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State Auditor

Suite 500  
525 Park Street  
Saint Paul, MN 55103

February 22, 2023

The Honorable David Lucas  
Mayor, City of Kettle River  
3977 Main Street  
Kettle River, Minnesota 55757

**TRANSMITTED VIA ELECTRONIC MAIL**

Dear Mayor Lucas:

The Office of the State Auditor (OSA) received concerns about certain financial transactions of the City of Kettle River (City). Specifically, concerns were raised alleging that the City credit card may have been used to make a nonbusiness purchase. Additional concerns were raised about the City Council's process for approving City employee pay rates. After the OSA reviewed these two concerns, the OSA received an additional concern about a contract for services with the City's fire department.<sup>1</sup>

In response to the first two concerns, the OSA contacted the City and requested certain documents from the time period of January 1, 2020, through July 31, 2021, including the City's credit card statements and supporting documents, and payroll records for the period January 1, 2021, through July 31, 2021, including the statutorily required signed declarations attesting to the accuracy of the time worked and wages paid.<sup>2</sup> In response to the third concern, the OSA requested the City's most recent contracts to provide fire services to surrounding towns.<sup>3</sup> In addition to the City-provided documents, the OSA reviewed meeting minutes available on the City's web site from January through the date of this letter. Based on its review, the OSA found:

#### **Credit Cards**

- The City's credit card was used for nonbusiness purchases;
- It appears certain City credit card purchases were shipped to non-City addresses;
- It appears the City did not obtain itemized receipts for certain City credit card purchases as required by Minn. Stat. §§ 471.38, subd. 1;
- It appears the City did not cancel a City credit card issued in the name of a former employee when the employee left employment with the City; and
- The City paid a \$39 credit card fee because it did not pay the November 2020 credit card statement in full.

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<sup>1</sup> This letter covers certain issues reviewed by the OSA. Nothing herein should be interpreted to imply the absence of other issues or approval of any other act or transaction.

<sup>2</sup> The City's credit card statements end mid-month. The OSA received credit card statements through July 14, 2021.

<sup>3</sup> In response, the City provided the OSA certain contracts that were dated February 16, 2021, (Automba Township signed February and May of 2021, Beaver Township signed March and April of 2021, the City signed June of 2022, Kalevala Township signed March and April of 2021, Silver Township signed June and May of 2022, Split Rock Township signed March and April of 2021), and a contract dated February 15, 2022, (Silver Township – unsigned).

### **Payroll**

- The City did not provide documentation to the OSA showing that City employees and their supervisors signed the declarations required by Minn. Stat. § 412.271, subd. 2;
- It appears the City Clerk/Treasurer signed her own timesheets as both the employee and the supervisor; and
- It appears the City paid City employees at pay rates that were not approved by the City Council.

### **Fire Department**

- It appears the City Council as a whole did not vote at an open meeting to approve contacts for services between the City fire department and surrounding Towns.

### **Meeting Minutes**

- Some City Council meeting minutes did not include information required by Minnesota Law.

This letter contains the OSA's findings and internal control recommendations to help the City comply with Minnesota law.

### **Background**

The City is a statutory City with a population of 172 and is governed by a 5-member City Council. The City has an appointed Clerk/Treasurer. The City reported receipts that totaled \$213,805 and disbursements that totaled \$166,807 for its governmental funds in 2021.<sup>4</sup> The City reported operating receipts that totaled \$116,540 and operating disbursements that totaled \$76,251 in its proprietary funds for 2021.<sup>5</sup>

In its audited financial statements, the City reported five governmental funds including a "Fire Department" fund.<sup>6</sup> The City reported charges for services receipts of \$32,877 in its Fire Department Fund in 2021.<sup>7</sup>

### **Minnesota Law**

#### **General Governance**

In general, a city acts through its elected city council, and council members' statutory duties are to be performed by the city council as a whole.<sup>8</sup> Actions of a governing body typically must take place in a

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<sup>4</sup> See City of Kettle River Financial Statements and Supplementary Information Year Ended December 31, 2021.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See League of Minnesota Cities, Handbook for Minnesota Cities Ch. 6, at 16 (2022).

meeting open to the public.<sup>9</sup> The Minnesota Supreme Court has stated that this serves three purposes: prohibiting public bodies from hiding their decision-making process from the public; allowing the public to be informed; and allowing the public to present its views.<sup>10</sup> Council members are provided pertinent documentation including receipts, invoices, and policies, often in an Agenda Packet, to facilitate this process.

### **Credit Card**

The legal authority for a city to use credit cards is found in Minn. Stat. § 471.382. This statute restricts the use of credit cards to purchases for the city by any city “officer or employee otherwise authorized to make a purchase on behalf of the city...”<sup>11</sup> If the city council does not approve a credit card purchase, the officer or employee who made the purchase becomes personally liable for the amount of purchase.<sup>12</sup>

Purchases made with the credit card must be consistent with other state law. For example, under Minnesota law, claims presented to a city for payment must be in writing and itemized.<sup>13</sup> Monthly statements from a credit card company, which may provide the date of purchase and the vendor but not the goods or service purchased, lack sufficient detail to comply with these statutory requirements. As a result, public entities using credit cards must retain the invoices and receipts needed to itemize the claims listed in monthly statements from the credit card company. Similarly, listing only the credit card company on a claims list would merely identify the method of payment. It does not identify the vendors providing the goods and services, as required by law. Therefore, the claims list provided to the City Council for approval should identify the individual purchases made with the credit card.

Additionally, the statutory authority allowing a public entity to use credit cards simply provides public entities with a permissible method to make otherwise authorized purchases. It is not authority for the public entity to carry credit card debt.<sup>14</sup> Therefore, a public entity’s governing board should adopt a policy or practice of paying off the credit card charges on a monthly basis.

### **Payroll**

Generally, absent a legally valid delegation of authority, the governing body of a public entity, as a whole, must approve the expenditure of public funds except in certain situations including the payment of wages “previously fixed by the council or by statute...the exact amount of which has been previously

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<sup>9</sup> See Minn. Stat. §§ 13D.01, 412.191, and League of Minnesota Cities Information Memo, “Meetings of City Councils.”

<sup>10</sup> *Claude v. Collins*, 518 N.W.2d 836, 841 (Minn. 1994).

<sup>11</sup> See Minn. Stat. § 471.382.

<sup>12</sup> *Id.*

<sup>13</sup> See Minn. Stat. § 412.271, subd. 2.

<sup>14</sup> The statutes governing the issuance of debt by a public entity add a number of restrictions to the issuance of any obligation. See e.g. *Minn. Stat. ch. 475 (Municipal Debt)*, *Minn. Stat. §§ 412.261 (Tax Anticipation Certificates)*, *412.301 (Certificates of Indebtedness)*, and *429.091, subd. 5 (Temporary Improvement Bonds)*.

determined by contract authorized by the council, and...no order shall be issued until the claim to which it relates has been audited and allowed by the council.”<sup>15</sup>

Minnesota Statute § 412.271, subd. 2 provides that the city clerk “shall keep a payroll giving the name of each employee and the number of hours or days worked by each and the timekeeper, supervisor, or other officers or employee having knowledge of the facts shall sign a declaration that the facts recited on the payroll are correct to the best of the declarant’s information and belief; and when any claim for wages listed on a payroll is paid, the employee shall sign a declaration...to the effect that the employee has received the wages and done the work for which wages have been paid.”

### **City Fire Department and City Department Budgets**

When a city has its own fire department, the fire department is a municipal fire department.<sup>16</sup> A city with a municipal fire department may enter into contracts with other entities (e.g., nearby towns or cities) allowing those entities to receive fire protection services from the fire department.<sup>17</sup> Under Minnesota law, a city council controls a city’s finances.<sup>18</sup>

### **Recordkeeping and Meeting Minutes**

Minnesota law requires all city officers to make and preserve all records necessary for “a full and accurate knowledge of their official activities.”<sup>19</sup> The city’s “chief administrative officer” is responsible for the preservation and care of the city’s records, which include all “written...documents...received pursuant to law or in connection with the transaction of public business. It shall be the duty of each agency, and of its chief administrative officer, to carefully protect and preserve government records from deterioration, mutilation, loss, or destruction.”<sup>20</sup>

Additionally, the Minnesota Open Meeting law requires that meeting minutes include the individual votes of each member of the city council on all actions, except appropriations fixed by law.<sup>21</sup>

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<sup>15</sup> See Minn. Stat. § 412.271, subd. 1.

<sup>16</sup> Firefighters of city municipal fire departments are considered city employees for most purposes, and the municipality issues to them paychecks and corresponding tax statements. Firefighter hiring and discipline decisions are made by the municipality.

<sup>17</sup> See Minn. Stat. § 412.221 (“The council shall have power to make such contracts as may be deemed necessary...”).

<sup>18</sup> See Minn. Stat. § 412.241 (“The council shall have full authority over the financial affairs of the city...”). Assets intended for use by a municipal fire department are city assets. The city must receive and account for all city funds, and all expenditures, including those for the fire department, must be approved by the city council, absent a lawful delegation. See e.g. Minn. Stat. § 412.271. There is no authority for a municipal fire department to control separate fire department financial accounts.

<sup>19</sup> Minn. Stat. § 15.17, subd. 1.

<sup>20</sup> Minn. Stat. § 15.17, subd. 2.

<sup>21</sup> Minn. Stat. § 13D.01, subd. 4 (“(a) The votes of the members ... on an action taken in a meeting required ... to be open to the public must be recorded in a journal or minutes. (b) The vote of each member must be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute.”).

As noted above, Minnesota law also requires, with limited exceptions, that the City council review and allow the payment of claims. The minutes of the City council meeting where the claims are considered should identify the claims that are allowed and the vote of each member.

## **OSA Review, Findings, and Recommendations**

### **Credit Cards**

The OSA reviewed the City's credit card statements and supporting documents from January 1, 2020, through July 31, 2021, and found that:

- 1) The City's credit card was used for certain purchases that do not appear to be City purchases. The first is a purchase made at "The Golf Warehouse" on August 14, 2020. The City provided the OSA an order confirmation that was not itemized for this purchase. An email was also provided to the OSA that indicated that the purchase "has since been reimbursed by the Fire Relief Association."

The OSA's review found that the City's credit card was used for a personal purchase on April 21, 2021. It appears the purchase was paid for with a check from a City employee.

- 2) The OSA noted 5 separate instances where the City's credit card was used to purchase items that were shipped to an address that does not appear to be an official City address.
- 3) The OSA requested and the City did not provide the OSA with itemizations for 13 separate City purchases made with a City credit card.
- 4) The OSA observed several purchases made with the use of a City credit card that was assigned to an employee for months after the employee's last day of service. Although the employee's employment with the City ended in August of 2020, the purchases continued into April of 2021. The September 8, 2020, City Council meeting minutes document that the former employee "returned the credit card" and that the City was "awaiting paperwork from credit card company to change the name on the card."
- 5) Finally, because the City did not pay the November 2020, credit card statement in full, it was required to pay, in addition to the amount owed for the purchases made with the credit card, a fee of \$39 as documented in the December 2020 Statement.

### **Recommendations**

The City has no legal authority to use the City credit card other than to make purchases for the City. Uses of the City credit card for purchases that are not for the City, even if later reimbursed, are contrary to Minnesota law.

The delivery of purported City purchases to addresses that are not an official City address creates difficulty in ensuring that the purchases were received by the City and in reviewing whether the

purchases were appropriate. We recommend that City purchases be delivered to an official City address, and once delivered, that invoices be marked as “received.” This will help the City make sure that all of the items purchased by the City are received by the City. Furthermore, sound internal controls would require at least two individuals involved in this process, one who makes the purchase and another who verifies receipt of the items purchased.

Under Minnesota law, claims presented for payment generally must be in writing and itemized.<sup>22</sup> In addition, adequate support for payments is a fundamental requirement of a sound accounting system and is in keeping with Minnesota law regarding the City’s duty to keep proper records. Prior to city council meetings, council members should fully review each claim for appropriateness and accuracy and, if needed, supporting documentation for the claim should be examined.

Further, Minnesota Law authorizes the use of credit cards only by officers or employees who are “otherwise authorized to make a purchase on behalf of the city...”<sup>23</sup> The City must cancel any credit card issued in the name of an employee when they are no longer employed by the City. The City Council should not allow former employees to make purchases on behalf of the city or allow current city employees to make purchases with a credit card issued to a former employee.

Finally, in order to avoid unnecessary expense and to protect against possible creation of unauthorized debt, we recommend that the City adopt a policy or practice of paying off the credit card charges on a monthly basis.

## **Payroll**

The OSA requested the City’s payroll and applicable signed declarations for the time period January 1, 2021, through July 31, 2021. In response, the City provided the OSA timesheets for certain employees. The City did not provide documentation to the OSA showing that the City employees and their supervisors signed the declarations required by Minnesota Law. Additionally, the OSA observed that the City Clerk/Treasurer signed her own timesheets as both the employee and the supervisor on several timesheets.

The September 8, 2020, City Council meeting minutes document that The City Council approved a motion “to approve the updated compensation step structure.” The City provided a document to the OSA titled “City of Kettle River Compensation Step Structure” that appears to be the document the City Council approved on September 8, 2020.

The OSA notes that the pay rates paid to each employee as documented on the timesheets were higher than those documented in the City’s “City of Kettle River Compensation Step Structure” for the same period. A note at the bottom of the document stated that “Step increase [sic] do not included cost of living (CPI) increases.” The City did not provide the OSA documentation showing that these increases

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<sup>22</sup> See Minn. Stat. § 412.271, subd. 2.

<sup>23</sup> See Minn. Stat. § 471.382.

were approved by the City Council, or that the higher pay rates were otherwise approved by the City Council.

### **Recommendations**

The City Council should implement a process to ensure that declarations required by Minn. Stat. § 412.271, subd. 2 are signed by the City employees and their supervisors.

The pay rates paid to employees should not exceed those approved by the City Council. For example, if the City Council intended the “City of Kettle River Compensation Step Structure” to fulfill the provision of Minnesota Law that allows for the payment of wages “previously fixed by the council,” then it should specify the pay rate for each position and the pay rates actually paid should match those it lists.

### **City Fire Department**

The OSA requested the City’s most recent fire services contracts and reviewed those provided by the City, which consisted of certain contracts that were dated February 16, 2021 (Automba Township signed February and May of 2021, Beaver Township signed March and April of 2021, the City signed June of 2022, Kalevala Township signed March and April of 2021, Silver Township signed June and May of 2022, Split Rock Township signed March and April of 2021), and a contract dated February 15, 2022 (Silver Township – unsigned) (the Fire Service Contracts).<sup>24</sup> The Fire Service Contracts indicated they were entered into between the City and specified townships (the Townships). The terms of the Fire Service Contracts were April 1, through March 31. The Fire Service Contracts recognized that the Townships agreed to purchase from the City, and the City agreed to provide to the Townships, specified fire services.<sup>25</sup> Furthermore, under the Fire Service Contracts, it was the City’s obligation to “[a]uthorize and direct the City fire Department and first responder unit to provide the fire and first responder services described [in the Fire Services Contract] ...”<sup>26</sup>

The Fire Service Contracts provided for a Fire Commission Board that served “in an advisory capacity to discuss such issues as either party deems relevant” to the contract; and for an annual meeting of the Fire Commission Board. The Fire Service Contracts stated that the Fire Commission Board also “shall have the duty of recommending an operating budget on an annual basis...”<sup>27</sup> (Emphasis added.)

The Fire Service Contracts required the City to, “[d]evelop a detailed annual operational budget” for the fire department for each year during the term of the contract and present it to the Townships “along

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<sup>24</sup> The OSA noted that certain contract provisions seem contradictory. For example, the contracts provided to the OSA dated February 16, 2021, listed a term of April 1, 2021, though March 31, 2022, but two of these contracts were signed by the City in June of 2022. The contracts only included a 2022 amount in the payment section. The City provided these contracts to the OSA in November 2022 when the OSA requested the most recent fire service contracts.

<sup>25</sup> The Fire Service Contracts, section 1.

<sup>26</sup> The Fire Service Contracts, section 9.

<sup>27</sup> The Fire Service Contracts, section 4.

with sufficient information to explain the items included in the budget figures.”<sup>28</sup> The amount each township was required to pay the City was set by applying certain computations to the annual operational budget.<sup>29</sup> The contract described the payment amount due from the Townships as “determined by the Fire Commission” however, the City Clerk reported to the OSA that she determined the payment amounts due under the Fire Service Contracts.<sup>30</sup>

The Fire Service Contracts also stated, “This is a service contract. The parties do not intend to undertake or create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise between the parties.”<sup>31</sup>

As noted above, the Kettle River Fire Department is a City Fire Department. City Council meeting minutes appear to indicate that the Fire Service Contracts, with the exception of the purported contract between the City and its fire department, were not approved, voted on, or discussed by the City Council. According to the City, a Fire Commission Board created by prior fire services contracts set the operational budget for the fire department and approved the Fire Services Contracts.<sup>32</sup> After the OSA contacted the City, however, the City Council approved a motion “to approve the 2023 fire department budget.” The OSA agrees with the City Council’s decision to start approving the operational budgets of its Fire Department.

## **Recommendations**

The OSA recommends that the City consider consulting with its legal adviser to clear up issues related to the Fire Services Contracts. In addition, the City Council, as the governing body of the City, should approve the terms of City contracts, with advice from advisory boards as appropriate.<sup>33</sup>

## **Meeting Minutes**

The OSA reviewed certain City meeting minutes posted to its web site. The OSA noted that minutes for some meetings did not record the vote of a certain council member but rather listed the Council Member’s vote as “Unintelligible.” Minnesota law generally requires that minutes include the individual

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<sup>28</sup> The Fire Service Contracts, section 9.

<sup>29</sup> The Fire Service Contracts, section 2.

<sup>30</sup> The Fire Service Contracts, section 10.

<sup>31</sup> The Fire Service Contracts, section 17.

<sup>32</sup> In June of 2022, the City Council approved (1) a motion to “accept the 2022 Fire Service contract between the City of Kettle River and the Kettle River Fire Department...” and (2) a “[m]otion to accept the 2023 Fire Service Contract between the City of Kettle River and the Kettle River Fire Department....” See June 7, 2022, City Council Meeting Minutes. It is unclear why a city would enter into a purported contract with a city department. City departments generally lack the authority to enter into contracts.

<sup>33</sup> The OSA questions the appropriateness of the purported contract between the city and a city department and suggests that if additional City Council action is needed to accomplish something, it should take another form, consistent with the advice of the City’s legal advisor if such advice is sought.



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votes of each member of the city council.<sup>34</sup> Documenting a council member's vote as "unintelligible" does not fulfill this requirement.

It appears that City claims are approved as part of the City's consent agenda, listing beginning and ending claims numbers and a single, total amount.

The OSA also noted an extensive amount of detail in the August 10, 2021, meeting minutes. The OSA contact with the City Clerk/Treasurer on November 9, 2021, is noted in the City's Council meeting minutes, however, the information put into the minutes is not correct.<sup>35</sup>

### **Recommendations**

The OSA recommends that the City Council ensure that its minutes include the individual votes of each member of the City Council as required by law. The minute-taker should document the individual votes at the time they are cast, and if the minute-taker initially does not hear a particular vote, the minute-taker should indicate at the time that he or she did not hear the vote, so that it can be reiterated and recorded in the minutes.

The OSA recommends the meeting minutes include a listing of the individual claims (including claims for per diems) allowed or approved for payment, noting the recipient, purpose, and amount.

Generally, the amount of detail which is appropriate for inclusion in the minutes is likely to vary, depending on the nature of the proceedings and the subject matter involved. For your reference, I have enclosed a copy of the OSA's Statement of Position on Meeting Minutes, which describes the minimum requirements for meeting minutes, but also includes additional guidance. Beyond the minimum requirements, minutes should be written in a manner that allows a reviewer reading the minutes to understand what matters were considered at the meeting and what decisions were made. In most cases, the minutes need not record discussions of the members and others. Moreover, the minutes should not be cluttered with unnecessary detail that could hamper or detract from a reader's ability to understand clearly what business was conducted at the meeting and what decisions were made by the governing body. In addition, the minutes should not reflect the clerk's or secretary's opinion on anything said or done.

### **Conclusion**

We remain available to provide you with additional assistance in this matter, should you need it.

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<sup>34</sup> Minn. Stat. § 13D.01, subd. 4.

<sup>35</sup> The City Council meeting minutes' document "Spoke with the state auditor, they needed one more piece of paper and they said the audit should be done quickly." This is not an accurate account of the communication the OSA had with the City Clerk/Treasurer nor is the information provided accurate. The OSA does not provide updates or information about an open review in accordance with Minn. Stat. § 6.715. The OSA has a detailed record of this communication.

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You can contact me at (651) 296-4717 or [Mark.Kerr@osa.state.mn.us](mailto:Mark.Kerr@osa.state.mn.us) or Nichole Bjornrud, CPA, CFE, at (651) 282-2750 or [Nichole.Bjornrud@osa.state.mn.us](mailto:Nichole.Bjornrud@osa.state.mn.us). As required by Minn. Stat. § 6.50, we will file a copy of this letter with the Carlton County Attorney.<sup>36</sup>

Sincerely,  
*/s/ Mark F. Kerr*  
Mark F. Kerr, JD, CFE  
Special Investigations Director  
Office of the State Auditor  
(651)296-4717

Enc.

cc: The Honorable Monique Doward, City Council Member  
The Honorable Guy Collier, City Council Member  
The Honorable Miya Kohmetscher, City Council Member  
The Honorable Elizabeth Mascarenas, City Council Member  
Kathryn M Lake, City Administrator/Clerk-Treasurer  
Sarah Sonsalla, City Attorney  
The Honorable Lauri Ketola, Carlton County Attorney

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<sup>36</sup> See Minn. Stat. § 6.50 (“[I]n case of any violation of law, such report shall be filed with the city attorney thereof and with the county attorney of the county in which the administrative offices of such city are located, and these officials of the law shall institute such proceedings as the law and the public interest require.”).