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August 3, 2010

The Honorable Jeremy Riddle
Mayor, City of Princeton
705 Second Street, North
Princeton, Minnesota 55371-1558

Dear Mayor Riddle:

The Office of the State Auditor (“OSA”) has completed a review of concerns the OSA received regarding the City of Princeton (“City”). Specifically, the OSA found that, prior to 2008, the City did not maintain adequate controls over funds the City’s Public Works Department received for City scrap metal. The OSA also reviewed concerns about a trip to Florida made by two Public Works Department employees when the City purchased a new sewer truck; the failure of two Public Works Department employees to use leave or compensatory (“comp”) time when responding to fire calls; and comp time paid to the former Public Works Department Director at retirement. This letter provides the City with our recommendations based upon our review of these concerns.

Public Works Department Scrap Metal Revenue

For years, the City’s Public Works Department maintained a lock box containing public funds that were not recorded in any City account.¹ While the City apparently learned about the lock box in September or October 2007, it did not take control of the funds until 2008, after the OSA questioned the City about the funds. When the City took control of the funds, the lock box contained \$8.27.

The OSA requested and reviewed the records maintained by the Public Works Department for the lock box funds. The records were minimal and included handwritten notations and receipts, some of which were undated, from December 1986 through September 2007. Lock box funds in the amount of \$366.18 were not accounted for in the records. Shortly after the City pointed out the \$366.18 shortage to the former City Public Works Department Director, the former Director gave the City an additional \$1,009.00 in cash without an explanation.²

¹ The City estimated that separate funds may have been maintained in the Public Works garage since the 1940s or 1950s.

² According to the City, the former Public Works Department Director, who began working for the City in 1986, had a key to and control over the lock box. The City Council accepted his resignation in November

More specifically, the records showed revenues totaling \$2,025.95, comprised of 12 scrap metal sales ranging in value from \$2.02 to \$399.00 and one sale of tires for \$120.00. The records showed expenditures totaling \$1,651.50.³ Some of the expenditures were for tools that may have been purchased for City business. However, the OSA questions whether there was a public purpose for other expenditures, including \$145.92 for Christmas parties, \$42.00 in sympathy cards and memorials, an apparent donation of \$150 for a clock tower project, \$50.00 for raspberry bushes, and \$412.16 for three “mini fridges.”⁴

The City informed the OSA that it believed all scrap metal receipts have been submitted to the City Finance Department since October 2007, when the City learned about the fund. For the time period of August 1, 2007, through September 1, 2009, the City Finance Department received a total of \$882.75 from four scrap metal sales.⁵

The OSA obtained scrap metal sales documentation for the time period August 1, 2007, through September 1, 2009, from a scrap metal dealer located in St. Cloud, Minnesota.⁶ One of the checks from the sale of City scrap metal receipted as part of the lock box funds was made out to a Public Works Department employee instead of the City. Therefore, the OSA obtained documentation for sales by either the City or by Public Works Department employees.⁷

2008. See City of Princeton Meeting Minutes (November 20, 2008). His retirement was effective February 25, 2009. See City of Princeton Meeting Minutes (March 12, 2009). The City told the OSA that the person who became the Public Works Department Director in November 2008 may also have had a key to the lock box. In 2009, the City reported concerns about the lock box and other matters to the Sherburne County Sheriff's Office. Law enforcement conducted an investigation and no criminal charges were filed.

³ \$2,025.95 - \$1,651.50 = \$374.45. \$374.45 - \$8.27 (the amount in the lock box when the City took control of the funds) = \$366.18.

⁴ The City's Finance Director told the OSA that he assumed the \$1,009.00 reflected the \$366.18 shortage plus questionable public purpose expenditures (\$366.18 + \$145.92 + \$42.00 + \$50.00 + \$412.16 = \$1,016.26). Additional information about the public purpose requirement is available on the OSA's website at:

http://www.auditor.state.mn.us/other/Statements/publicexpdonationsdues_0809_statement.pdf.

⁵ The proceeds from a scrap metal sale on September 28, 2007, for \$376.00 was included in the lock box receipts. The proceeds from the four scrap metal sales received by the City Finance Department were: \$413.40 from a sale on September 27, 2007, deposited with the City on October 11, 2007; \$49.30 from a sale on November 15, 2007, deposited with the City on November 21, 2007; \$321.10 from a sale on January 25, 2008, deposited with the City on January 31, 2008; and \$98.95 from a sale on April 15, 2009, deposited with the City on April 22, 2009.

⁶ Prior to August 1, 2007, scrap metal sales could be handled as cash transactions. However, effective August 1, 2007, Minnesota's scrap metal dealers must pay by check or electronic transfer for scrap metal purchases and document the identity of the seller. See Minn. Stat. § 325E.21.

⁷ A second scrap metal dealer in St. Cloud informed the OSA that it issued checks to the City's Public Utilities, but it did not issue any scrap metal checks in the name of the City or any Public Works Department employees during the August 1, 2007, through September 1, 2009, time period.

It appears the City received all funds from the sale of City scrap metal during the OSA's period of review. The OSA also received two checks from the scrap metal dealer that were made out to Public Works Department employees for the sale of aluminum during this time period.⁸ The OSA contacted the employees and was informed that the aluminum was not City property. Therefore, the two additional checks do not appear to have been public funds.

The Public Works Department had no authority to retain or spend the funds it received from the sale of City scrap metal.⁹ The funds were City funds and should have been controlled by the City. Prior to 2008, the City did not maintain adequate controls over funds the Public Works Department received for City scrap metal.

The OSA offers the following recommendations to the City:

- The City should maintain control of all City funds, and City employees should periodically be reminded that all City revenue and expenditures must be accounted for by the City Finance Department. All expenditures of City funds must be for a public purpose.
- All checks from the sale of City scrap material should be issued in the name of the City. The City may want to establish an account in the name of the City at each of the scrap dealers used by the City and discuss with the dealers whether proceeds from the sale of City materials could be sent directly to the City Finance Department. The City may also want to require that City vehicles be used for transporting all City scrap materials to scrap dealers.
- The Public Works Department should maintain a log of all materials taken to scrap dealers. The log should include a description of the material being sold and an estimate of the weight of each load. The City Finance Department should review these records on a regular basis to provide some assurance to City residents that the City has received all proceeds from the sale of City scrap material.

⁸ One of the checks was dated October 19, 2007, for \$480.60. The second check was dated August 28, 2008, for \$350.00. $\$480.60 + \$350.00 = \$830.60$.

⁹ See Minn. Stat. §§ 412.241 and 412.271.

City Employees' Trip to Florida

The OSA received concerns that two Public Works Department employees went to Florida in 2009, on a trip paid for by a vendor from whom the City was purchasing a sewer truck.

The City informed the OSA that it purchased a new sewer truck in 2009 from ABM Equipment & Supply ("ABM"). According to the City, two employees from the Public Works Department, and the spouse of one of the employees, traveled in March 2009 to the truck's manufacturing plant in Florida.¹⁰ The City stated that the two employees toured the manufacturing plant and received training on how to operate the truck. Apart from the employees' compensation, it appears no public funds were directly spent on trip expenses.¹¹ The City Administrator told the OSA that he recalls the City Council was advised of the trip, but the discussion was not recorded in the City Council meeting minutes.

ABM told the OSA that a purchaser is required to receive training on vehicle operation, but the training could take place at either the purchaser's delivery location (Minnesota) or the Florida manufacturing plant, with no change in the purchase price of the vehicle.¹² The City Administrator confirmed that the vendor informed the City that the truck price would not be discounted if the City chose not to send employees to Florida for training. When the vehicle was delivered to the City, representatives from ABM and the manufacturer traveled to the City and conducted additional training on the operation of the truck.

As for the spouse of the employee who went on the trip, the employee told the OSA that ABM paid for his spouse's airfare and meals, but he subsequently reimbursed ABM for the cost of the airline flight in cash.

Minnesota law generally bans a "local official" from accepting gifts from vendors.¹³ Given the training component of the trip, it does not appear the trip for the employees

¹⁰ The City reported that the trip took place from March 4-7, 2009.

¹¹ ABM confirmed that ABM and the manufacturer paid all trip expenses for the two City employees. The City paid the two employees' compensation for Wednesday, March 4, through Friday, March 6, 2009.

¹² ABM told the OSA it splits the costs for these trips with the manufacturer. ABM said the Florida training is more thorough than the delivery location training. ABM also said that inspection of the vehicle by the purchaser at the Florida manufacturing plant made it more efficient if any modifications to the vehicle were required. The Minnesota Cooperative Purchasing Venture ("CPV") required training to be included in the cost of the sewer truck, and precluded additional training fees. *See* State of Minnesota Request for Bid due September 27, 2007, ¶16 of Special Terms, Conditions and Specifications.

¹³ *See* Minn. Stat. § 471.895, subd. 2. It provides in relevant part: "a local official may not accept a gift from an interested person." A "local official" is defined as an elected or appointed official of a city, or an agency, authority or instrumentality of a city. *See* Minn. Stat. § 471.895, subd. 1(d). An "interested person" is defined as someone who has a direct financial interest in a decision that a local official is

would be a “gift” under Minnesota’s gift ban statute.¹⁴ It is unclear whether the spouse’s meals on the trip would be prohibited under Minnesota’s gift ban statute. The City does not have a separate gift or ethics policy.

The OSA recommends that the City adopt a gift or ethics policy that prohibits employees involved in the purchasing process from directly or indirectly accepting gifts from vendors.¹⁵ To avoid similar concerns in the future, the City Council may want to discuss and formally approve any out-of-state vendor-paid training trips.¹⁶ If any non-employees accompany employees on such trips, the OSA recommends that the non-employees pay all of their costs for the trips.

During our review of this issue, we found that the bid price approved by the City Council did not reflect the actual purchase price of the sewer truck. City Council meeting minutes show that the City Council approved the purchase of the truck on June 26, 2008, for \$271,138.60 from the low bidder, ABM.¹⁷ Subsequent to the City Council’s approval, additional features were added to the truck, resulting in a final purchase price of \$280,639.00.¹⁸ We recommend that, in the future, the City compare bid prices approved by the City Council with the actual purchase prices and obtain City Council approval of any price increases.

authorized to make, which would include a city vendor. *See* Minn. Stat. § 471.895, subd. 1(d). A “gift” is defined as “money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.” *See* Minn. Stat. §§ 10A.071, subd. 1(b), and 471.895, subd. 1(b).

¹⁴ It is also unclear whether Minnesota’s conflict of interest statutes apply in this particular fact situation. *See* Minn. Stat. §§ 471.87 – 471.89 (with exceptions, a public officer who is authorized to take part in any manner in making any sale or contract in official capacity is prohibited from voluntarily having a personal financial interest in that sale or contract or personally benefitting financially from the sale or contract). According to the June 26, 2008, City Council meeting minutes, one of the employees who went on the trip obtained bids for the truck through the CPV, but neither of the employees addressed the City Council or made a recommendation on the truck bids.

¹⁵ Minn. Stat. § 15.43, applicable to state employees, may provide guidance to the City.

¹⁶ The City’s expense allowance policy provides in relevant part: “It is the City’s policy to discourage out-of-state travel unless there is a clear and compelling reason for such travel. All out-of-state travel and the estimated expenses for such travel required pre-approval by the City Council.” *See* City Personnel Manual, approved April 24, 2003 (with revisions) at § 9.20.A. Because the City did not pay trip expenses, the City Administrator explained to the OSA that he believed the Florida trip did not require formal pre-approval by the City Council.

¹⁷ *See* City Meeting Minutes (June 26, 2008). The minutes also state that the City would receive “this year’s pricing” if the City entered into a purchase agreement before September 1. The City Administrator provided the OSA with a quote from ABM and stated there was no separate purchase agreement. According to the minutes, the truck was purchased through the “State contract,” a reference to the CPV.

¹⁸ The City provided the OSA with a quote from ABM dated January 30, 2008, for \$273,880.00, a quote dated July 1, 2008, for \$279,779.00, and an invoice from ABM dated March 26, 2009, for \$280,639.00, the final purchase price reflected in a check dated April 9, 2009.

Leave or Comp Time During Fire Calls

The OSA received concerns that Public Works Department employees who were also City volunteer firefighters did not use leave or comp time when they responded to fire calls during work hours.¹⁹

The City confirmed that, in the past, two Public Works Department employees did not use leave or comp time when they responded to fire calls during work hours.²⁰ The City reported that it was customary for employees to use comp time when responding to fire calls during work hours, but the personnel policy did not directly address this issue.²¹ The City has since amended the union contract to clarify that a City employee responding to a fire call during work hours must use either leave or comp time.²² The OSA recommends that the City amend its personnel policy to be consistent with the union contract.

Comp Time Payments to a Supervisor Upon Retirement

The OSA received concerns that the City paid a former Public Works Department Director for unused comp time when he retired in 2009. The concerns appear to have been twofold: whether the supervisor was entitled to comp time and whether adequate records were maintained establishing the comp time accrued.

A city council has the authority to establish the duties and set the compensation of employees, when not otherwise prescribed by law.²³ The Fair Labor Standards Act allows a city to compensate an employee for additional hours worked by providing overtime pay or granting comp time from work.²⁴

The City informed the OSA that, upon retirement, a Public Works Department Director received compensation from the City for comp time hours he had accumulated but not used during his employment. The City made the payment after the Director presented the City with a list of comp time hours. The City reported that the Director did not have a written employment contract with the City, but department supervisors typically do not receive payment for unused comp time. The City informed the OSA that it believed the

¹⁹ In 2009, the City reported this matter to the Sherburne County Sheriff's Office. Law enforcement conducted an investigation and no criminal charges were filed.

²⁰ It is the OSA's understanding that approximately 80 hours was involved.

²¹ See City Personnel Manual, approved April 24, 2003 (with revisions).

²² See 2010/2011/2012 Labor Agreement between the City and American Federation of State, County and Municipal Employees (Council No. 65) at § 9.6.

²³ Minn. Stat. § 412.111.

²⁴ See 29 U.S.C.A. §§ 201-219. See also Minn. Stat. §§177.21-177.35.

The Honorable Jeremy Riddle
City of Princeton
August 3, 2010
Page 7

personnel policy at the time contained conflicting provisions regarding a supervisor's eligibility for comp time, but the policy has since been amended to resolve the inconsistent provisions.

The OSA recommends that City employees and department heads be required to affirm for each pay period the carried-forward amount of any leave (e.g., sick or vacation) and/or comp time accrued. The OSA recommends that all timesheets, including those of department heads, have two people attesting to the hours claimed on the timesheets and the leave or comp time accrued. Additional information on basic payroll systems is found in the OSA's Statement of Position No. 2007-1004 on Employee Timekeeping Procedures available on the OSA's website at the following link:
http://www.auditor.state.mn.us/other/Statements/employeetimekeepingproc_0808_statement.pdf.

Conclusion

The Office of the State Auditor has completed its review of these concerns. If you have any questions, please feel free to contact me at (651) 297-7108 or by email at Terrilyn.Diamond@state.mn.us.

Sincerely,

/s/ Terrilyn Diamond

Terrilyn Diamond, Attorney
Office of the State Auditor
(651) 297-7108

cc: The Honorable Dick Dobson, City Council Member
The Honorable Victoria Hallin, City Council Member
The Honorable, Lee Steinbrecher City Council Member
The Honorable, Paul Whitcomb City Council Member
Mr. Mark Karnowski, City Administrator
Mr. Steve Jackson, City Finance Director
Kern DeWenter Viere, Ltd., City's Auditor