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June 16, 2009

The Honorable Mike O'Loughlin, Mayor
City of Maple Lake
P.O. Box 757
Maple Lake, Minnesota 55358-0757

Dear Mayor O'Loughlin:

The Office of the State Auditor became aware of concerns regarding the City of Maple Lake's ("City") employment of John Meyer as its Economic Development Coordinator. Specifically, a newspaper article stated that Mr. Meyer was working for the City while working full-time as the City of Centerville's Finance Director and full-time with the architectural and engineering firm Lightowler Johnson Associates.

We contacted the City Clerk/Treasurer in response to these concerns. We learned that the invoices the City obtained from Mr. Meyer did not contain sufficient information to determine whether the services provided to the City were performed at the same time that Mr. Meyer was billing another public entity for his services. This letter contains our recommendations to the City to improve the procedures the City uses for employing consultants.

Consulting Services Agreement

The Office of the State Auditor contacted the City and learned that the City had employed Mr. Meyer as a consultant since 1993. We obtained and reviewed the City's Consulting Services Agreement with Mr. Meyer. The Agreement was for the time period of November 1, 1993, through October 31, 1994. The City Clerk/Treasurer informed us that the written Agreement was never updated. We also obtained and reviewed a sample invoice from Mr. Meyer dated January 1, 2009. Finally, we reviewed the minutes from the City Council's July 24, 2008, meeting where Mr. Meyer explained the process used for marketing the City and stated that he worked for four different cities.

The City's Consulting Services Agreement with Mr. Meyer provided that Mr. Meyer would be paid \$65 per hour, with a maximum payment of \$975 per month. In addition, the Agreement provided that Mr. Meyer would be reimbursed for certain costs and would receive additional compensation for additional specific services. Under the Agreement,

Mr. Meyer was required to submit monthly invoices to the City, itemizing among other things, the date the services were provided.

The sample invoice provided to us did not show the dates the services included in the billing were provided to the City. As a result, we were unable to determine whether the services including in the invoices submitted to the City were performed at the same time that Mr. Meyer was billing his services to another city.

We recommend that the City review and update the City's written consulting services agreements on a regular basis. Periodic review of these agreements will help both the City and the consultant understand the terms of the contract. In addition, we recommend that the City enforce the terms of its consulting services agreements, including requirements for the itemization of services provided by the consultant.¹

Potential Conflict of Interest

The news article stated that Mr. Meyer was also employed full-time by Lightowler Johnson Associates. We understand that the City hired Lightowler Johnson Associates to design plans for a city hall.² According to the City's Clerk/Treasurer, Mr. Meyer was on a City committee that recommended the City hire Lightowler Johnson Associates for the plan design.

Under Minnesota law, "a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom."³ While a consultant may not fall within this statutory prohibition, we recommend that the City consider potential organizational conflicts of interest whenever a consultant is hired by the City.

An organizational conflict of interest exists when: (1) a consultant is unable, or potentially unable, to render impartial assistance or advice because of existing or planned activities, or because of relationships with other persons; or (2) the consultant's objectivity in performing the contract work is or might be otherwise impaired; or (3) the consultant has an unfair competitive advantage.⁴

¹ The itemization of claims is required by Minn. Stat. §§ 412.271 and 471.38.

² According to the City Clerk/Treasurer, the construction of the city hall was not pursued.

³ See Minn. Stat. § 471.87.

⁴ See, e.g., Minnesota Department of Administration Policy & Procedure Admin 01-13, Organizational Conflicts of Interest Policy (November 1, 2001), available at: <http://www.mmd.admin.state.mn.us/pdf/alpn9.pdf>. Minnesota state agencies must avoid, mitigate or neutralize organizational conflicts when contracting for goods or services. Minn. Stat. § 16C.04.

Policies regarding organizational conflicts of interest seek to ensure adherence to two underlying principles: (1) preventing the existence of conflicting roles that might bias a consultant's judgment; and (2) preventing unfair competitive advantage in the awarding of contracts.

To avoid both real and apparent conflicts of interest, we recommend that the City adopt third-party contracting policies that avoid, mitigate or neutralize organizational conflicts of interest. We recommend that prior to entering consulting contracts, the City ask the following questions:⁵

- Are there conflicting roles that might bias a consultant's judgment in relationship to the consultant's work for the City?
- Will the consultant provide assessments or evaluations of itself, or another entity with which the consultant has a financial relationship?
- Will the consultant provide assessments or evaluations of a competitor where detrimental findings could serve, directly or indirectly, the interests of the consultant?
- Will the consultant's advice provide the groundwork for decisions on future contracts or acquisitions?
- Will the consultant have access to not public data or other information that could provide the consultant with an unfair advantage in later competition for a contract with the City?

To help avoid organizational conflicts of interest, we recommend that the City require potential consultants to provide information concerning any past, present, or planned interest relating to the work, and concerning the consultant's possible organizational conflicts of interest. For example, the City may want to require potential consultants to submit to the City a listing of the consultant's other clients, and other employment and consulting agreements. If the consultant does not disclose any information about a possible conflict, the contract should provide that the consultant warrants, to the best of their knowledge and belief, that no facts exist relevant to a possible organizational conflict.⁶

⁵ Many of these questions are adapted from the Department of Administration's Organizational Conflicts of Interest Policy.

⁶ The Department of Administration's Organizational Conflicts of Interest Policy contains a sample provision for state agencies.

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Conclusion

The City had the authority to hire Mr. Meyer as a consultant. The invoices the City obtained from Mr. Meyer did not contain sufficient information for the Office of the State Auditor to determine whether the services provided to the City were performed at the same time that Mr. Meyer was billing another public entity for his services. This letter contains our recommendations to the City to improve the procedures the City uses for employing consultants.

We appreciate the timely assistance the City's Clerk/Treasurer provided to us during our review. If the City has any questions about the information contained in this letter, please feel free to contact me at 651-297-5853.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
Assistant Legal Counsel

cc. Ms. Linda Hruby, Clerk/Treasurer