportedly employed to

serve. The community provided donations of time, household goods, and money to Goodwill Omaha with an expectation they were furthering its mission of helping the disabled and disadvantaged to find work. The levels of compensation Goodwill Omaha paid to its executives significantly impacted expenses and ultimately diverted funds away from mission programs. Goodwill Omaha was frequently cash poor and paid its executives large bonuses each year despite lacking the funds to do so.

There were no objective performance measurement factors that justified the high salaries and bonuses paid to the Executive Management team, which exceeded the NPAM survey standards. Members of Goodwill Omaha's Executive Management team were evaluated based on whether they met performance metrics set forth on a Balanced Scorecard. In 2010, the Scorecard considered 18 factors. These factors were designed to allow Goodwill Omaha's Board of Trustees to measure overall performance by Goodwill Omaha management. The Balanced Scorecards reveal that the Executive Management team was consistently failing to meet many of its goals:

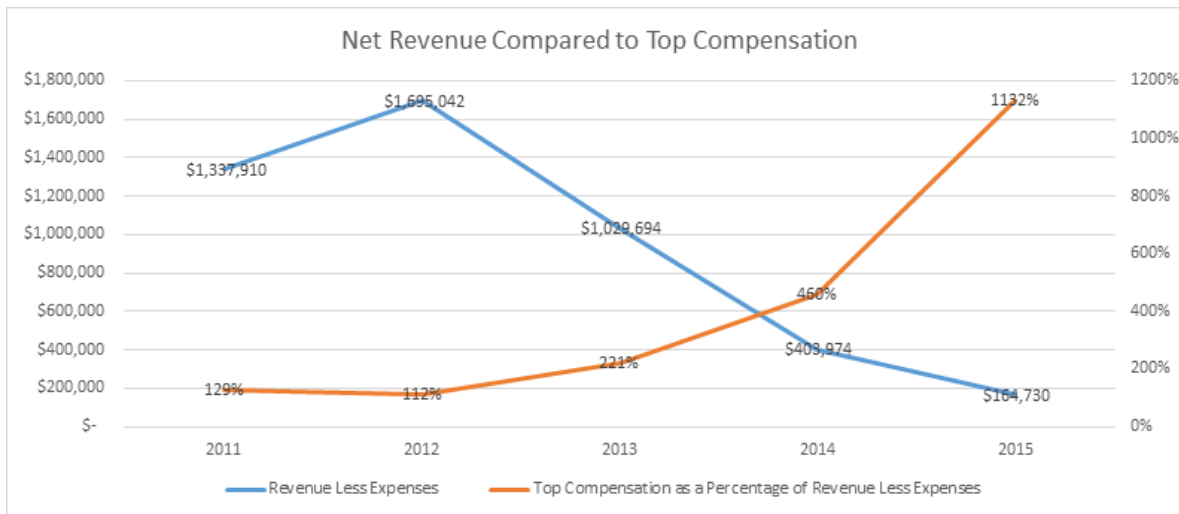
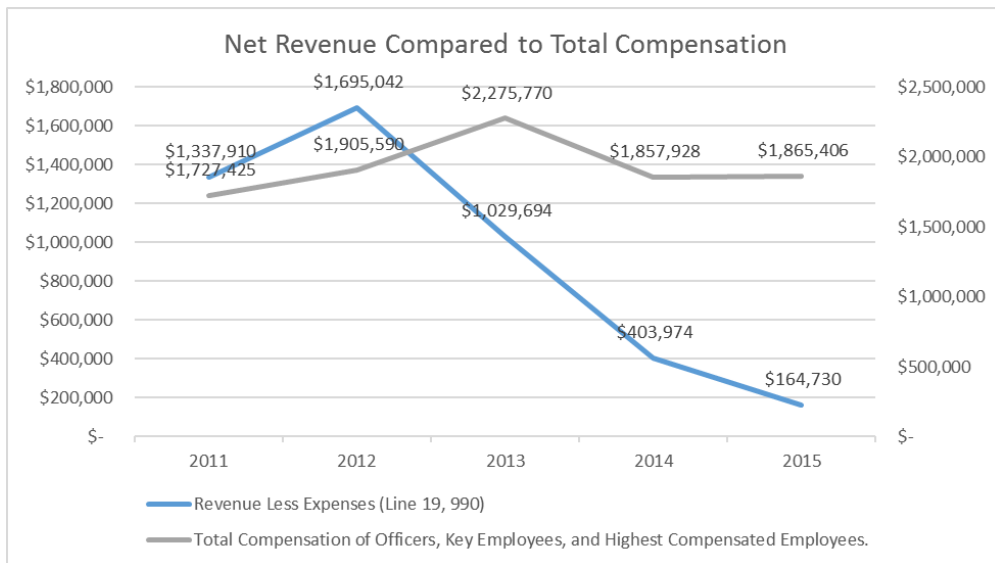
BALANCED SCORECARD RESULTS			
YEAR	GOALS MET	GOALS NOT MET	TOTAL BONUSES TO EXECUTIVES
2011	14	4	\$273,481
2012	16	2	\$244,753
2013	10	8	\$278,900
2014	10	9	\$248,450
2015	11	8	\$174,000
2016*	9	9	\$0

*\* At some point in 2016, the decision was made that no bonuses would be given for that year.*

It should be noted that in 2015 the Executive Committee did identify that executive compensation was growing and taking a larger share of revenue. In response, it engaged Hays Consulting to restructure employee accountability and compensation. This led to a restructuring in job descriptions, reassignments and terminations, and overall compensation being reduced. However, these efforts failed to sufficiently address the magnitude of the situation.

Goodwill Omaha's net revenue numbers had been plummeting since 2012, yet Frank McGree kept adding more highly paid executives to the payroll. Goodwill Omaha's net revenue (or revenue minus

expenses) declined from \$1,695,042 in 2012 to \$164,730 in 2015. The charts below demonstrate that even as Goodwill Omaha's annual net revenue plummeted, the total compensation it paid to top executives remained very high and made up an ever-increasing cost impacting Goodwill Omaha's revenue, further depleting the money left for Goodwill Omaha service programs.



It is difficult to understand why Goodwill Omaha's Board of Trustees awarded Frank McGree and other members of the Executive Management team significant salaries and bonuses despite these poor Balanced Scorecard results. Our investigation found evidence that certain of Goodwill Omaha's top

executives did not work full-time schedules. The Goodwill Omaha employees we spoke with described some executives as frequently absent and unapproachable about any problems. Employees viewed Frank McGree and certain other executives as “disengaged.” As noted previously, feedback from Goodwill Omaha’s own employees expressed serious concerns as to whether top leadership was mission focused. Yet even as the organization they led struggled both in terms of overall morale and financially, those executives continued to be compensated at a rate well beyond their peers at other nonprofit organizations.

The Board of Trustees completely deferred to McGree to hire, conduct performance evaluations, determine salary, and provide bonuses to the Executive Management Team. Board members acknowledged that Goodwill Omaha’s 990 forms, which contained information about Executive Team compensation, were available for them to review. Assuming Board members did review those 990 forms, they did not take any action to address McGree’s decisions regarding compensation.

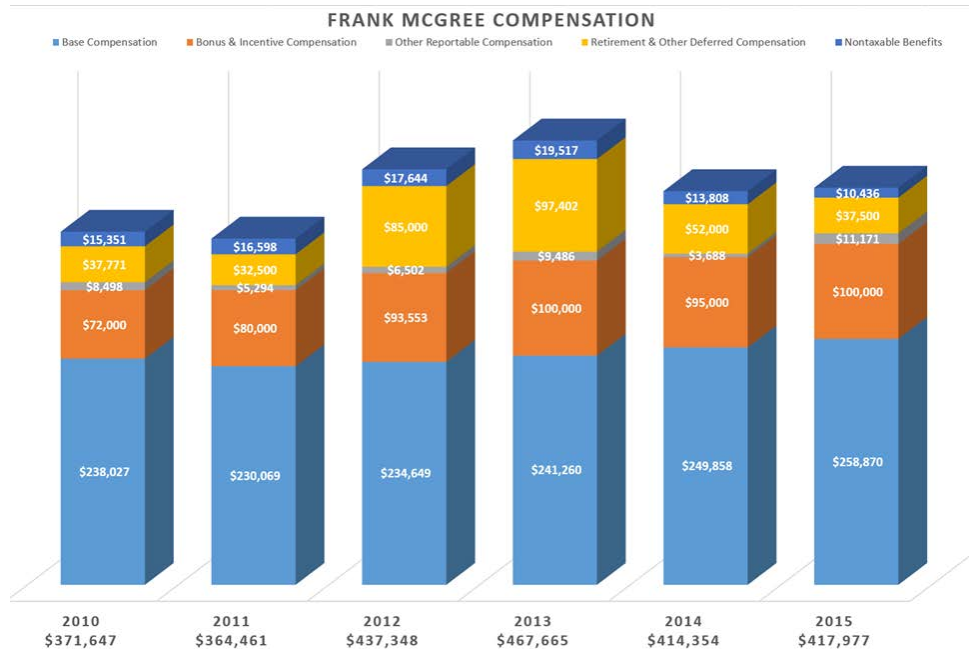
There are no hard and fast rules that set forth how much a person in a particular position for a nonprofit organization should be paid. Guidance from the IRS requires that compensation be reasonable and based on market rate. Based on the compensation survey analyses we reviewed, it is clear that Goodwill Omaha’s executives were paid well above market rate for nonprofit executives in the Omaha area. It is inexplicable that so many Goodwill Omaha executives were receiving more than \$100,000 in annual compensation given their poor performance metrics, as measured by the results of the Balanced Scorecards. Goodwill Omaha’s focus was on opening new stores, which required more executive management. In light of the fact that Goodwill Omaha’s retail stores contributed very little to its purported mission, the compensation levels for McGree were not reasonable.

Ultimately, each member of a nonprofit organization’s Board of Directors has a fiduciary duty to make sure nonprofit dollars are properly stewarded for the sole purpose of the nonprofit. The Board of Trustees of Goodwill Omaha improperly relied on McGree to perform this stewardship duty. Had the Board fulfilled this responsibility, they would have known that neither nonprofit market surveys, nor Balanced Scorecard results, would justify such disproportionate executive salaries.

## **b) President and CEO Frank McGree's Compensation**

McGree's annual compensation was determined by the Executive Committee, based on both Key Performance Indicators (KPIs) and executive salary surveys. Once the Executive Committee completed its evaluation, it made its recommendation to the full Board of Trustees for a vote. McGree's compensation package included base salary, yearly bonus, deferred compensation, a leased vehicle, a social membership at a local country club, travel expenses for his wife, and a general expense account. The extent of McGree's compensation package was not common for nonprofit CEOs. The Nonprofit Times reported that less than half of nonprofit organizations offered their CEO/President additional executive benefits, including a car or car allowance (36 percent), a deferred compensation plan (15 percent), a private club membership (7 percent), and travel expenses for a spouse (6.5 percent).

The chart below breaks down Frank McGree's annual compensation for the period of 2010-2015. Of note is that Goodwill Omaha's Form 990 shows that McGree received \$867,636 in 2014. That amount included a large mandatory payout from a 457(f) plan that Frank McGree had, which vested that year and required that payout. For the purpose of our analysis of Frank McGree's compensation, that mandatory payout would have skewed the numbers and has not been included in the following chart. A review of both the KPI performance and executive salary surveys reveals that the Executive Committee's decisions to reward McGree with such exceedingly high compensation packages were unwarranted.

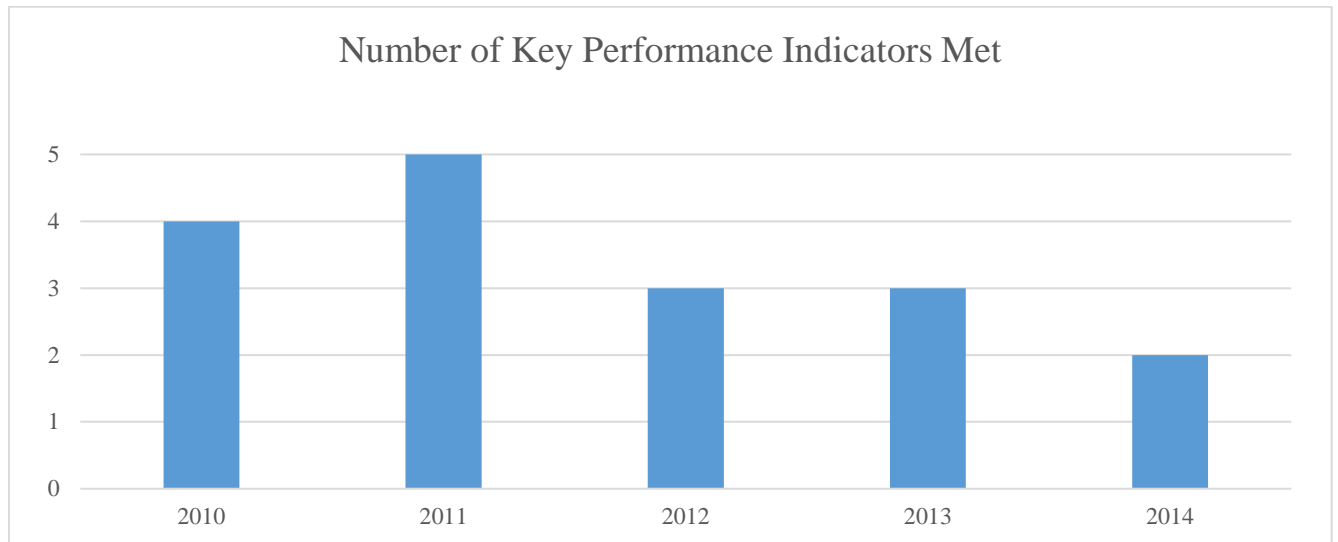


### **Goodwill Omaha's Performance Under Frank McGree's Leadership**

The Board of Trustees of Goodwill Omaha limited its role to evaluating Frank McGree's performance and relied upon McGree to evaluate his executives and managers. According to one past Board of Trustee Chairman, "A board has one employee, its CEO." As Goodwill Omaha's CEO, McGree was evaluated on a yearly basis by the Executive Committee. The process included McGree performing his own self-evaluation, which was then reviewed with the Chairman of the Board of Trustees. In judging McGree's performance as President and CEO, the Executive Committee placed significant weight on the KPIs. Those five measurement factors were: 1) Agency Operating Profit (45%), 2) Percent of administrative expenses to total review (15%), 3) Revenue Growth (15%), 4) Total persons enrolled (15%), and 5) Safety incident rate (10%). While subjective factors were also included in the evaluation, a review of Goodwill Omaha's repeated failures to meet its five KPIs since 2010 makes apparent that McGree was not meeting his performance goals, which might help to justify his significant compensation.

As Goodwill Omaha met less and less of the KPI factors that served as the organization's goals, the Board of Trustees inexplicably continued to reward Frank McGree with significant annual compensation, especially in the areas of bonuses and deferred compensation. As the charts below

illustrate, in 2014 Goodwill Omaha met barely half of its goals from the Balanced Scorecard and less than half of its Key Performance Indicators. Yet the Board of Trustees awarded Frank McGree an annual bonus of \$95,000.



Not only was Frank McGree failing to meet the KPI goals, but a year-to-year comparison of Goodwill Omaha's 1099 forms also showed a dangerous trend with regard to expenses versus revenue. As Goodwill Omaha's financial performance progressively worsened, its Board of Trustees was increasing the compensation paid to Frank McGree and his leadership team.

Year	Revenue less expenses	Salary & other compensation
2013	Decrease of \$665,348	Increase of \$608,205
2014	Decrease of \$626,000	Increase of \$355,000
2015	Decrease of \$239,244	Increase of \$852,070

Although McGree, as CEO, acknowledged that mission focus was "absolutely" important, when asked about his degree of involvement in keeping Goodwill Omaha focused on mission, McGree testified as follows:

- Q. Mr. Peterson You weren't involved with making sure that people were focused on mission?**
- A. Mr. McGree That's not what I said.**

- Q. Mr. Peterson Okay. That's what I heard.**
- A. Mr. McGree No.**
- Q. Mr. Peterson So tell me what you meant.**
- A. Mr. McGree That's not what I said. You said I – you asked how do you measure the mission and the effectiveness of the mission, and what I said was I wasn't regularly involved on day to day basis with how we determined how the mission was being measured.**
- Q. Mr. Peterson Okay.**
- A. Mr. McGree It was – it was involved. So I just don't remember how.**

McGree's testimony in that regard was consistent with the survey results discussed earlier in this report which indicated staff members and some leadership felt that the primary leaders of Goodwill Omaha had become disconnected and that the organization was suffering from mission drift. McGree said that he was not aware of these concerns about mission drift. Yet, he acknowledged that as CEO it was his responsibility to make sure that the Senior Leadership Team was staying focused on the mission, testifying as follows:

- Q. Mr. Peterson Would you agree that as the CEO you were ultimately responsible for making sure that senior leadership was staying focused on mission?**
- A. Mr. McGree Yes.**

In the interviews and depositions we conducted with several Board of Trustees members, many acknowledged that they were under the impression that Frank McGree was one of the top Goodwill CEOs in the country. They wanted to compensate him well, especially with deferred compensation, to discourage him from leaving Goodwill Omaha. As a result, they increased his deferred compensation contributions in 2011, 2012, 2013, and 2014. The Board continued to award McGree with both additional deferred compensation and bonuses despite Goodwill Omaha's serious and worsening financial

performance. Additional compensation for McGree was not warranted based upon the KPI scorecard results.

Goodwill Omaha's KPI results under McGree's leadership are evidence that McGree did not merit his extremely high compensation package. In tandem with the poor morale and loss of mission focus, it is apparent that both the Executive Committee and the Board of Trustees failed when it determined that McGree's performance as CEO warranted such an unusually high compensation package.

### **Compensation Analysis**

The Charity Navigator guidelines classify Goodwill Omaha as a "Large" charity, with annual expenses in excess of \$13.5 million. The median compensation for a CEO of a large nonprofit in the Midwest was \$241,645 in 2014, the last year for which such numbers are available. Frank McGree's compensation of \$414,354 was 71.47% more than the median for similar organizations.

The Nonprofit Times reported that in 2014, the average salary for a CEO/President of a nonprofit organization with operating budgets of \$10,000,000 to \$24,999,999 was \$184,926. The average salary increased to \$226,023 for organizations with operating budgets of \$25,000,000 to \$49,999,999. Goodwill Omaha's gross receipts in 2014 were \$25,243,777, barely placing it in the latter category. Yet Frank McGree's compensation of \$414,354 was well in excess of the average for similar or even larger nonprofit organizations.

In determining McGree's compensation, the Executive Committee used salary surveys and data from Goodwill International, Hay Group, Mercer, Silverstone Group, and others. Goodwill International's compensation guidance places a great deal of emphasis on the size of the organization in terms of overall revenue but does not seem to measure the quality of program services. Although these other survey companies were referenced, it appears that both the Executive Committee and McGree felt that the most reliable survey to rely on was the salary survey produced by Goodwill International for Goodwill executives.

Goodwill International provided a survey of specific CEO compensation from Goodwill organizations across the country. The Goodwill International Survey based its compensation analysis on Annual Revenue rather than on other operational factors, such as the number of people served by the organization. That fact is significant because “annual revenue” became the exclusive measurement by Goodwill International to categorize CEO compensation. Under the 2015 Goodwill International Survey for CEOs of Goodwill organizations with annual revenue between \$23 and \$31.6 million, the range of total CEO compensation was \$219,000 to \$495,000, with an average of \$278,954.

Executive Committee members as well as other members of the Board of Trustee believed Frank McGree was one of the top Goodwill CEOs in the country. That belief was not based upon McGree consistently meeting all of the key performance indicators. The perception that McGree was one of the top Goodwill CEOs was seemingly based upon the fact that McGree had expanded the operation to 16 retail stores that generated just over \$30 million in annual revenue. On a national level, that made Goodwill Omaha one of the larger Goodwill operations.

Frank McGree and the other senior executives at Goodwill Omaha were paid more than their counterparts at comparable nonprofit organizations. Their excessive compensation deprived the organization of much-needed dollars for its mission programs. It is also difficult to justify those high levels of compensation given how poorly Goodwill Omaha was performing.

**3) Goodwill Omaha was not operating its retail stores appropriately by utilizing the profits of those stores to sufficiently benefit its nonprofit mission**

Goodwill Omaha receives a variety of tax-exemptions, one of which prevents it from being required to pay property taxes for its retail stores in Douglas County. As a part of the annual review process, Goodwill Omaha presents the Douglas County Assessor with disclosures that indicate, among other things, the number of employees in its retail stores who are disabled or disadvantaged. Those forms, together with testimony from the Goodwill Omaha executives we spoke to, revealed that only a small minority of its retail workers are disabled, disadvantaged, or are part of a job-training program. Goodwill

Omaha advertises job openings for retail employees just as any other retailer would and employs a pool of employees similar to a for-profit retailer in the same or a similar line of business. As a result, Goodwill Omaha cannot credibly claim the primary element of its stores is to provide employment opportunities or training to disabled or disadvantaged workers.

There was no apparent connection between the growth in number of retail stores and revenue from retail operations and the money Goodwill Omaha was spending on its mission or the number of people served. Under McGree's leadership, Goodwill Omaha was rapidly expanding, adding more and more stores. In 2000, Goodwill Omaha had a total of 8 stores, while by 2017 it had grown to 15 stores. The mantra that McGree and other Goodwill Omaha executives and Board members reportedly used was some variation of "No Stores, No Programs." McGree described the relationship between Goodwill Omaha's retail operation and its mission work, saying,

**“[t]he only way that we would be able to do those things was – would be to have a successful retail program. It’s like a chicken and the egg thing. You know, you have got to have – you have got to have the revenue sources, the profitability of a pretty unique nonprofit organization and with a – with a retail program in order to do the kind of things that we did.”**

McGree and the leadership of Goodwill Omaha justified their focus on constant retail expansion by pointing to retail sales as furthering their mission programs. Yet there is no evidence that the increased number of stores did anything to benefit Goodwill Omaha's mission. A senior executive testified that Goodwill Omaha's mission programs were funded "almost exclusively" by grants and profits from the retail stores were only used when special needs arose within a program that could not be funded with grant money. He added,

**“...[Frank McGree and some other Goodwill executives] wanted mission to kind of be over here and be this sort of thing on the side while they do the real, you know, business-y stuff over here.”**

A senior financial executive testified that she did not necessarily agree with decisions to open more retail stores, when that money could have been spent instead on Goodwill Omaha’s programs. She noted that a retail growth strategy only works if the new stores are profitable and those profits could then be spent on Goodwill Omaha’s programs, and the stores that were added are not operating as well as had been planned.

A review of Goodwill Omaha’s financials reveals that the increased number of stores simply added to Goodwill Omaha’s overhead costs, depriving Goodwill Omaha of valuable dollars that could have been spent on its mission. Also troubling is that McGree and other Goodwill Omaha executives were compensated largely on the size and revenue of the organization. So Goodwill Omaha’s executives received larger financial incentives when they increased the size of the organization rather than when they increased the number of people served or the value of the organization to the community.

The two components of Goodwill Omaha, Goodwill Industries, Inc. and Goodwill Specialty Services, Inc. are registered as nonprofit and public benefit organizations and enjoy tax-exempt status as a result. The Goodwill Omaha model is based on its retail stores providing employment opportunities for disabled individuals and generating revenue to fund programs to assist disabled individuals. Yet our investigation revealed that Goodwill Omaha’s retail operation was largely treated as separate from its mission work, with very few program participants actually being utilized in the retail operation. As the number of retail stores significantly expanded, far more of its income was spent to provide compensation and benefits for its executives, than for any mission-related purpose. Therefore, more stores did not equate to more mission programs or spending.

Goodwill Specialty included what the public would consider the mission work of Goodwill Omaha. Its funding sources included the federal, state, and local grant programs, job training programs, etc. It also included a variety of contracted commercial services, including bus cleaning, grounds maintenance, and custodial services. Goodwill Specialty realized a profit of \$185,755 from those commercial services in 2015. Goodwill Omaha used funds from grants and contract funds from government agencies and other entities for far more of the annual job programming it conducted than funds from retail sales.

**4) Goodwill Omaha misled the public about whether contributions made to Goodwill Omaha actually benefited Goodwill Omaha’s mission.**

Donors to Goodwill Omaha reasonably expected that when they donated merchandise, Goodwill Omaha would sell it at a retail store, with the proceeds going to help disabled and disadvantaged individuals to find meaningful work. Goodwill Omaha’s advertising is replete with the refrain that there is a direct cause and effect relationship: “Donate Stuff. Create Jobs.” However, the vast majority of its training programs for individuals with employment challenges were funded through grants and contracts.



Typical advertisements for Goodwill Omaha also contain language like “Goodwill turns donations into jobs for people in our communities with disabilities and other disadvantages.” Yet Goodwill Omaha’s own analysis, which can be found on page 8 of this report, better describes how

Goodwill Omaha's model worked. It shows that when household items were donated to Goodwill Omaha and then sold in its retail stores, very little of the money generated went to programs, but rather was used to cover store overhead expenses. Most surprising is that very few of the individuals working in the stores are actually part of the mission program. It does bear noting that under the new executive leadership, efforts have already been made to utilize the stores more effectively for mission program participants.

Goodwill Omaha also runs a "Round Up" campaign, where Goodwill Omaha customers are asked to round their retail purchase up to the next dollar. Goodwill Omaha represented to customers that the extra dollars raised would go toward Goodwill Omaha's mission. Upon inquiry, Goodwill Omaha has been unable to account for those funds, which do not appear to have ever been segregated from general revenues from Goodwill Omaha's retail operations. As a result, it appears likely that most of the Round Up funds were not spent on its mission, but instead on store overhead cost, including executive compensation.

Goodwill Omaha spent far more of the money it generated in retail profits on executive compensation and executive accommodations at its corporate headquarters than on its charitable mission. In fact, from 2012-2015, Goodwill Omaha's mission programs were actually generating money, not requiring funding from its retail operations. People donate to Goodwill Omaha with the specific intent of helping the disabled and disadvantaged to find work. Goodwill Omaha's Board and Executives lost sight of its mission, resulting in far too little of that money being spent to help those Goodwill Omaha was supposed to be helping.

Goodwill Omaha had a long-standing arrangement with Prestige Products, a Council Bluffs based company that sold hair rollers. Prestige Products would supply bags of hair rollers, which Goodwill Omaha employees would repackage for sale. The hair rollers supplied by Prestige Products were, at least at times, manufactured in China and were labeled as such. Upon receipt, Goodwill Omaha employees put the hair rollers in packaging labeled, "Made in America."

McGree testified that Goodwill Omaha had only had the contract with Prestige Products “for a couple of years.” Goodwill Omaha’s relationship with Prestige Products actually appears to have begun around 2008. Our investigation revealed that Goodwill Omaha employees knew the curlers were being mislabeled at least as early as 2013 and voiced concerns about it. Those discussions were not focused on correcting the process by either stopping the practice of mislabeling the curlers or terminating the contract. Goodwill Omaha employees instead discussed how to explain or handle it if anyone found out what they were doing.

McGree testified as follows:

- Q. Mr. Peterson Okay. With regards to the mislabeling concern of a contract that you had where Goodwill employees were putting Made in America on items made in China, when did you become aware of that practice or that contract?**
- A. Mr. McGree I think it was in -- like in August of '16.**
- Q. Mr. Peterson And how did you become aware of it?**
- A. Mr. McGree It came up at a staff meeting.**
- Q. Mr. Peterson Okay. And how did you respond?**
- A. Mr. McGree Stop the contract immediately.**

The Omaha World-Herald ran an article exposing Goodwill Omaha’s fraudulent mislabeling of the hair rollers on October 23, 2016. The contract Goodwill Omaha had with Prestige Products was terminated by email two days later on October 25, 2016. That was just in time for Frank McGree to respond on October 26, 2016, to a series of questions posed by the Omaha World-Herald and represent to the public that the contract with Prestige Products had been terminated.

**5) Goodwill Omaha engaged in transactions with local business organizations which employed members of the Goodwill Omaha Board of Trustees, creating the possibility of a conflict of interest under Neb. Rev. Stat. §21-1987.**

Under §21-1987, members of a nonprofit board are specifically prohibited from engaging in transactions with the nonprofit organization that unfairly benefits that board member directly or indirectly. If the transaction is fair to the nonprofit, or is approved as required by statute, the transaction may proceed. The ultimate analysis is whether it is fair to the organization.

There were three primary contracts that Goodwill Omaha entered into at a time that a Board of Trustees member served and was associated with one of the three contractors. The three companies were Kiewit Construction, RDG Planning and Design, and Arthur J. Gallagher and Co. Our review focused on determining whether those three contractual relationships were fair to Goodwill Omaha at the time they were entered.

Goodwill Omaha had a policy that when each Board member joined, they were required to read and sign a conflict-of-interest document. It also had a policy that required a three-bid process, which former interim President and CEO Pauli Bishop described as requiring Goodwill Omaha to bid out its work, get at least three bids, discuss the bids, and then select the best company for the job. Our investigation found that this three-bid process was routinely ignored, and Goodwill Omaha regularly engaged in business deals from companies owned by, or which employed, friends of Frank McGree. The fact that Goodwill Omaha's Board dispensed with the three-bid process, especially for its most expensive transactions, was troubling. The question raised was whether those transactions were fair to Goodwill Omaha.

Goodwill Omaha owns and operates retail stores, each of which was built by Kiewit Building Group. Joseph Lempka, the President of Kiewit Building Group, served on the Goodwill Omaha Board,

was for a time the Board Chairman, and is a social acquaintance of Frank McGree. Goodwill Omaha did not solicit bids for those contracts, which have been given to Kiewit Building Group, since 1995.

Goodwill Omaha contracted with RDG Planning & Design for the architectural design and planning of its retail stores. Joe Lang, RDG's principal architect, is a member of the Goodwill Omaha Board. RDG has not been required to bid on contracts for the work performed for Goodwill Omaha, which have been worth \$903,000 in the past decade.

Goodwill Omaha contracted with Arthur J. Gallagher and Co. as its insurance broker. Mark Stokes, an Executive Vice-President of the company, was a Board member and served as the Board's chairman.

As a part of our investigation, we took a close look at these conflict-of-interest transactions, in order to ensure they were fair to Goodwill Omaha. We found that the members of the Board of Trustees fully disclosed any conflicts of interest. We reviewed the work Kiewit Construction and RDG performed for Goodwill Omaha and assessed the fees and profit margins that were charged and then examined the fair market rates for the types of work performed and the fees and margins Kiewit Construction and RDG charged to others. The evidence showed that Kiewit and RDG charged Goodwill Omaha lower than market rates. Kiewit and RDG also provided us with evidence that established the rates they charged Goodwill Omaha were less than they had charged other customers for similar projects.

Kiewit and RDG established that they have won products by being able to do them more cheaply than their competition. They then established that the work they performed for Goodwill Omaha was done at rates still lower than that. Our investigation also revealed that Goodwill Omaha submitted its insurance services for competitive bidding, which Gallagher typically won. Based on this evidence, we concluded that Kiewit Construction and RDG performed work for Goodwill Omaha at a discount, charging less than market rates, which was fair to the organization. Gallagher competed for and won the insurance contracts it had with Goodwill Omaha, indicating the rates it charged were likewise fair to Goodwill Omaha.

**6) The Directors of Goodwill Omaha did not provide sufficient oversight to ensure it was accomplishing its mission.**

The directors of a nonprofit organization have fiduciary duties to that organization, chief among them the Duty of Care and the Duty of Loyalty. Neb. Rev. Stat. § 21-1986. The duty of care requires a director to discharge his or her duties with the care an ordinarily prudent person in a like position would exercise under similar circumstances. This obligates the director to attend meetings, review records, ask questions when appropriate, and safeguard the assets of the organization. In a nonprofit context, the assets of the organization have come from the community and are intended to support the organization's charitable mission. It is the duty of a director to ensure that those funds are spent appropriately and as intended.

The Trustees of Goodwill Omaha did not provide effective oversight of the organization's operations, and therefore did not exercise the duty of care commensurate with their positions. Having interviewed or deposed thirteen former members of Goodwill Omaha's Board of Trustees, our investigation revealed that they were not sufficiently aware of Goodwill Omaha's operations. The Trustees understood their role was to monitor the performance of CEO and President Frank McGree and to determine his compensation. The Trustees did not involve themselves with who McGree hired, how much he paid them, or how he operated the organization. The Trustees uniformly referred to the Balanced Scorecard as a way they monitored operations, but they did not monitor how the revenue from Goodwill Omaha's retail operations were being spent and were unaware that far more of those funds were being used to pay McGree and other Goodwill Omaha executives than were being spent on Goodwill Omaha's mission work. The Trustees also seem to have been unaware of Goodwill Omaha's financial condition, yet they paid McGree and allowed him to pay others excessive amounts of compensation anyway. Goodwill Omaha was suffering from declining sales and decreased profits. It had lost government contracts. It had less revenue and smaller profit margins over the last few years. Furthermore, although they claim to have reviewed the Balanced Scorecards, most of the trustees seemed to have little

understanding as to whether program services were growing. Despite that, each year until 2016, the Board of Trustees awarded McGree with generous compensation and bonuses and authorized funding to allow McGree to do the same with his staff.

As Goodwill Omaha was growing, it allowed McGree to claim he was running a larger organization, and thus, entitled to more generous compensation. Members of the Board of Trustees stated that they utilized the Balanced Scorecards when evaluating McGree's performance and determining his appropriate compensation. However, it is clear from the Balanced Scorecards that McGree was not meeting his marks. The "Best Place to Work" evaluations make apparent that morale and mission focus was deteriorating. When viewed in tandem with a breakdown of his compensation, there was no apparent correlation between Goodwill Omaha's declining performance under McGree's leadership and the amounts the Board of Trustees chose to provide him in compensation.

Goodwill Omaha's Board of Trustees was insufficiently engaged. The Board met every two months over lunch for an hour or two. The most important matters Goodwill Omaha dealt with, including issues related to its finances and budgets, were routinely placed in the consent agenda. Issues in the consent agenda were not discussed, but were simply voted on. Goodwill Omaha also relied on a committee structure, which would consider various matters and then bring recommendations to the full Board. Board members we spoke to described the Board as less engaged and less willing to spend time on Goodwill Omaha matters over the last few years. We deposed several former members of the Board of Trustees as a part of our investigation. It quickly became clear that they placed too much trust in the representations from Frank McGree and his executive team.

A former Chairman of the Board of Trustees indicated that at least some Board members became disengaged due to an inability or unwillingness to commit the time necessary to Goodwill Omaha. "...I think it's fair to say [the committee structure] wasn't as strong over the last couple of years as it was when I first started coming on the board." When asked to clarify the basis for that statement, he added, "So I

think it has to do with the amount of time that these volunteer positions take for everybody. And I think the strength of a committee is, in large part, the willingness of people to give that time.”

It was evident in our interviews of the former Board members that they were shocked by much of the reporting in the Omaha World-Herald’s series exposing abuses at Goodwill Omaha. Our interviews revealed a large part of that problem was that Frank McGree actively discouraged his executive team from discussing any problems with the Board of Directors. Yet it seems self-evident that if the directors of an organization learn about problems with its operations by reading a local newspaper, those directors were not sufficiently engaged to insure that Goodwill Omaha was accomplishing its nonprofit community service role.

**7) The culture at Goodwill Omaha grew worse over time and encouraged neither accountability nor transparency.**

Several of Goodwill Omaha’s former Board members and executives described a mission drift that occurred under the last several years of McGree’s leadership. One senior executive described it by saying, “My opinion, just looking at the organization, I think we became less focused on people and more focused on profit. And employee morale was not great.” She said the executive staff “feared for our jobs.” The perception that she and other Goodwill Omaha executives we talked to shared was that if they challenged McGree’s decisions, expenses, or leadership or the mission drift they were witnessing as Goodwill Omaha focused more on profits and less on mission, they would be fired. They similarly did not feel comfortable bringing their concerns to the Board, for fear that word would get back to McGree and they would be fired.

McGree created and fostered an organizational culture, which cost Goodwill Omaha money, destroyed morale among the employees, and ran counter to Goodwill Omaha’s professed values. The poor work environment at Goodwill Omaha is relevant to show that the lack of accountability and transparency at Goodwill Omaha were severe and led to the problems documented herein and the failures to effectively

address those problems. Each time McGree and the top executives at Goodwill Omaha made clear they did not want to hear about problems and refused to seriously address problems, it cast a chill over the entire organization and ensured that problems would fester and remain unaddressed. The fact that so many problems grew so severe and remained unaddressed for so long reflects poorly on Frank McGree and Goodwill Omaha's management as well as on its Board of Trustees.

#### **D. SUMMARY OF FINDINGS**

1) Goodwill Omaha lost sight of its nonprofit mission.

Goodwill Omaha focused too much on retail sales and growing the size of the organization and too little on its mission of helping the disabled and disadvantaged to find work. Very few of those employed in Goodwill Omaha stores were part of a job training program. Very little of the money Goodwill Omaha raised from its stores was spent to help people find work. Instead, Goodwill Omaha prioritized executive compensation from store revenues to the detriment of mission-related services.

2) Goodwill Omaha's executives received excessive levels of compensation.

Frank McGree and other Goodwill Omaha executives received compensation that was well in excess of that paid to executives at comparable Midwestern nonprofit organizations. McGree's leadership did not merit such extraordinary compensation. Each dollar the Board of Trustees paid to McGree or McGree paid to a member of his executive team was a dollar that was unavailable to further Goodwill Omaha's mission of helping people to find work.

3) Goodwill Omaha misled consumers about what it would do with donations from the public and about the origin of certain goods.

Goodwill Omaha misled donors about whether and to what extent their donations were used to further its nonprofit mission. Goodwill Omaha participated in the repackaging of Chinese-made hair rollers in packaging that was marked, "Made in America."

4) Goodwill Omaha routinely did business with companies that employed members of its Board of Trustees; those transactions were examined and found to be fair to Goodwill Omaha.

Members of Goodwill Omaha's Board of Trustees were employed by Kiewit Construction, RDG, and Arthur J. Gallagher and Co. Kiewit Construction built each of Goodwill Omaha's retail locations. RDG provided the architectural services for those buildings. And at some points Arthur J. Gallagher and Co. provided Goodwill Omaha with insurance services. The terms of the business arrangements between these companies and Goodwill Omaha were examined and determined to be fair to Goodwill Omaha.

5) The Board of Trustees of Goodwill Omaha failed to provide effective oversight or to fulfill its fiduciary duties to the organization.

Our investigation found that the Board of Trustees failed to provide appropriate oversight to Goodwill Omaha, placing too much trust in Frank McGree – and sometimes the Executive Committee. The Board's ability to carry out its obligations was hindered further by McGree's failure to ensure that Board members, including those on the Executive Committee, were properly informed.

### **E. GOODWILL OMAHA'S REMEDIAL ACTIONS**

Following the Omaha World-Herald's reporting on Goodwill Omaha and the public outcry that resulted, Goodwill Omaha has made extensive efforts to fix the problems plaguing the organization. Some of those are highlighted below:

- Longtime President and CEO Frank McGree and three other top executives at Goodwill Omaha were identified during our investigation as the individuals most responsible for Goodwill Omaha's drift away from its charitable mission. Those individuals are no longer with the organization.
- Goodwill Omaha terminated its business dealings with Prestige Products, which involved Goodwill Omaha repackaging Chinese-made hair-rollers in "Made in America" packaging.
- Goodwill Omaha ceased its practice of paying disabled workers less than minimum wage.

- Goodwill Omaha retained Quantum Governance and sought guidance from the Business Ethics Alliance in identifying and fixing problems with the organization. Quantum Governance is a consulting company that specializes in providing guidance to nonprofits and had twelve (12) people working on the Goodwill Omaha team.
- Goodwill Omaha retained Wheless Partners to conduct a nationwide search for a new CEO and announced that Michael McGinnis has been hired to fill that role.
- Goodwill Omaha has adopted the Nonprofit Association of the Midlands's Guidelines and Principles.
- Goodwill Omaha has adopted new policies governing conflicts of interest and nepotism.
- Goodwill Omaha has implemented policies requiring CEO approval for capital purchases over one-thousand dollars (\$1000.00) and three bids for capital purchases over ten-thousand dollars (\$10,000.00). If three bids are not available or the lowest bidder is not selected, the reason(s) will be documented.
- Goodwill Omaha has made a commitment to transparency and will post its IRS Form 990 filings on its website.
- Goodwill Omaha has reduced its Leadership Team from nineteen (19) to nine (9) employees.
- Goodwill Omaha has reduced the size of the Board of Trustees, which now comprises six (6) members.
- Goodwill Omaha will recruit new Board members, making an effort to select individuals with diverse skills and backgrounds, to bring new and fresh perspectives to its operations and mission programming.
- Goodwill Omaha's entire Board of Trustees will consider and vote on compensation for its CEO and other employees making in excess of one-hundred thousand dollars (\$100,000) a year.
- Goodwill Omaha has changed its onboarding process for new Board members to familiarize them with its mission and reinforce that its primary focus is Goodwill Omaha's mission programs.

- Goodwill Omaha will award employee bonuses based on metrics that consider mission effectiveness and not mere profitability.
- Goodwill Omaha has reduced annual CEO compensation from \$396,369 in 2015 to \$230,000 in 2018. CEO perks, which included deferred income, country club membership social dues, automobile leases, and spousal travel have been eliminated.
- Goodwill Omaha reduced the number of executives making more than \$100,000 a year from fourteen (14) to three (3).
- Goodwill Omaha has disbanded its Executive Committee and no longer uses a consent agenda during Board meetings.

As disappointing as our findings were with respect to the problems that had plagued Goodwill Omaha, we would be remiss not to point out the efforts that the current Board of Directors and Leadership Staff have made to turn things around. Goodwill Omaha fully cooperated with our investigation and appears to be recommitted to serving the disabled and disadvantaged in the Omaha area. Several of Goodwill Omaha's directors remained in their roles, during a time of great tumult and uncertainty, to make sure the organization survived. Although our investigation is critical of past Board members for failing to be properly engaged in its oversight of a nonprofit, the current Board members also deserve credit for responding to the Omaha World-Herald's reporting, our office's investigation, and widespread public criticism by taking significant action to ensure that Goodwill Omaha was rededicated to the mission for which it was founded.

## **F. FURTHER REMEDIAL ACTIONS**

The Nebraska NonProfit Corporation Act assumes that the Board of Directors (or in the case of Goodwill Omaha, "Trustees"), will provide oversight to the organization. The law provides a variety of potential remedies against Directors of a nonprofit organization who violate their duties to the organization, but very few against officers or managers. Our investigation revealed that the main problem at Goodwill Omaha was poor management by former President and CEO Frank McGree. Unfortunately,

the law does not provide adequate remedies for a situation such as this, where a president, CEO, or executive director of an organization, with outsized influence over the organization, engages in misconduct.

Ultimately, we concluded that there were inadequate legal remedies to pursue any claim for restitution against McGree and inadequate evidence of wrongdoing to pursue any claim for restitution against individual members of Goodwill Omaha's Board of Trustees. The current and former members of Goodwill Omaha's Board of Trustees complied fully with our investigation and deserve credit for their loyalty to the organization during a time of great tumult and scrutiny. We also considered that Goodwill Omaha employs more than six hundred (600) Nebraskans and provides much-needed services to thousands more. The organization has struggled financially over the past few years, particularly in the wake of the Omaha World-Herald's reporting that prompted our investigation. Our priorities have been to ensure that the bad actors at Goodwill Omaha are removed, the Board members and executive staff are truly mission-focused, the jobs Goodwill Omaha creates are preserved, and the people it is designed to help are truly served. Those interests are not served by dragging Goodwill Omaha through further legal battles.

Based on the results of our investigation and our goal of fixing Goodwill Omaha, we have determined that further corrective actions with respect to Goodwill Omaha are required. After discussions with Goodwill Omaha and with input from Quantum Governance we have decided on the following:

- Goodwill Omaha's Board of Directors will be capped at a maximum of thirteen (13) members.
- Certain members of Goodwill Omaha's Board of Trustees will continue to serve on the Board in order to provide the organization with a measure of continuity and institutional knowledge.
- Goodwill Omaha will appoint new Board members with an emphasis on members with a wide array of education, experience, and backgrounds and with experience in and commitment to the nonprofit sector and Goodwill Omaha's mission.

- Goodwill Omaha will continue to follow its conflict-of-interest and nepotism policies.
- For a period of four (4) years, all new members of Goodwill Omaha's Board will be required to review the Nebraska Attorney General's Best Practices prior to beginning their service on the Board. The Board of Trustees will collectively review those same Best Practices once a year at a Board meeting.
- Goodwill Omaha will continue to post links to its annual financial statements and 990 filings on the main page of the organization's website, where they can be reviewed by the public.

We believe these requirements are necessary to address the problems that occurred at Goodwill Omaha, prevent their recurrence, and restore the public's faith in Goodwill Omaha.