

# STATE OF MINNESOTA

## Office of the State Auditor



**Julie Blaha**  
**State Auditor**

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PETITION ENGAGEMENT

**CITY OF LAKELAND, MINNESOTA**

JANUARY 1, 2017 THROUGH DECEMBER 31, 2018

## **Description of the Office of the State Auditor**

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 100 financial and compliance audits per year and has oversight responsibilities for over 3,300 local units of government throughout the state. The office currently maintains five divisions:

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**Government Information** – collects and analyzes financial information for cities, towns, counties, and special districts;

**Legal/Special Investigations** – provides legal analysis and counsel to the Office and responds to outside inquiries about Minnesota local government law; as well as investigates allegations of misfeasance, malfeasance, and nonfeasance in local government;

**Pension** – monitors investment, financial, and actuarial reporting for Minnesota’s local public pension funds; and

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# **CITY OF LAKELAND, MINNESOTA**

**January 1, 2017 through December 31, 2018**



## **Petition Engagement**

**Audit Practice Division  
Office of the State Auditor  
State of Minnesota**

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## PETITION REPORT

Petitioners  
Mayor and Members of the City Council  
City of Lakeland, Minnesota

### INTRODUCTION

Registered voters of the City of Lakeland, Minnesota, petitioned the Office of the State Auditor (OSA) to examine the books, records, accounts, and affairs of the City in accordance with Minn. Stat. § 6.54. The statute allows the OSA, in the public interest, to confine the scope of the examination to less than that requested by the petition. Communications with petitioner representatives assisted us in developing an understanding of the petitioners' areas of interest or concern. We established that some of the issues raised were not within the scope of this review. Our examination was limited to addressing the issues discussed below for the period January 1, 2017 through December 31, 2018.

The OSA has completed its examination into the concerns identified by the petitioners of the City of Lakeland. The objectives of the engagement were to address the concerns of, and to answer the questions raised by, the petitioners. Where applicable and appropriate, we make recommendations to the City in this report.

### PETITIONERS' CONCERNS AND OUR FINDINGS

#### **1. City Equipment Auction**

The petitioners requested information regarding the accounting for the auction proceeds from the sale of City equipment in July 2017.

The OSA obtained and reviewed the general ledger and 2017 unaudited financial statements. From this review, it was determined that \$4,974.25 in proceeds of one auction held were recorded on August 31, 2017, in general ledger account 43400 (Vehicle & Equip Reserve). This payment was reported in the 2017 unaudited financial statements as part of the miscellaneous revenue balance in the Public Works Fund.

The OSA obtained and reviewed the support provided by the City from Hines Auction Service, Inc., the vendor who facilitated the auction. Gross auction proceeds were \$6,899. Hines Auction Service, Inc., charged 25 percent, or \$1,724.75, in commissions, as well as \$200 in advertising expenses, for total net auction proceeds of \$4,974.25.

The OSA inquired of City staff, who confirmed that only one auction was held in 2017 where proceeds were received.

### Recommendation

We recommend transactions be recorded in the general ledger at gross rather than net to provide transparency and allow for accurate monitoring of financial activity.

## **2. Fire Claim Settlement**

The petitioners requested information regarding the accounting for the fire claim settlement received in March 2017 for the amount of \$100,265.

The OSA obtained and reviewed the general ledger and 2017 unaudited financial statements. From this review, it was determined that the fire claim settlement was recorded on April 30, 2017, in general ledger account 58022 (City Hall). This payment was reported in the 2017 unaudited financial statements as part of the miscellaneous revenue balance in the Long-Term Improvement Fund.

## **3. City Hall Remodel**

The petitioners requested information regarding expenditures for the City Hall remodel, including furniture, computer, and security system purchases, as well as whether quotes or bids were needed and obtained as applicable.

The City provided the OSA a detailed listing of expenditures for the City Hall remodel, which totaled \$91,759.75 for 2017 and \$82,083.39 for 2018, for a project total of \$173,843.14. The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, and identified an additional \$39,501.05 in expenditures. These consisted of legal services; the prior City Treasurer's time and expense for the City Hall fire insurance claim; relocation costs; the new City Hall site preparation; a security system; and \$1,422.09 in 2019 expenditures for furniture, a kitchen sink drain, and payments to the prior Public Works Commissioner. Of the \$213,344.19 in total expenditures identified by the OSA for the City Hall remodel, \$39,598.26 was for the purchase of furniture; \$4,250 was for labor to consult, install, and provide graphics creation for a new City Hall A/V system; and \$30,678.36 was for the purchase of a security system, fire and intrusion alarms, and access control system.

In reviewing the general ledger, the OSA identified two laptop purchases, one on December 31, 2018, for \$1,179 and one on April 30, 2019, for \$1,159.50. These were recorded in general ledger account 58021 (City Office Equipment). The City informed us that it has two laptops, one in the Water Department and one purchased in 2019 for use at City Hall by the City Clerk. The City also informed us that the Mayor donated a laptop used exclusively to record videos.

Minnesota Statutes, section 471.345 requires contracts estimated to exceed \$175,000 (\$100,000 for contracts entered into prior to August 1, 2018) be solicited with sealed bids. In reviewing the general ledger, the OSA did not identify any related contracts that exceeded this threshold. Minnesota Statutes, section 471.345 requires that certain contracts estimated to exceed \$25,000, but not to exceed \$175,000 (\$100,000 for contracts entered into prior to August 1, 2018), be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible. The OSA identified four vendors whose total payments by the City exceeded \$25,000 where sealed bids or quotations may have been required.

The OSA requested copies of contracts, including any quotations or bids received, for the City Hall remodeling. City staff provided the OSA copies of City Council meeting minutes where reference was made to a bid received and preparation of a request for proposal for construction services for the City Hall remodel. However, no quotations or bids could be located by City staff.

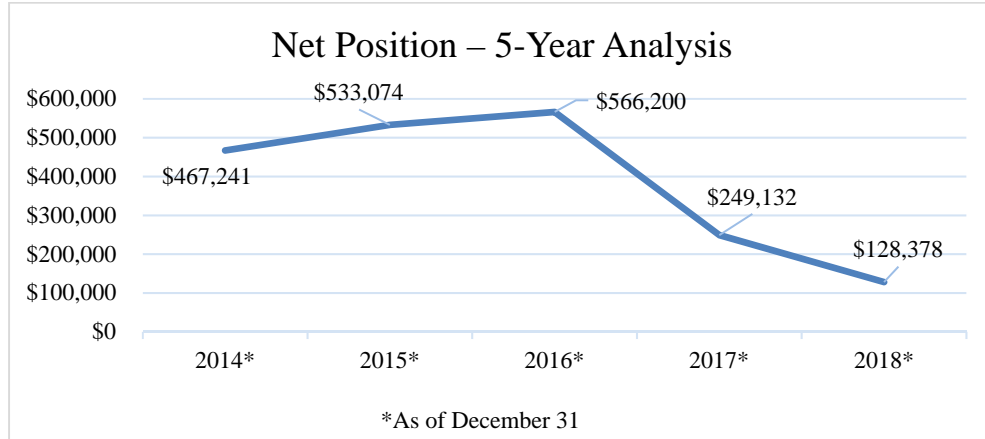
#### Recommendation

We recommend the City Council implement procedures to ensure purchases of supplies, materials, and equipment, or for construction, alteration, repair, or maintenance of real or personal property, be made in accordance with Minn. Stat. § 471.345. We also recommend that contract files be maintained and kept on file at City Hall for ease of inspection.

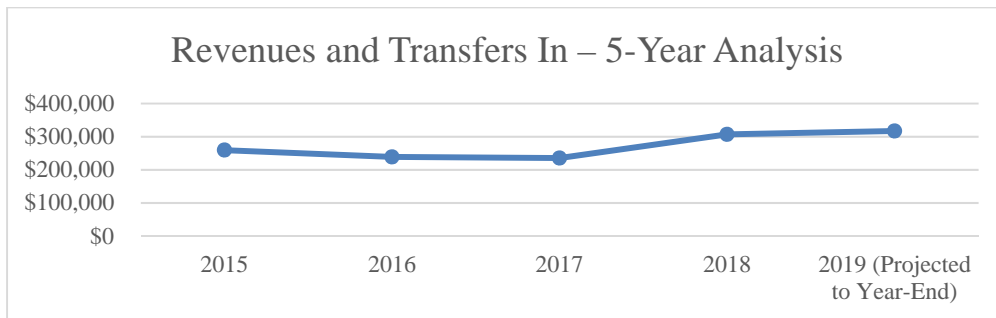
#### **4. Water Utility Fund**

The petitioners requested information regarding the City's Water Utility Fund, including significant variances and trends.

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, as well as the 2015 through 2018 unaudited financial statements. The following chart details the Water Utility Fund's net position for the past five years:

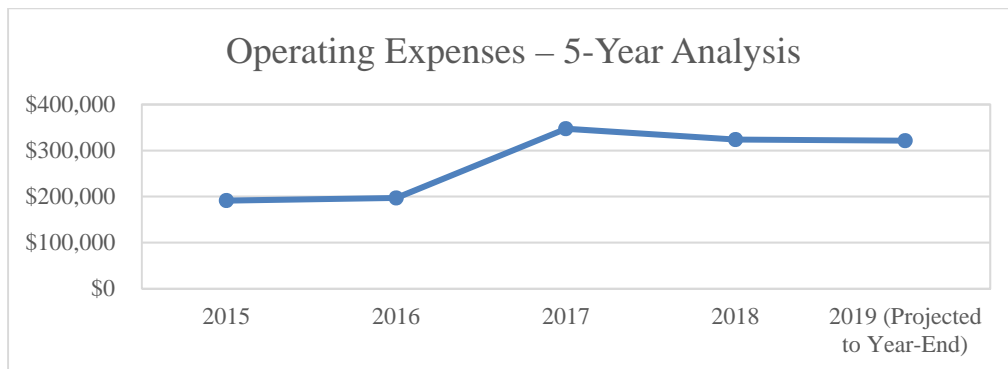


The 2019 revenues and transfers have been projected to year-end based upon actual data provided for the first three quarters of 2019. The following chart details the Water Utility Fund’s revenues and transfers in for 2015 through 2019:



City staff informed the OSA that the almost \$71,300 increase in revenues in 2018 was due to the City Council approving an increase to the water usage rate by \$0.25 per 1,000 gallons and an increase to the monthly flat charge by \$4.00 per hook up.

The 2019 expenses have been projected to year-end based upon actual data provided for the first three quarters of 2019. The following charts detail the Water Utility Fund’s operating expenses and capital expenses for 2015 through 2019:







City staff informed the OSA that in 2017, the Water Utility transitioned to almost all contracted labor, which increased operating expenses. In addition, the City made a concerted effort to update, upgrade, and perform repairs and maintenance on the water system and two water treatment facilities. The City hired a number of outside organizations to determine what work needed to be completed, to monitor daily operations, and to assist and perform work. The work on the City’s water system and two water treatment facilities continued into 2018 and 2019, but decreased from 2017.

As a result of the increased operating and capital expenses over the City’s increased revenues, net position of the City’s Water Utility Fund declined in 2017 and 2018.

**Recommendation**

We recommend the City analyze if an additional increase to the water usage rate fee is necessary to maintain or increase net position of the Water Utility Fund. Increased fees, a reduction of operating expenses, and/or a reduction of capital expenses may be needed due to the significant decrease in net position.

**5. Payments to Mr. Stanton**

The petitioners requested information regarding payments to Mr. James Stanton (Mr. Stanton), including what services he performed for the City and the rate charged.

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019. The OSA identified and summarized payments to Mr. Stanton as follows:

<u>Services</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Council Member	\$ 2,300.04	\$ 2,300.04	\$ 383.34
City Planner (Zoning Administrator)	1,000.00	7,370.00	1,397.50
Janitorial	510.00	2,895.00	-
Public Works Commissioner	42,317.02	77,325.00	67,347.50
Expense Reimbursement	654.26	615.79	-
<b>Total</b>	<b>\$ 46,781.32</b>	<b>\$ 90,505.83</b>	<b>\$ 69,128.34</b>

As Council Member, Mr. Stanton was considered an officer of the City; for all other services, he was considered an independent contractor. The OSA obtained and reconciled both Form W-2 and Form 1099-MISC, as applicable, to the amounts noted in the general ledger without exception.

The OSA was provided copies of the City’s agreements with Mr. Stanton as an independent contractor. The agreements are summarized as follows:

<b>Services</b>	<b>Date</b>	<b>Rate</b>	<b>Description</b>
City Planner/Zoning Administrator	June 1, 2018 (terminated July 16, 2019 by City Council)	\$65 per hour	Duties include, but not be limited to: updating zoning ordinances as directed by the City Council and recommending zoning ordinance amendments to the City Council, processing land use applications including preparing and presenting reports and recommendations to the City Council, enforcing the City’s Zoning Code in response to complaints, and special projects as may be assigned by the Council. The Zoning Administrator may be requested to attend evening meetings. The Zoning Administrator shall, on a monthly basis, provide a written record of all time spent.
Public Works Commissioner	April 1, 2017	\$750 per month	Duties include oversight of all Public Works Department operations, including but not limited to administration, inspection, repair and routine maintenance of Lakeland public utilities, streets, sanitary water and sewer utilities, public rights-of-way, and parks. Additional time for services not covered above require prior approval of the City Council, and will be compensated at an amount agreed upon by the City and Public Works Commissioner.
Public Works Commissioner	June 1, 2018	\$55 per hour	Duties include oversight of all Public Works Department operations, including but not limited to administration, inspection, repair and routine maintenance of Lakeland public utilities, streets, sanitary water and sewer utilities, public rights-of-way, and parks. Approval of additional services shall be in writing. The Public Works Commissioner shall provide a written record of all time spent on additional services. A daily report of jobs and duties will be provided to the City Treasurer at the end of each month.

The OSA identified 70 payments to Mr. Stanton in 2017, 98 payments in 2018, and 62 payments in 2019. The OSA selected a sample of 11 payments in 2017, 11 payments in 2018, and two payments in 2019 to test that services were charged at the agreed-upon rate, that any additional services were approved in writing and included a written record of time spent, and that work performed was within the duties as agreed upon. In testing the sample, the OSA noted the following:

- Janitorial services were charged at a rate of \$30 per hour. The City was not able to locate and provide an agreement for janitorial services provided.
- In one instance, the rate charged and number of hours worked for janitorial services was not provided (supporting documentation only included a dollar amount).
- In one instance, Mr. Stanton was reimbursed for “iPhone accessories.” The City’s agreements with Mr. Stanton did not address reimbursement of business expenses, and providing an independent contractor with “iPhone accessories” appears to be inconsistent with the status of an independent contractor.
- The unsigned copy of the City’s agreement with Mr. Stanton as Public Works Commissioner provided by the City indicated that he was to be paid \$750 per month and would be compensated at an amount agreed upon by the City and Public Works Commissioner for any additional services beyond the duties agreed upon. However, it was noted that Mr. Stanton was receiving payment of \$750 per 40 hours of work, plus \$50 per hour for any services provided over 40 hours. The OSA noted City Council approval of the latter (“monthly rate of \$750 for 40 hours of service with additional hours over the monthly retainer billed at \$50/hour. . .”) in the April 11, 2017, City Council meeting minutes; however, this differs from the City-provided copy of the written agreement with Mr. Stanton.
- In five instances, Mr. Stanton was compensated for services that were outside the agreed-upon duties. These services included office work, painting, cleaning City Hall, and assembling TV stands for City Hall. Mr. Stanton was compensated at a rate of \$55 per hour. The City had agreements with other individuals over the period January 1, 2017 through October 2019, who were compensated at \$30 per hour for office work. Documentation of approval for these services was not provided with claim support.
- In one instance, Mr. Stanton was compensated at a rate of \$55 per hour for four hours of service as City Planner when he should have been compensated at the agreed-upon rate of \$65 per hour.

In reviewing the supporting documentation to the sample of payments to Mr. Stanton noted above, as well as the City’s agreements with Mr. Stanton, no instances were noted of Mr. Stanton approving his own services or compensation.

## Minnesota Conflict of Interest Statutes

Under the general conflict of interest provisions of Minn. Stat. § 471.87, “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.” Abstaining from voting on the contract does not negate a conflict of interest. Because the general rule is so strict, the legislature has created limited exceptions, found in Minn. Stat. § 471.88, that permit interests that would otherwise be prohibited. If a conflict is found to exist, the contract is only permitted if one of the specific exceptions provided in Minn. Stat. § 471.88 applies and all of the statutory requirements associated with the exception are followed.

Under this statute, a city council “by unanimous vote, may contract for goods or services with an interested officer” if the contract is one “for which competitive bids are not required by law.” Minn. Stat. § 471.88, subs. 1 and 5. To use this exception, however, a city and the interested officer must follow the procedures set forth in Minn. Stat. § 471.89.

- First, the City Council “shall authorize the contract in advance of its performance by adopting a resolution setting out the essential facts and determining that the contract price is as low as or lower than the price at which the commodity or services could be obtained elsewhere.”
- In addition, before claims are paid on the contract, the interested officer must file with the City Clerk “an affidavit stating:
  - (1) the name of the officer and the office held by the officer;
  - (2) an itemization of the commodity or services furnished;
  - (3) the contract price;
  - (4) the reasonable value;
  - (5) the interest of the officer in the contract; and
  - (6) that to the best of the officer’s knowledge and belief the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.”

City staff informed the OSA that these statutory requirements were not met.

## Recommendation

We recommend that a written contract be documented for services performed on the City's behalf by any individual not employed by the City. When such services are performed, a detailed accounting should be provided to the City for its review to ensure services were as agreed upon. In addition, when the City enters into a contract with an independent City Council member, the City and Council member must perform and document its compliance with Minn. Stat. § 471.88-.89.

### **6. Vehicle and Equipment Usage**

The petitioners requested information regarding the City's vehicles and equipment, including the City's vehicle policy, storage, insurance coverage, usage, and mileage. In addition, the petitioners requested information regarding the accounting for the proceeds from the sale of the 2014 Ford truck for the amount of \$35,000.

Under Minn. Stat. § 471.666, local government vehicles (other than public safety vehicles) "may be used only for authorized local government business, including personal use that is clearly incidental to the use of the vehicle for local government business." In addition, such local government vehicles "may not be used for transportation to or from the residence of a local government employee", except:

- (1) in connection with work-related activities during hours when the employee is not working;
- (2) if the employee has been assigned the use of a local government vehicle for authorized local government business on an extended basis, and the employee's primary place of work is not the local government work station to which the employee is permanently assigned; or
- (3) if the employee has been assigned the use of a local government vehicle for authorized local government business away from the work station to which the employee is permanently assigned, and the number of miles traveled, or the time needed to conduct the business, will be minimized if the employee uses a local government vehicle to travel to the employee's residence before or after traveling to the place of local government business.

The OSA requested a copy of the City's written vehicle policy and was provided the City of Lakeland Employee Handbook. Section 3.4 of the Employee Handbook states, "Vehicles are only to be used by employees conducting official City business. These vehicles may not be used for personal business." The Employee Handbook does not address where vehicles are to be stored when not in use or who is authorized to use the vehicles.

City staff informed the OSA that the City’s practice was to store vehicles at either of the two water treatment facilities, but employees were allowed to take a vehicle home if they were on call during off hours.

The OSA requested a listing of all City-owned vehicles for 2017 through October 2019, including any sold or purchased in that time; who used the vehicles; and the mileage of the vehicles as of October 2019 (or at the time of sale). In addition, the OSA obtained and reviewed the City’s insurance coverage as of October 2019 over the vehicles provided in the listing. A summary of this information follows:

<b>Vehicle</b>	<b>Date Sold</b>	<b>Mileage</b>	<b>Individuals Covered</b>	<b>Insurance Coverage</b>
1999 Paris Utility Trailer	N/A	N/A	James Nordstrom, Wayne P., James Stanton, Mary Stanton, Simon Wirth	Liability, \$250 Deductible, \$0 Premium
2005 Ford F-250	N/A	102,135	Josh Conroy, James Nordstrom, Wayne P., James Stanton, Simon Wirth	Liability, \$250 Deductible, \$124 Premium
2008 Mope Trailer	N/A	N/A	James Nordstrom, Wayne P., James Stanton, Mary Stanton, Simon Wirth	Physical Damage, \$250 Deductible, \$24 Premium
2014 Ford	November 30, 2017	15,876	None	Liability, \$250 Deductible, \$363 Premium (at the time of sale)
2018 Chevrolet Colorado	N/A	17,020	James Stanton	Liability and Physical Damage, \$250 Deductible, \$292 Premium

City staff informed the OSA that authorization for use of City vehicles was done verbally by the Public Works Director.

The OSA obtained and reviewed the general ledger and 2017 unaudited financial statements. From this review, it was determined that the proceeds from the sale of the 2014 Ford truck (\$35,000) were recorded on November 30, 2017, in general ledger account 43400 (Vehicles & Equip Reserve). This payment was reported in the 2017 unaudited financial statements as part of the miscellaneous revenue balance in the Public Works Fund.

Recommendation

We recommend the City’s Employee Handbook be updated to address where vehicles are to be stored when not in use and who is authorized to use the vehicles. We also recommend the City implement procedures to ensure vehicles are only used for their intended purpose, such as having users declare that intention and tracking mileage, and approval over vehicle use be documented and completed by employee supervisors or the City Council for independent contractors. Vehicles should be kept in the possession of the City as much as possible.

## 7. Credit Card Usage

The petitioners requested information regarding the City's credit card policy as well as users of City credit cards and their spending limits.

Under Minn. Stat. § 471.382, a city council "may authorize the use of a credit card by any city . . . officer or employee otherwise authorized to make a purchase on behalf of the city . . . ." The statute states that if a city officer or employee "makes or directs a purchase by credit card that is not approved by the city council . . . the officer or employee is personally liable for the amount of the purchase." Finally, "[a] purchase by credit card must otherwise comply with all statutes, rules, or city . . . policy applicable to city . . . purchases."

The OSA knows of no authority for a city to authorize use of a city credit card by an independent contractor.

The OSA requested and reviewed the City's written Credit Card Use Policy, established by City Council Resolution No. 2017-39. The City's Credit Card Use Policy includes the following requirements:

- "City employees or otherwise authorized City Official who are designated by the City Council are authorized to use or direct use of the City of Lakeland credit card."
- "Credit cards will carry a card limit not to exceed \$10,000."
- "City credit cards will be issued through the City Clerk's office. All cards must be returned in-person to the City Clerk or designee when renewed, revoked, or upon leaving employment with the City. A lost or stolen credit card must be reported immediately to the Authorized Officer and the City Clerk or designee."
- "No City employee or City Official will intentionally use a City of Lakeland credit card for personal purchases. Unauthorized use or abuse of a city credit card will result in disciplinary action, up to and including termination of employment with the City."
- "Supporting documents and/or invoices will be submitted to the Treasurer promptly after a purchase has been made. The employee or City Official will stipulate on the receipts and/or invoices a description of what the purchase is for. All documents and/or invoices will be coded by the City Treasurer."
- "Authorized persons will receive and sign the acknowledgment form regarding credit card use prior to issuance. Original signed copies of said acknowledgement form will be returned and filed in the City Clerk's office."

The OSA requested a listing of authorized users of City credit cards and applicable spending limits for 2017 through October 2019. The following is a summary of that information:

<u>Authorized User</u>	<u>Positions Held</u>	<u>Spending Limit</u>
Thomas Niedzwiecki	City Treasurer	\$ 5,000
James Stanton	Acting Mayor/Public Works Commissioner	10,000
Jennifer Hutchins-Farrell	City Clerk	10,000
Andy Erickson	City Clerk/City Administrator	5,000
Kate Piscitello	City Clerk	Not Provided

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019. No individual credit card purchases exceeded the authorized users' spending limits. The OSA identified and summarized credit card purchases as follows:

<u>Authorized User</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Thomas Niedzwiecki	\$ -	\$ 144.00	\$ -
James Stanton	-	14,507.38	2,746.62
Jennifer Hutchins-Farrell	-	-	-
Andy Erickson	-	7,764.05	1,835.72
Kate Piscitello	-	-	-

The OSA requested signed acknowledgement forms for all authorized users. City staff were only able to locate and provide the acknowledgement form for Mr. Thomas Niedzwiecki.

City staff informed the OSA that the credit card account was canceled on August 1, 2019, and the City no longer uses credit cards.

**8. Check Writing Policy and Procedures**

The petitioners requested information regarding the City's checking accounts, including authorized signors, the number of checkbooks, and statutory requirements over check signors.

The OSA requested a copy of a written check writing policy, and one was not provided. City staff informed the OSA that the City has two checking accounts at US Bank, one is the City's primary checking account and the other is the City Clerk checking account, used as a petty cash account. The primary checking account requires two signatures for vendor checks and one signature for payroll checks. Typically, the City Treasurer signs the payroll and vendor checks, and the second signature is obtained for vendor checks at the Council meeting after approval by the City Council. The City Clerk checking account requires one signature.



Over the period January 1, 2017 through October 2019, the City had the following authorized check signors:

Authorized Signor	Position(s) Held	Date Added	Date Removed
Richard Glasgow	Deputy Mayor/Mayor	January 30, 2015	N/A
Thomas Niedzwiecki	City Treasurer	Prior to January 30, 2015	August 13, 2019
Amy Williams	Unknown	Unknown	March 21, 2017
James Stanton	Acting Mayor/Public Works Commissioner	Prior to March 21, 2017	Unknown
Jennifer Hutchins-Farrell	City Clerk	March 21, 2017	March 26, 2018
Sandie Thone	City Clerk	Unknown	March 21, 2017
Kate Piscitello	City Clerk	May 29, 2018	September 19, 2019
Georgeann Janisch	City Treasurer	Prior to September 19, 2019	N/A
Andy Erickson	City Clerk/City Administrator	September 19, 2019	N/A

City staff informed the OSA that currently, one checkbook is located at the Golden Valley location of CarlsonSV, the firm that employs the City Treasurer, with a few checks at the Amery location of CarlsonSV. Previously, these checks were located with the prior City Treasurer. The checkbook for the City Clerk checking account is located at City Hall, Clerk’s Office.

Minnesota Statutes, section 412.271, subdivision 1, requires that city payments by check be made by an order drawn by the mayor and clerk upon the treasurer. Each order “shall be so drawn that when signed by the treasurer . . . it becomes a check on the city depository.” Minn. Stat. § 412.271, subd. 3. In addition, Minn. Stat. § 412.271, subd. 8, does not allow the City Council to delegate its authority for paying certain claims when the City does not have an independent audit of its annual financial statements.

Recommendation

We recommend that all City checks, for both the primary checking account and the City Clerk checking account, be signed by the Mayor, City Clerk, and City Treasurer, as required by Minn. Stat. § 412.271, subds. 1 and 3.

**9. City Laptops, iPads, and Cell Phones**

The petitioners requested information regarding authorization for and use of the laptop purchased for the Water Department. In addition, the petitioners requested information regarding the number of iPads and cell phones supplied by the City in the Public Works and Water Departments, along with any related City policies.

The OSA requested a listing of all laptops, iPads, and cell phones owned by the City. City staff informed the OSA that it had three laptops, two iPads, and four cell phones from January 2017 through October 2019. Of the three laptops, one was originally kept at the Water Department to perform water billings. That laptop was being used by the City Clerk for City business near the end of 2019. Prior to the City Clerk using this laptop, a new laptop had been purchased to replace and update the laptop; however, near the end of 2019, it was being used by the Interim City Administrator.

City staff informed us that currently, no one uses iPads or cell phones in the Public Works and Water Departments. The iPads were received free by the City with the purchase of cell phones and have never been used. The iPads are stored at City Hall. Of the four cell phones, currently, one is being used by the City Clerk, one is not being used and is stored at Pump House 2, and the location of the remaining two cell phones is unknown.

The OSA requested a written policy on employee usage of City equipment, as well as a written policy addressing approval for users of laptops, iPads, or cell phones. The OSA was provided the City of Lakeland Employee Handbook. Section 3.5 of the Employee Handbook states, “No employee shall use City equipment, vehicles, facilities or materials for personal purposes except as allowed by established City policy. No personal business of any kind should be conducted during business hours.” It also states, “When the City has purchased cellular phones for those employees who need to contact others or who need to be contacted by others while outside of City buildings, cellular phones are considered City equipment and are to be used by employees to conduct their course of business in a professional manner.” City staff informed us that it does not have a policy addressing approval for users of laptops, iPads, or cell phones.

#### Recommendation

We recommend the City’s Employee Handbook be updated to address where laptops, iPads, and cell phones are to be stored when not in use and who is authorized to use them. We also recommend the City implement procedures to ensure laptops, iPads, and cell phones are only used for their intended purpose, such as having users declare that intention; and approval of laptop, iPad, and cell phone use be documented and completed by employee supervisors or the City Council for independent contractors. Laptops, iPads, and cell phones should be kept in the possession of the City as much as possible. Property no longer needed by the City should be disposed of pursuant to state law.

### **10. Quality Avenue/3rd Street Reconstruction Project**

The petitioners requested information regarding the activity and progress of the Quality Avenue/3rd Street Reconstruction project, as well as the status of the project in comparison to budgeted expenditures.

The OSA requested approval, the approved budget, and the construction estimate over the Quality Avenue/3rd Street Reconstruction project. The OSA reviewed City Council meeting minutes and presentations done by Short Elliott Hendrickson (SEH), Inc., (the City Engineer is employed by this company) available on the City’s website. In addition, the OSA was provided and reviewed correspondence with the City Engineer, City Council meeting minute excerpts, and bidding documents. From this review, the OSA developed the following timeline:

<b>Date</b>	<b>Activity</b>
January 19, 2016	Discussions over drainage issues began.
February 16, 2016	The prior Public Works Director reported working with the prior City Engineer regarding the drainage and reconstruction of Quality Avenue. The prior City Engineer reported that he was hoping to present the Quality Avenue project to City Council.
May 17, 2016	City Council workshop held.
June 29, 2016	Public open house held.
January 17, 2017	The Engineering Report presented at the City Council meeting noted that the City completed a drainage report in 1990 (updated in 2006) that called for a number of improvements beginning at Quality Avenue and extending to 3rd Street. The City Council meeting minutes noted that the 2018 Street Improvement Project was scheduled to be the final project to tie all drainage improvements together.
May 16, 2017	City Council meeting minutes noted 2018 target date. City Council workshop held.
August 15, 2017	City Council meeting minutes noted City Engineer was to research Cully Park as a ponding area, which would delay the project until 2019. It was noted that this would provide additional time for resident input in 2018.
September 19, 2017	City Council agreed to delay planning to 2018 and construction to 2019 at the recommendation of SEH. SEH recommended delay to early 2019 being the best months for bidding, to allow more time for public involvement and City exploration of design options, the road condition of Quality Avenue and 3rd Street, and the City's budget did not cover the cost of any pedestrian facilities, so a delay would allow the City more time to save additional funds. Construction was estimated to occur April through October 2019.
March 8, 2018	Public open house held.
June 21, 2018	Public open house held.
July 17, 2018	The Engineering Report presented at the City Council meeting stated they are working with the public on concerns.
September 13, 2018	Public open house held.
September 18, 2018	City Council meeting packet noted project estimate and bids to be prepared for \$1.1 million.
November 11, 2018	On-site open house held.
May 2, 2019	City Council meeting minutes noted three bids were received for the project on March 27, 2019, the lowest from Harddrives, Inc., at \$1,404,000. The City Council expressed concerns over project cost and the depletion of Public Works Fund reserves.
June 18, 2019	City Council meeting minutes noted City Engineer would regroup with the contractor regarding revised construction dates if the contractor would still honor the bid after the delay.
July 16, 2019	The Engineering Report presented at the City Council meeting noted the contractor was not able to start the project until spring 2020.

The \$1,404,000 bid received from Harddrives, Inc., was broken out as follows:

<b>Project</b>	<b>Work Item</b>	<b>Estimated Cost</b>
1A	Quality Avenue	\$ 1,001,000
1B	3rd Street South	183,000
2	Outlot A Storm Water Basin	158,000
3	Humphries Park Storm Water Basin	62,000

SEH recommended the following approach for the City, based on the bid received and the City’s funds available:

<u>Year</u>	<u>Work Item</u>	<u>Estimated Cost</u>	<u>City Funds</u>	<u>Balance</u>
2019	Projects 1A and 3	\$ 1,063,000	\$ 1,135,000	\$ 72,000
2020	Project 2	158,000	135,000	(23,000)
2021	Project 1B	183,000	135,000	(48,000)
	<b>Total</b>	<u>\$ 1,404,000</u>	<u>\$ 1,405,000</u>	<u>\$ 1,000</u>

Actual costs through October 2019 total \$217,738.34. City staff informed us that the majority of the costs will be incurred in 2020.

**11. City Staffing**

The petitioners requested information on whether the City’s appointment of the City Treasurer and City Clerk as independent contractors is allowable by Minnesota statutes, as well as a listing of the City’s staff, identifying between independent contractors and employees. For those hired as independent contractors, the petitioners requested information on whether wages were approved and had corresponding agreements.

**A. City Clerk and City Treasurer as Independent Contractors**

As noted above, the City entered into “independent contractor” contracts with its Clerk and Treasurer. The classification of a person performing services for a city as either an employee or an independent contractor depends on a number of criteria adopted by the Internal Revenue Service, the U.S. Department of Labor, the Social Security Administration, the Minnesota Department of Employment and Economic Development (unemployment insurance), the Minnesota Department of Labor and Industry (workers’ compensation), and the Public Employees Retirement Association (PERA).

In order to provide more protection for employees misclassified as independent contractors, the Minnesota legislature in 2019 enacted “wage theft” laws. *See* 2019 Minn. Laws 1st Special Session, ch. 7. Pursuant to this legislation, the Minnesota Attorney General has created a new department to enforce these laws called the Wage Theft Unit. Other state and federal agencies also have an interest in the proper classification of employees.

The misclassification of employees as independent contractors can result in City liability for pension contributions to PERA, employer, and un-withheld employee state and federal taxes, Social Security, Medicare; as well as exposure to additional taxes, penalties and interest, additional wage and overtime obligations under the Fair Labor Standards Act, workers’ compensation and unemployment liabilities, and the possibility of wrongful termination suits.

Lakeland is a statutory city, for which the offices of City Clerk and City Treasurer are created by statute, with the duties of each office set forth in statute. See Minn. Stat. §§ 412.581 (Officers), 412.151 (Duties of Clerk), 412.201 (Execution of Instruments), and 412.141 (Treasurer’s Duties). Applying the various factors to these two offices, it is our conclusion that a city is not authorized to fill these positions using independent contractor contracts and must fill these position with employees and officers of the City.

This is also the conclusion of the League of Minnesota Cities (LMC), of which the City of Lakeland is a member. An Informational Memo prepared by the LMC to assist cities in the proper classification of their employees states that the positions of city clerk and city treasurer cannot be classified as independent contractors “based on IRS and Social Security regulations. . .” See “Employee or Independent Contractor: Legal Implications and Ramifications,” LMC Information Memo (July 25, 2017), p. 6.

Further, the Minnesota Statutes governing enrollment in PERA specifically define “public employee” to include “persons who are appointed, employed, or contracted to perform governmental functions that by law or local ordinance are required of a public officer, including but not limited to: (i) town and city clerk and treasurer,” (Emphasis added). Minn. Stat. § 353.01, subd. 2a(a)(3)(i). Further, this statute provides: “Any person performing the duties of a public officer in a position defined in subdivision 2a, paragraph (a), clause (3), is not an independent contractor and is not an employee of an independent contractor. Minn. Stat. § 353.01, subd. 2b(b) (Emphasis added).

### Recommendation

We recommend that the City, with the assistance of legal counsel as appropriate, properly recognize and appoint its Clerk and Treasurer as officers and employees of the City as required for the purposes of state and federal taxation, Social Security, Medicare, and membership in PERA and all other benefits afforded employees under U.S. and state law. Because other City employees may have been misclassified as independent contractors by the City, we are referring this matter to the Minnesota Attorney General’s Wage Theft Unit and the Minnesota Department of Employment and Economic Development for further review, as they deem appropriate.

### B. Oath of Office

Minnesota Statutes, section 358.05 requires every person elected or appointed to a public office take and subscribe the oath of office prior to exercising any privilege of such office. Minnesota Statutes, section 412.111 states that, “[t]he council may require any officer or employee to furnish a bond conditioned for the faithful exercise of duties and the proper application of, and payment upon demand of, all moneys officially received.”

City staff informed the OSA that the current City Treasurer and City Clerk did not take an oath of office. In addition, City staff informed us that the City Treasurer is believed to have furnished a bond through the firm she is employed with, and the City Clerk is not believed to have furnished a bond.

Recommendation

We recommend persons elected or appointed as officers of the City take an oath of office, and the City Treasurer and City Clerk furnish a bond conditioned for the faithful performance of their duties and the proper application of, and payment upon demand of, all moneys officially received.

C. Other City Staff and Independent Contractors

During 2017 through September 30, 2019, the City had the following officers/employees:

<b>Years</b>	<b>Department</b>	<b>Officer/Employee</b>
2017	Public Works, Water	Joshua Conroy
2017 - 2019	Deputy Clerk, City Clerk, Administration, Public Works, Water	Andy Erickson
2017 - 2019	City Council	Tamara Fahey
2017 - 2019	Mayor	Richard Glasgow
2017	Public Works, Water	Thomas Glasgow
2017 - 2018	Deputy Clerk, City Clerk, Administration, Water	Jennifer Hutchins-Farrell
2017	Water	Matthew Kline
2017	Building and Plant	Jeffrey Kokaisel
2017 - 2018	Public Works, Water	Abigail Nordstrom
2018	General Fund	Claudette Nordstrom
2017 - 2018	Public Works, Water	Emily Nordstrom
2017 - 2018	Public Works, Water	James Nordstrom
2017 - 2019	City Council	Shayne Orning
2017 - 2019	City Council	Joseph Paiement
2017 - 2019	City Council	James Stanton
2019	City Council	Michael Thron
2017	City Clerk	Sandra Thron
2019	City Council	Lisa LaRoque Williams

City staff informed the OSA that employees do not have contracts with the City.

During 2017 through September 2019, the City had the following independent contractors:

<b>Years</b>	<b>Department or Position</b>	<b>Independent Contractor</b>
2019	City Treasurer	Georgeann Janisch
2019	M-Files Clerk, Interim Deputy Clerk	Pamela Kinde
2017 - 2018	Consultant	Mark Nagel
2017 - 2019	City Treasurer	Thomas Niedzwiecki
2018	City Clerk	Claudette Nordstrom
2017 - 2019	City Clerk	Kate Piscitello
2017 - 2019	City Planner/Zoning Administrator, Janitor, Builder/Public Works Administrator	James Stanton
2018 - 2019	Public Works	Mary Stanton
2018	Meter Installs, Hydrant Flushing, Brush Cleanup	Wayne Thisius
2017	Administration, City Hall	Doug Tollefson
2018 - 2019	Public Works, Water	Simon Wirth

The OSA was provided and reviewed copies of the City’s agreements with independent contractors. The OSA identified 138 payments to independent contractors in 2017, 178 payments in 2018, and 157 payments through September 30, 2019. The OSA selected a sample of five payments in 2017, ten payments in 2018, and ten payments in 2019 to test that services were approved and were charged at the agreed-upon rate. In testing the sample, the OSA noted the following:

- In one instance, supporting documentation was not provided to the OSA.
- In six instances, an agreement was not provided to the OSA to support services provided at the time they were performed.

See item 5 on pages 5 through 9 for separate testing performed over payments to Mr. Stanton.

Recommendation

We recommend that a written contract be documented for services performed for the City’s behalf by any individual not employed by the City. When such services are performed, a detailed accounting should be provided to the City for its review to ensure services were as agreed upon.

**12. City Newsletter**

The petitioners requested information regarding costs and staff associated with preparing the City newsletter.

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 20, 2019. From this review, it was noted that the City paid \$6,641.74 in expenses and received \$2,744.67 from sponsors, for a total net expense of \$3,897.07 in 2017. In 2018, the City paid \$7,007.00 in expenses and received \$600.00 from sponsors, for a total net expense of \$6,407.00. The OSA was provided the 2019 general ledger through the end of September and projected total expenses noted from January through September to year-end. In 2019, the City will pay \$6,276.00 in projected expenses and did not anticipate receiving any funds from sponsors, for a total net projected expense of \$6,276.00.

City staff informed the OSA that currently, the City Clerk prepares and distributes the City newsletters. For a period of time from the end of 2017 to approximately July 2018, the Mayor edited the newsletters, but the City Clerk was still involved in preparing and distributing newsletters.

**13. City Website**

The petitioners requested information regarding the City's website.

City staff informed the OSA that, during 2017, 2018, and from January 1 through November 20, 2019, maintenance of the City's website was done by the City or Office Clerk, and technical support was provided by GovOffice. The Mayor launched a new City website using GoDaddy and Wordpress. The Mayor designed and did the initial updates to this site. Afterwards, management of the site went to the Deputy City Clerk or City Clerk.

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, and identified \$1,250.00 in payments to GovOffice and \$805.84 in payments pertaining to the website using GoDaddy. In addition, \$179.55 in payments for "DNS hosting" were made, but City staff were uncertain if this pertained to the City's website or not.

**14. City Contracting**

The petitioners requested information regarding the City's contracting, including if contracts were properly bid when required and City Council approval for contract amendments or overruns, as applicable.

The OSA was provided and reviewed copies of all contracts entered into during 2017, 2018, and from January 1 through November 20, 2019. Excluding contracts with independent contractors and contracts pertaining to the City Hall remodel and Quality Avenue/3rd Street Reconstruction project, a total of 20 contracts were provided.



Minnesota Statutes, section 471.345 requires contracts estimated to exceed \$175,000 (\$100,000 for contracts entered into prior to August 1, 2018) be solicited with sealed bids. In reviewing the contracts provided and the 2017, 2018, and January 1 through September 30, 2019, general ledger, the OSA did not identify any related contracts that exceeded this threshold. Minnesota Statutes, section 471.345 requires contracts estimated to exceed \$25,000, but not to exceed \$175,000 (\$100,000 for contracts entered into prior to August 1, 2018), be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible. The OSA identified four vendors whose total payments by the City exceeded \$25,000 where sealed bids or quotations may have been required. City staff informed the OSA that other proposals were considered in one of the four contracts; otherwise, there was no formal request for proposal process or solicitation of bids or quotations.

See item 3 on pages 2 through 3 for separate testing performed over contracting for the City Hall remodel. The Quality Avenue/3rd Street Reconstruction project was properly bid as noted in item 10 on pages 14 through 16.

**15. City Council Meetings**

The petitioners requested information regarding City Council meetings, noting which meetings were canceled, along with City Council compensation for attending meetings. In addition, the petitioners requested information regarding costs and equipment associated with recording City Council meetings and where the equipment is stored.

During 2017 through October 24, 2019, the City Council held the following meetings:

<b>Date</b>	<b>Meeting</b>
January 6, 2017	Special Meeting
January 17, 2017	Regular Meeting
February 21, 2017	Regular Meeting
February 28, 2017	Special Meeting
March 21, 2017	Regular Meeting
April 11, 2017	Special Meeting
April 18, 2017	Regular Meeting
May 16, 2017	Regular Meeting
June 20, 2017	Regular Meeting
July 18, 2017	Regular Meeting
August 15, 2017	Regular Meeting
September 19, 2017	Regular Meeting
October 17, 2017	Regular Meeting
November 21, 2017	Regular Meeting
December 19, 2017	Regular Meeting
January 16, 2018	Regular Meeting
February 20, 2018	Regular Meeting
March 20, 2018	Regular Meeting
April 17, 2018	Regular Meeting
May 15, 2018	Regular Meeting

<b>Date</b>	<b>Meeting</b>
June 6, 2018	Special Meeting
June 19, 2018	Regular Meeting
July 17, 2018	Regular Meeting
August 1, 2018	Special Meeting
August 21, 2018	Regular Meeting
September 18, 2018	Regular Meeting
October 16, 2018	Regular Meeting
November 20, 2018	Regular Meeting
December 18, 2018	Regular Meeting
January 15, 2019	Regular Meeting
February 19, 2019	Regular Meeting
March 19, 2019	Regular Meeting
April 4, 2019	Special Meeting
April 16, 2019	Regular Meeting <i>Meeting Canceled</i>
April 25, 2019	Special Meeting <i>Meeting Canceled</i>
April 26, 2019	Special Meeting <i>Meeting Canceled</i>
May 2, 2019	Special Meeting
May 21, 2019	Regular Meeting <i>Meeting Canceled</i>
May 28, 2019	Special Meeting <i>Meeting Canceled</i>
May 31, 2019	Special Meeting
June 18, 2019	Regular Meeting
July 16, 2019	Regular Meeting
July 25, 2019	Special Meeting
August 20, 2019	Regular Meeting
September 10, 2019	Special Meeting
September 17, 2019	Regular Meeting
October 3, 2019	Special Meeting
October 15, 2019	Regular Meeting

City staff informed the OSA that City Council members receive an annual salary of \$2,300.04, and the Mayor receives an annual salary of \$3,750.00. The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, and confirmed these amounts. As salaried officials, compensation is the same regardless of the number of meetings attended.

City staff informed the OSA that annually, the City pays for the services of a videographer to record City Council meetings. In 2018, the City purchased new video and audio equipment. The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, and identified the following costs:

	<u>2017</u>	<u>2018</u>	<u>2019</u>
Videographer	\$ 1,220.00	\$ 1,525.00	\$ 2,015.69
Video/Audio Equipment	-	24,566.56	-

City staff informed the OSA that the video and audio equipment is stored and kept locked at City Hall. Currently, only the videographer has access to the video and audio equipment in order to record City Council meetings.

## **16. Data Requests**

The petitioners requested information regarding the fees charged to citizens by the City for data requests, and to report requirements of applicable Minnesota statutes.

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, and noted one data request recorded on March 31, 2019, for a total cost to the citizen of \$109.50. The citizen had submitted two data requests on the same day. City staff confirmed that this was the only data request received by the City in this time frame. City staff informed the OSA that the charge was for a copy of the current credit card policy and a listing of authorized users and a copy of the current check writing policy and a listing of authorized users, a copy of a contract between the City and SEH, and a copy of the Employee Handbook.

The OSA requested a copy of the City's written policy for data requests and was provided the City's 2019 Fee Schedule. Per the Fee Schedule, the City charges \$0.25 per page for black and white copies and \$0.50 per page for color copies. The City of Lakeland Data Request Form states \$27.50 per hour is charged for staff time if a request is extensive.

The OSA obtained and reviewed documentation supporting the City's receipt of funds from the data request. The request for items listed was documented on the Data Request Forms with the calculation/documentation of costs separated into three items. The City calculated the costs as follows:

- \$56.00 for a copy of the current credit card policy and a listing of authorized users and a copy of the current check writing policy and a listing of authorized users. Four pages were documented as provided to the citizen at a cost of \$1.00 for four copies and a \$55.00 charge for staff time.
- \$28.50 for a copy of a contract between the City and SEH consisting of a \$27.50 charge for staff time and \$1.00 for four copies.
- \$25.00 for a copy of the Employee Handbook, which did not have further detail. The OSA requested a copy of the Handbook; the Handbook provided by the City was 97 pages.

Minnesota Statutes, section 13.03 requires government entities to establish procedures for complying with data requests and states that governmental entities “may require the requesting person to pay the actual costs of searching for and retrieving government data, including the cost of employee time, and for making, certifying, and electronically transmitting copies of the data.” It also states that, “if 100 or fewer pages of black and white, letter or legal size paper copies are requested, actual costs shall not be used, and instead, the responsible authority may charge no more than 25 cents for each page copied. If the responsible authority or designee is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.”

The amounts charged by the City appear to be inconsistent with statute. Costs were calculated and documented by the City as three items, each for fewer than 100 pages. The costs charged, however, were based on a mix of both \$0.25 per page and staff time.

Recommendation

We recommend that the City request further information on its data practices policies and procedures from the Data Practices Office (DPO) of the Minnesota Department of Administration, which provides informal advice and can issue advisory opinions on these matters. Additionally, the City should consider revising its Data Request Form to communicate that staff time to make copies is applied to requests over 100 pages.

**17. Bulk Water Sales**

The petitioners requested information regarding the City’s bulk water sales.

City staff informed the OSA that the City does not charge a different fee for bulk water sales. The City charges \$2.65 for 1,000 gallons of water. The OSA obtained and reviewed the City’s 2019 Fee Schedule and confirmed the rate charged. Currently, the City receives water sales revenue from over 30 vendors, the primary vendors being Harddrives, Inc., and Chlorinated Water Supply.

The OSA obtained and reviewed the general ledger from January 1, 2017 through September 30, 2019, as well as the 2017 and 2018 unaudited financial statements. From that review, the following was noted for water sales:

	<u>2017</u>	<u>2018</u>	<u>2019</u>
Water Utility Billings	\$ 232,133.98	\$ 301,005.27	\$ 266,371.73
Hydrant Permit Fees	115.00	-	-

## CONCLUSION

We were not engaged to and did not perform an audit, the objective of which would be the expression of an opinion on specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters may have come to our attention that we would have reported to you.

This report has been prepared solely for the information and use of the petitioners of the City of Lakeland, Mayor, and City Council members, but is a matter of public record, and its distribution is not limited.

*/s/Julie Blaha*

JULIE BLAHA  
STATE AUDITOR

*/s/Greg Hierlinger*

GREG HIERLINGER, CPA  
DEPUTY STATE AUDITOR

January 21, 2020