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April 8, 2011

The Honorable Melissa Folstad
Mayor, City of Mabel
P.O. Box 425
Mabel, Minnesota 55954-0425

Dear Mayor Folstad:

The Office of the State Auditor (OSA) received concerns about the City of Mable (City). Specifically, the OSA received concerns about the City's acceptance of donations and about the City's contracting procedures.¹ The OSA discussed the concerns with the City's Clerk/Treasurer, Jim Narum. This letter will provide the City with information to help the City comply with Minnesota law in the future.

Donation Acceptance

The City's Clerk/Treasurer informed the OSA that the City received donations for the construction of a Community Center and City Hall, as well as a number of pledges for the construction project. The City's Clerk/Treasurer also told the OSA that the City Council did not accept the donations in a formal resolution.

Minnesota cities generally have the authority to accept gifts and donations. However, Minnesota law requires cities to accept all donations by passing a formal resolution, expressing all terms of the donation, by a two-thirds majority of the city council.² The resolution is important because it provides the city and the public with documentation regarding any conditions attached to the donation. Once the resolution has passed, the donation becomes public funds and may only be used for purposes that are both authorized by statute and serve a public purpose.

The League of Minnesota Cities (LMC) has created sample resolutions for cities to use as a template. The City can access the sample resolutions on the LMC's website at: <http://www.lmc.org/media/document/1/sampleresolutionacceptingdonations.doc>.

¹ The OSA received the donation concerns in March of 2011. The contracting concerns were received in October of 2010.

² See Minn. Stat. § 465.03.

During our conversations with the City's Clerk/Treasurer, the OSA discussed that a donation from a local telephone cooperative was being referred to as a "loan." The OSA knows of no authority for the City to receive a loan from a local telephone cooperative.³

The Office of the State Auditor recommends that the City comply with Minnesota law in the future for all gifts and donations to the City. The OSA also recommends that the City avoid referring to donations as "loans."

Contracting Procedures

The OSA received concerns that the City or its Economic Development Authority (EDA) did not accept bids for demolition projects performed on two pieces of City property. The OSA discussed the City's contacting procedures with the City's Clerk/Treasurer. In response to those discussions, the City's Clerk/Treasurer provided the OSA with copies of relevant City Council meeting minutes and an Amended Purchase Agreement dated August 21, 2008, for the City's purchase of a creamery building property.

According to the City's December 12, 2007, City Council meeting minutes, the City approved a recommendation by the City's EDA to hire a local company, for a cost not to exceed \$40,000, to demolish buildings on an elevator site the City had purchased.⁴ According to the City's Clerk/Treasurer, no written or verbal quotes were obtained from other companies for the demolition work.

The City's Clerk/Treasurer also informed the OSA that the City paid the same company to demolish a building on the creamery site that the City had purchased in September 2008. The Amended Purchase Agreement the City's Clerk/Treasurer provided to the OSA stated that the City would pay \$40,000, and the seller would demolish the creamery building located on the property prior to the date of closing. The City's Clerk/Treasurer informed the OSA that the City paid approximately \$35,000 for the land, and approximately \$20,000 for the demolition work. According to the City's Clerk/Treasurer, the company performing the demolition work was selected by the seller, not by the City.

Minnesota's Uniform Municipal Contracting Law requires a city to use certain procedures for the construction, alteration, repair, or maintenance of real or personal property.⁵ If the estimated cost of the contract exceeds \$100,000, competitive bids must

³ In contrast, the OSA understands that the City received a loan from the U.S. Department of Agriculture for the Community Center project. Both Minnesota and Federal laws provide authority for cities to accept various forms of assistance from the Federal Government. *See, e.g.*, Minn. Stat. § 465.73 (cities may accept loans from the U.S. Department of Agriculture for construction of a city hall).

⁴ Based upon the OSA's conversations with the City's Clerk/Treasurer, the OSA understands that the City paid \$30,722 for the demolition.

⁵ *See* Minn. Stat. § 471.345.

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be obtained, or best value procedures must be followed.⁶ For contracts estimated to cost between \$25,000 and \$100,000, the city may use the competitive bidding process, direct negotiations, or best value procedures.⁷ However, if the city uses direct negotiations, the city must obtain at least two quotes when possible, and keep the quotes on file for at least one year. For contracts estimated to cost less than \$25,000, the city may obtain at least two quotes when practicable (and keep them on file for at least one year), purchase the goods/services in the open market, or use best value procedures.⁸

The OSA recommends that, in the future, the City comply with Minnesota law when contracting for the construction, alteration, repair, or maintenance of real or personal property. If the City is unable to obtain two or more quotes for a contract estimated to cost between \$25,000 and \$100,000, the OSA recommends that the City document in the City Council meeting minutes why it was unable to obtain two or more quotes. If the terms of contracts change, the OSA recommends that: 1) the changes be approved by the City Council and recorded in the City Council meeting minutes; 2) the written contracts be amended to reflect the changes; and 3) the City retain copies of the amended written contracts.

Conclusion

The Office of the State Auditor reviewed concerns it received about the City's acceptance of donations and contracting procedures. In this letter, the OSA has provided the City with information to help the City comply with Minnesota law in the future.

Please feel free to contact me at 651-297-5853 if you have any questions or concerns.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
Assistant Legal Counsel

cc. Mr. Jim Narum, City Clerk/Treasurer
Mr. Dick Nethercut, City Attorney

⁶ See Minn. Stat. § 471.345, subs. 3 and 3a. Prior to 2008, the dollar amount threshold was \$50,000. See 2008 Minn. Laws ch. 207.

⁷ See Minn. Stat. § 471.345, subs. 4 and 4a. Prior to 2008, the dollar range was \$10,000 to \$50,000. See 2008 Minn. Laws ch. 207.

⁸ See Minn. Stat. § 471.345, subd. 5. Prior to 2008, the dollar amount threshold was \$10,000. See 2008 Minn. Laws ch. 207. For additional guidance on contracting procedures, the OSA recommends that the City review the following documents available on the League of Minnesota Cities' website (www.lmc.org):

- *Competitive Bidding Requirements in Cities*;
- *Handbook for Minnesota Cities*, Chapter 23; and
- *Purchase and Sale of Real Property*.