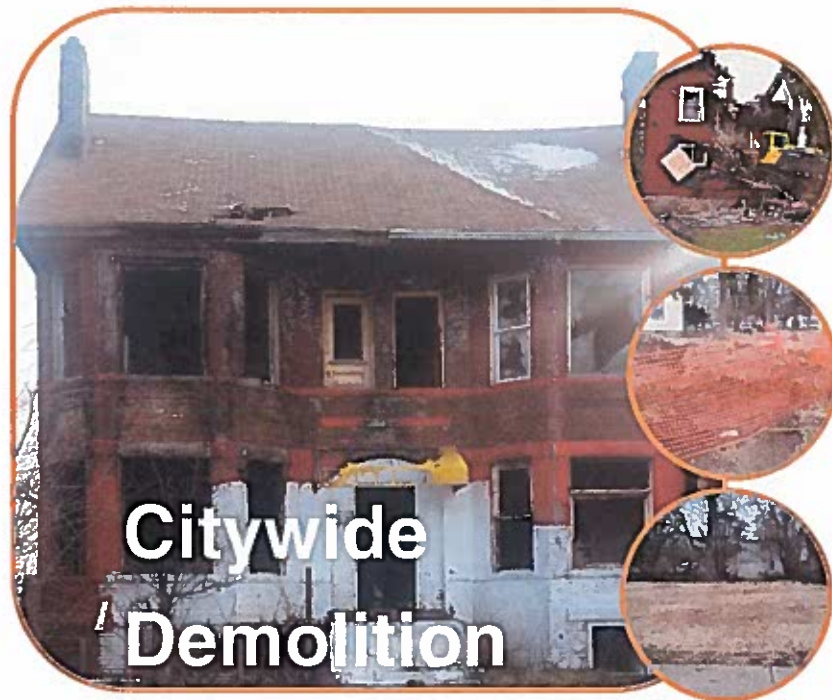


**City of Detroit**

**OFFICE OF THE AUDITOR GENERAL**

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**Audit of Demolition Activities  
Interim Report**

**April 2016**



**City of Detroit**  
**OFFICE OF THE AUDITOR GENERAL**  
2 WOODWARD AVENUE, SUITE 216  
Detroit, Michigan 48226  
PHONE: (313) 224-4558  
FAX: (313) 224-4091  
[www.detroitmi.gov](http://www.detroitmi.gov)

Mark W. Lockridge  
AUDITOR GENERAL

**MEMORANDUM**

**DATE:** April 11, 2016

**TO:** Honorable City Council

**FROM:** Mark W. Lockridge, CPA *MWL*  
Auditor General

**RE:** Interim Report on the Audit of Demolition Activities

**CC:** Mayor Mike Duggan  
David Bell, Interim Director, Buildings Safety Engineering and  
Environmental Department  
Carrie Lewand-Monroe, Executive Director, Detroit Land Bank Authority  
Dave Manardo, Executive Director, Detroit Building Authority, and Group  
Executive, Operations

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Attached for your review is an interim report from the Office of the Auditor General (OAG) on the Audit of Demolition Activities as requested by City Council President Brenda Jones on October 8, 2015.

This is a limited scope performance audit that encompasses demolition and demolition related activities performed within the City of Detroit.

Copies of all of the Office of the Auditor General reports can be found on the City's Website: View City of Detroit Reports at <http://www.detroitmi.gov/How-Do-I/View-City-of-Detroit-Reports/Auditor-General-Audits>.

**AUDIT OF DEMOLITION ACTIVITIES  
INTERIM REPORT – APRIL 2016**

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## **EXECUTIVE OVERVIEW**

The purpose of issuing this Interim Audit Report at this time is in response to Council President's memorandum relative to a Demolition Audit update. Therefore, included in this report is a summary of the audit work performed to date and the audit work planned to be performed in the near future; an appendices section (A –D) for informational purposes, and one finding. Although there are other existing conditions that may prove to be worthy of reporting, they are not included in this report because they are not fully developed and evidence is still being collected and evaluated.

The original request by Council President consisted of an audit of all demolition activity of the City of Detroit. During the initial planning stages of this audit we discovered that there are at least nine entities that have operations that encompass varying amounts of demolition activity. We discovered that demolition activity in the City is convoluted, complex, and will require a considerable amount of time to audit. We limited the scope of the audit to focus on activities and transactions deemed as high risk in terms of internal controls, and safeguarding of assets, and those areas where there is a high probability of misappropriation and/or fraud.

Prior to the request for this audit, the local media reported multiple articles indicating the possibility of abuse and/or fraud in terms of demolition costs, the bidding and vendor selection processes, and other potentially unacceptable activities. Some Council Members expressed that they wanted an update primarily to have some assurance that we are working toward providing answers that so many citizens and others are interested to receive.

This report is published in accordance with Generally Accepted Government Auditing Standards (GAGAS) as compiled by the United States Government Accountability Office (GAO). The Office of the Auditor General does not issue audit findings without sufficient and persuasive evidence to support the findings and conclusions in relation to the audit objectives. However, GAGAS does provide for the early communication of deficiencies to those charged with governance or management because of their relative significance and the urgency for corrective follow-up action. During the audit, if we conclude that either fraud or abuse has occurred, or is likely to have occurred, which is significant within the context of the audit objectives, we will report the matter as a finding in an expedited manner.

In conclusion, this interim audit report is meant primarily to be informative in nature, except for the inclusion of one condition that is fully developed as a finding. The audit purpose, scope, objectives, approach, and methodology are described on the following pages. Included in this section is an overview of work completed to date and planned audit focus areas. The scope of this audit is the period January 1, 2014 through September 30, 2015 and background information is located in the appendices which includes a history and timeline of demolition activities in the City.

## **AUDIT PURPOSE, SCOPE, OBJECTIVES, APPROACH AND METHODOLOGY**

### **Audit Purpose**

The Audit of Demolition Activity will be performed in accordance with the Office of the Auditor General's charter mandate to make audits of the financial transactions, performance and operations of City agencies based on an annual risk-based audit plan prepared by the Auditor General, or as otherwise directed by the City Council, and report findings and recommendations to the City Council and the Mayor.

### **Audit Scope**

This is a limited scope performance audit that encompasses demolition and demolition related activities performed by the:

1. Detroit Land Bank Authority (herein referred to as the Land Bank);
2. Detroit Buildings Authority (DBA);
3. Building Safety, Engineering and Environmental Department (BSEED);
4. Housing Revitalization Department (HRD);
5. Planning and Development Department (PDD);
6. General Services Division (GSD);
7. Offices in the Office of Chief Financial Officer (OCFO):
  - a. Office of Contracting and Procurement (OCP);
  - b. Office of Financial Planning and Analysis (OFP&A);
  - c. Assessor.

The audit focuses on the citywide demolition activity administered by these agencies, departments, and divisions for the period January 1, 2014 through September 30, 2015. The Office of the Auditor General (OAG) reserves the right to examine prior fiscal years outside of the aforementioned scope based on information discovered during the audit.

### **Audit Objectives**

- To determine if the Land Bank is in compliance with the terms of the Memorandum of Understanding, and all amendments between the Land Bank and the City;
- To determine if DBA is in compliance with the Memorandum of Understanding between DBA and the City;
- To determine if the Land Bank is in compliance with all contracts between DBA and the City related to demolition activity;
- To determine if there is proper oversight of demolition contracts;
- To analyze and report on the cost of Citywide demolition activities, including all revenues and expenditures;

- To determine if the City's Fire Insurance Escrow Fund is being used in accordance with related laws and if there are proper controls in place for the related funds;
- To determine if BSEED's dangerous buildings and demolition processes are in compliance with relevant laws and policies.

### **Audit Approach And Methodology**

The audit will be performed in three phases. The timing and execution of these phases may overlap given the nature and complexity of this audit:

#### **1. Preliminary Preparation and Planning**

During this phase, the auditors performed the following preliminary preparation procedures and planning steps to include:

- Conducted an audit-planning meeting to determine the scope and audit objectives, and to determine the financial transactions and/or areas to audit;
- Read prior audit report(s) and reviewed prior audit workpapers;
- Reviewed the City Charter, City ordinances, Municipal Manual, financial reports, budget reports, the CAFR, organization charts, Finance Directives, state laws, and federal regulations and other reports pertinent to demolition;
- Reviewed documentation, made observations, and developed an audit program that documents the nature and extent of audit procedures.

#### **2. Fieldwork**

##### **Overview of Fieldwork Work to Date**

- Conducted Entrance Conferences with the Land Bank, DBA, and BSEED Management (10/21/2015-11/13/2015);
- Conducted Internal Control Questionnaires (ICQ's) with all top level management at the Land Bank, DBA, and BSEED, and interviewed other City personnel involved with demolition activities. This involved twenty-two (22) separate interviews and over 300 audit hours (11/17/2015-2/24/2016):

Interviews are the most common technique for planning, evaluating the design of controls, and reporting results. These are essential for putting observations into perspective so auditors can reach the right conclusions, and what auditors learn in interviews is often the most meaningful information obtained during the audit. ICQ's are efficient tools for determining whether specified control procedures are in place.<sup>1</sup>

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<sup>1</sup> The Institute of Internal Auditor Research Foundation. *Sawyers Guide for Internal Auditors*. (6<sup>th</sup> Ed. Vol. 2 p 119).

- Requested and received, sorted and catalogued hundreds of documents from each entity ranging from organizational charts, memorandums of understandings, State, and Federal demolition compliance requirements, funding sources and amounts, number of houses demolished, to contracts prices and amounts paid to contractors. We have received limited information on policies, procedures, and internal controls surrounding the systems which house the physical and financial information related to properties owned by the Land Bank:

Because interviews only provide testimonial evidence, what auditors learn in interviews usually must be corroborated with stronger evidence before it can be used to support conclusions.<sup>2</sup>

- Completed detailed walkthrough of the Land Bank's property inventory and management system (Sales Force) which tracks all properties transferred to them from the City and Wayne County. The Land Bank also maintains information on all property located in the City (over 300,000 parcels) in Sales Force.

#### Planned Future Fieldwork

Ongoing and future audit fieldwork will include the following procedures:

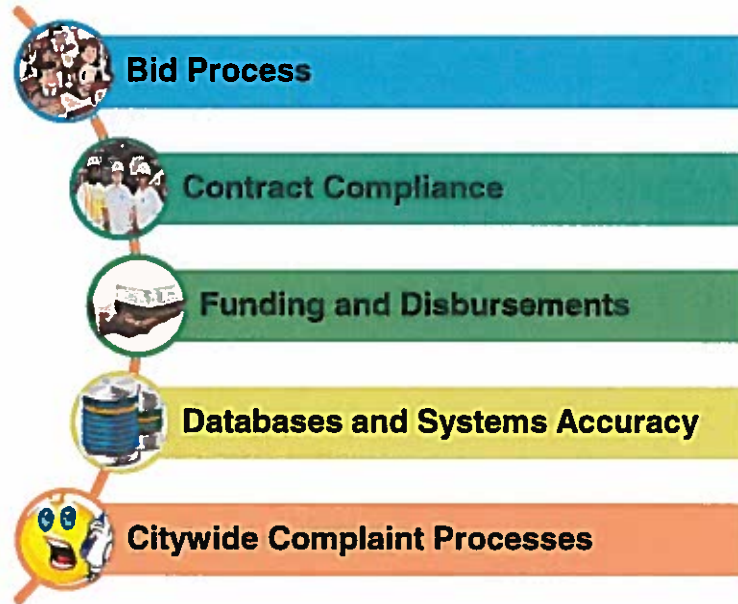
- Document, observe, and test processes;
- Examine samples of contracts, demolition packages, and invoices to conclude on the appropriateness of demolition cost and proper contract oversight;
- Analyze funding and disbursements to conclude on the integrity of financial transactions relating to demolition activity;
- Prepare conclusions for audit objectives and develop findings as warranted.

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<sup>2</sup> The Institute of Internal Auditor Research Foundation. *Savyers Guide for Internal Auditors*. (6<sup>th</sup> Ed. Vol. 2 p 119).

### Areas of Focus

Based on the initial interviews and documentation gathered thus far, we have determined the following preliminary areas of focus for this audit. These are, not listed in priority order and are subject to change as the audit progress:



### **3. Wrap-up and Report**

The auditor's will perform the following audit wrap-up and report preparation procedures:

- Complete, organize, and cross-reference audit workpapers;
- Conduct any necessary additional testing, and complete any other audit steps necessary to draw conclusions to the relevant objectives;
- Develop recommendations for all findings;
- Prepare and cross reference draft audit report(s);
- Conduct end of fieldwork conference to review and discuss audit work;
- Coordinate exit conferences to discuss audit findings;
- Publish audit report(s).

The estimated timeline for completion is presently unknown due to the complexity of demolition activities, the volume of activity, and the undocumented and unclear inter/intra-relationships between the Auditees. We plan to issue update memorandums and/or status reports on a regular basis, and formal reports as areas are audited and completed.



## AUDIT FINDING AND RECOMMENDATION

### **1. There Is A Conflict Of Interest Between The Executive Leadership Of The Detroit Building Authority And The City of Detroit**

The Detroit Building Authority (DBA) and the City of Detroit (City) has violated the Property Management Agreement between DBA and the City (through the Planning and Development Department) and Compiled Laws of the State of Michigan by creating and allowing a Conflict of Interest to exist in their Executive Leadership.

A preliminary audit step is the gathering of information through the use of Internal Control Questionnaires (ICQ's). During the ICQ with Dave Manardo, Executive Director, of the Detroit Building Authority (DBA) and Chief Operating Officer (COO) for the City of Detroit, he stated the following responsibilities:

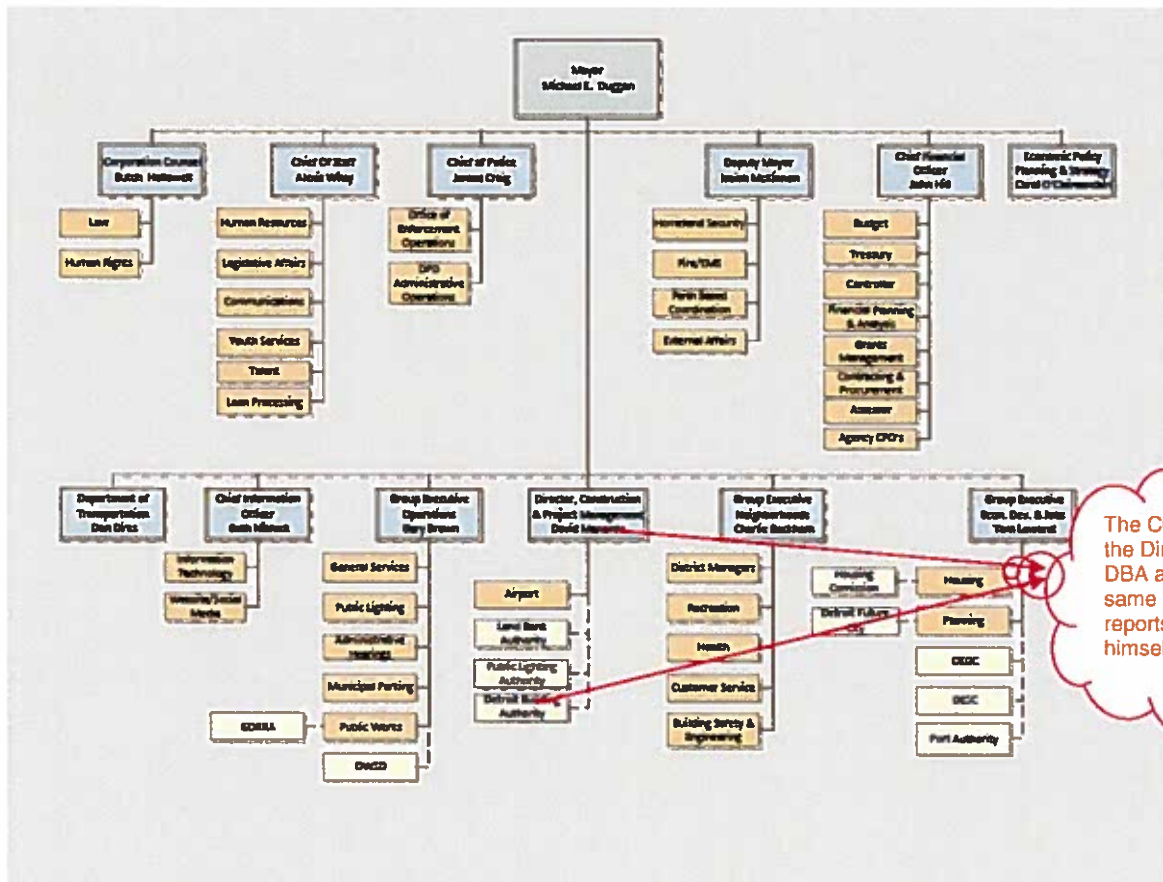
- As Director of Detroit Building Authority (DBA) he reports to DBA Board of DBA. He became Director of DBA March 3, 2014;
- As COO he reports to the Mayor Mike Duggan. He was appointed to COO on October 1, 2015 when Gary Brown transitioned to the Detroit Water and Sewerage Department.

Similarly, during the ICQ with Rebecca Christensen, we learned that she is currently the Deputy COO. Her salary of \$102,000 is being paid by DBA in the role of a "Demolition Contractor." Ms. Christensen stated that she reports to Dave Manardo in both roles.

<b>NAME</b>	<b>CITY TITLE</b>	<b>DBA TITLE</b>
Dave Manardo	Group Executive Chief Operating Officer (COO)	Director Detroit Building Authority
Rebecca Christensen	Deputy Chief Operating Officer	Demolition Contractor

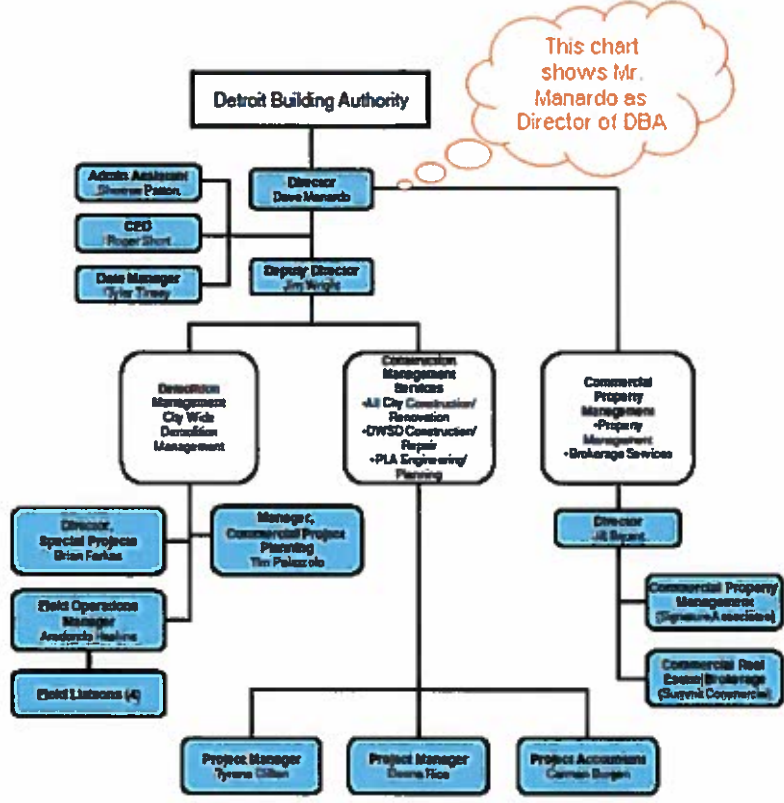
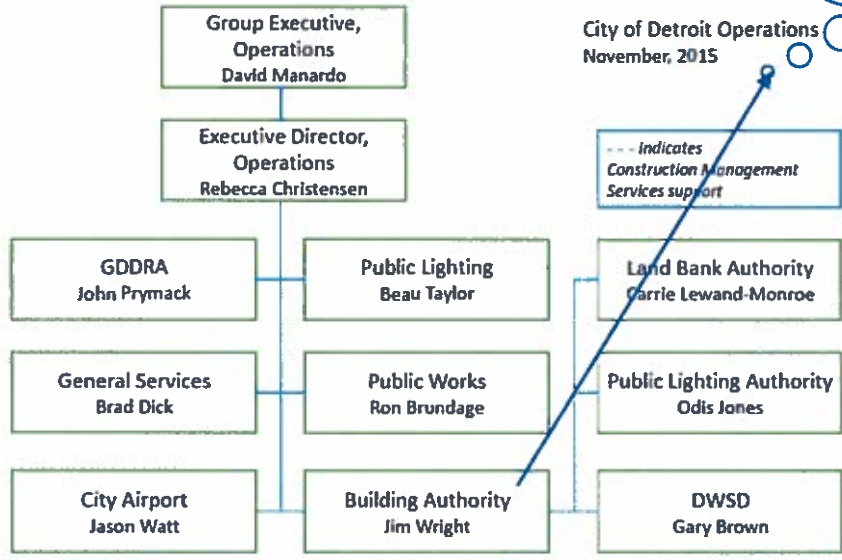
Mr. Manardo stated that he is not on the City of Detroit Payroll and he is still being paid through DBA under a Personal Services Contract administered through the City's Human Resource Payroll Department. Mr. Manardo stated that he does not anticipate any change in his contract [even with the appointment as COO.]

The following organization charts for DBA and the City of Detroit Operations clearly demonstrate the conflict of interest since the Director of DBA reports to the City's COO and in essence has authority of himself albeit in two different roles:



Source: [City of Detroit Website – Mayor’s Office  
https://data.detroitmi.gov/Government/Duggan-Administration-Organizational-Chart/bkt5-fjcc](https://data.detroitmi.gov/Government/Duggan-Administration-Organizational-Chart/bkt5-fjcc)

This chart shows Operations with a solid line of authority over DBA.



Source: [City of Detroit Website – Mayor’s Office](https://data.detroitmi.gov/Government/Duggan-Administration-Organizational-Chart/bkt5-ficc)  
<https://data.detroitmi.gov/Government/Duggan-Administration-Organizational-Chart/bkt5-ficc>

### **Conflict of Interest Clause in Property Management Agreement**

A Property Management Agreement (“Agreement”) between the City (through the Planning and Development Department) and DBA was entered into on October 31, 2014. The Agreement called for DBA to more efficiently improve, operate, maintain, and manage certain commercial buildings and/or vacant land owned or leased by the City, or owned or leased by a public entity created, in whole or in part, by the City (the “Properties.”)

Article XI of the Agreement has a clear statement warranting against conflicts of interest:

11.01 DBA warrants and covenants that it does not have and that it will not have during the performance of this Agreement, any direct or indirect proprietary or other interest in any concern, business, or entity which would conflict in any manner or degree with the performance of the Services under this Agreement. DBA further warrants and covenants that no officer, commissioner, member or employee of the City or any other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or the proceeds hereof.

According to DBA’s current payroll, Mr. Manardo’s salary of \$250,000 per year, and Ms. Christensen’s salary of \$102,000 per year are paid by DBA. The fact that Mr. Manardo, who is a public official who has direct responsibility for DBA, is also paid by DBA, is a clear conflict of interest and is in direct violation of the Agreement.

Similarly, Ms. Christensen’s duties as Deputy COO and a Demolition Contractor for DBA are a clear conflict of interest. In August 2015, DBA entered into a two-year Demolition Management Agreement between the City and DBA. This agreement is similar to the Demolition Management Agreement between DBA and the Land Bank (executed February 2015), and engages DBA to act as Program Manager and “coordinate and implement” the Demolition Program on behalf of the City. As such, in her role as Deputy COO, Ms. Christensen has the opportunity to direct demolition related activities to DBA.

### **Michigan Complied Laws**

The Michigan Compiled Laws (MCL) Section 15.322 - Contracts of Public Servants with Public Entities (Excerpt) Act 317 of 1968, expressly guard against this type of activity. The law prohibits a public servant from soliciting, negotiating, renegotiating, approving, or representing a party to a contract with a public entity, except in certain situations. According to the law, the public servant:

1. Shall not be a party, directly or indirectly, to any contract between himself or herself and the public entity of which he or she is an officer or employee;
2. Shall not directly or indirectly solicit any contract between the public entity and any firm, meaning a co-partnership or other unincorporated association, of which he or she is a partner, member, or employee. This includes any private

corporation in which he or she is a stockholder owning more than 1% of the total outstanding stock of any class if the stock is not listed on a stock exchange, or stock with a present total market value in excess of \$25,000.00 if the stock is listed on a stock exchange or of which he or she is a director, officer, or employee. And any trust of which he or she is a beneficiary or trustee.

### **Previous Opinion by the Board of Ethics**

In 2012, Council President Brenda Jones, (then Councilmember acting as a public servant) requested a similar opinion from the City of Detroit Board of Ethics ("Board") as to the applicability of the 2012 Detroit City Charter. She asked the Board to please opine on:

Whether a Director can serve in a dual capacity as a Department Director and the CEO of a Non Profit Corporation which will assume many of future responsibilities of the Department and manage City grant funds currently allocated to the Department.

The Board ruled the following in their Advisory Opinion #2012-12, Issued October 5, 2012:

A City Director may not serve in a dual capacity as Department Director and Chief Executive Officer of a Non Profit Corporation whose subject matter and work authority is identical to that of the City Department.

DBA is a quasi-governmental body that is governed by a Board of Directors. The City appoints the voting majority of DBA's Board Members and is able to impose its will. Although legally separate, DBA is included in the operations and activities of the City.

The Opinion cited other sections of the City's Charter applicable to this issue. Section 2-106.1 - Ethical Standards of Conduct are standards of conduct:

- That apply to Public Servants including the Mayor, City Council members, City Clerk, appointive officers, appointees, employees, and contractors as defined in this Charter;
- Where the purpose of applying and enforcing these standards is to ensure that governmental decisions are made in the public's best interest by prohibiting city officials and employees from participating in matters that affect their personal or financial interests.

The Standards states (in part) that a Public Servant shall not knowingly:

- (2)(b) Use or disclose Confidential Information concerning the property, government or affairs of the City or any office, department or agency thereof, not available to members of the public and gained by reason of his or her official position;
- (2)(d) Engage in or accept private employment or render services when such employment or service is in conflict or incompatible with the proper

discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of official duties;

- (2)(e) Represent a private person, business, or organization in any action or proceeding pending before the City or any office, department or agency thereof, except;
- (2)(f) Vote or otherwise participate in the negotiation or the making of any city contract, or any other type of transaction, with any business entity in which he or she or an immediate family member has a financial interest;

The Standards also mandates that a Public Servant who:

In the course of his or her duties, exercises significant authority shall not solicit or accept a loan or payment from an individual who is providing service to, receiving tax abatements, credits, or exemptions from the City.

#### OAG Requested a New Opinion from the Board of Ethics

It is particularly important for OAG to have a correct understanding of the laws applicable to the current audit. Therefore, on November 2, 2015, we requested an opinion from the Board of Ethics regarding (in part) the following specific concern:

Can an Administrator for the City of Detroit serve in a dual capacity as a Group Executive and the Director of a quasi-governmental body which is responsible for some of the operations for which the Group Executive is directly responsible for overseeing as a City employee?

On April 8, 2016, OAG received a written response from the Board of Ethics advising us that our request did not meet the definition of a "Request for an Advisory Opinion" as defined in the Charter. This response comes more than five months after the initial request. The Board noted that for "effective and timelier responses," and for matters of concern to OAG (or any employee,) the proper method is to file a complaint or request the Board to investigate a matter on its own initiative.

The effect of violating Conflict of Interest laws diminishes the assurance that governmental decisions are made in the public's best interest.

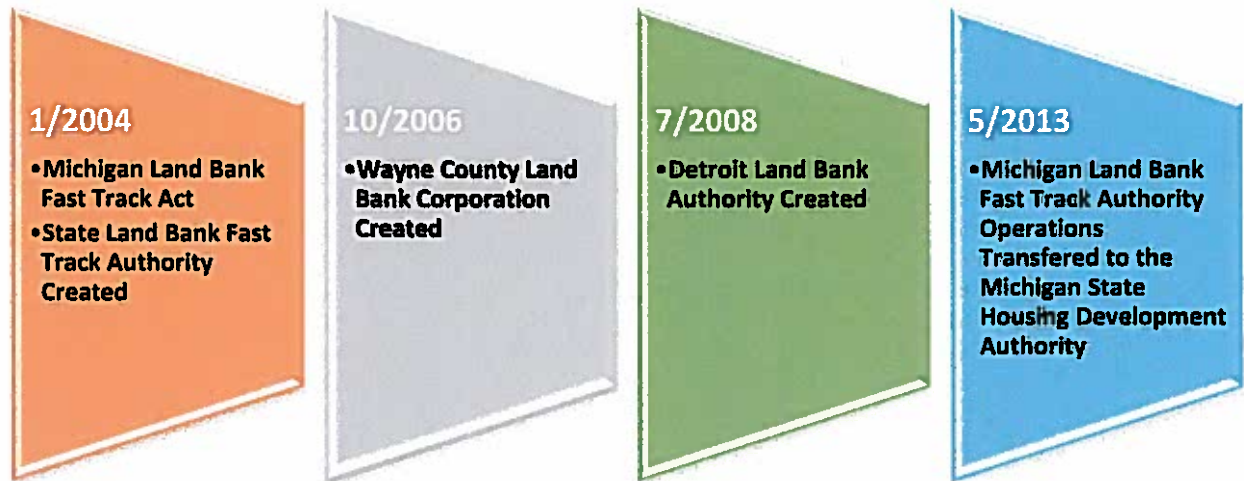
Mr. Manardo does not believe there is a conflict of interest issue. In our interview he reiterated that DBA will still fall under him, but he will phase out of day-to-day authority. He stated that "for all practical purposes" DBA activities are managed by another executive administrator.

#### **Recommendation**

We recommend that DBA and the City abide by the Agreement and Michigan State Law and take steps to eliminate the Conflict of Interest.

## History Of Land Banks, Management, Demolition, And Land Transfers Agreements

The following is a select history of Land Banks and demolition activities relating to the City of Detroit:



### January 2004

In 2003, the State of Michigan enacted Public Act 258 of 2003, also known as the "Land Bank Fast Track Act." The Act was effective on January 5, 2004. This Act allowed for the creation of land banks which are public authorities created under state law to efficiently acquire, hold, manage, develop, and dispose of vacant and abandoned properties.

The State of Michigan Land Bank Fast Track Authority (MLB) was created under Section 15 of the Land Bank Fast Track Authority Act. The purpose of MLB is to promote economic growth in this state through the acquisition, assembly, and disposal of public property, including tax reverted property, in a coordinated manner to foster the development of that property, and to promote and support land bank operations at the county and local levels.

### October 2006

The Wayne County Land Bank Corporation was created on October 19, 2006 under PA258 of 2003:

The Land Bank acquires, manages, and disposes of public tax reverted property to foster development and promote economic growth. The Land Bank also sells abandoned properties and collaborates with non-profit organizations and developers to promote new economic development within Wayne County.

**July 2008**

In 2008, there was a lot of public pressure to create a local land bank. Based on City Council's Resolution adopted July 29, 2008, the City of Detroit entered into an Intergovernmental Agreement (IGA) with MLB to create the Detroit Land Bank Authority (herein referred to as the "Land Bank"). The agreement was signed in September, 2008 and filed with the State of Michigan on February 18, 2009.

Typically, land bank authorities are created under a county not a city. According to the current information on MLB's website, there are a total of thirty-eight land banks – all are county land banks except, for the City of Detroit.

The Detroit Land Bank Authority is a public entity created specifically to tackle the huge surplus of vacant, abandoned, and foreclosed property in the city and return them to productive use. The Detroit Land Bank Authority and the City of Detroit are working in partnership to eliminate blight in Detroit in order to stabilize neighborhoods and improve quality of life for Detroit residents.

The current Executive Director, Carrie Lewand-Monroe, started at the Land Bank in February 2014 as a Senior Advisor and began overseeing demolition in March 2014. Prior to her employment at the Land Bank, Ms. Lewand-Monroe served as the Executive Director of the Michigan Land Bank Authority, appointed to that position by Governor Granholm in December 2007.

**May 2013**

Executive Order 2013-8 (May 2013) transferred the State's land bank operations to the Michigan State Housing Development Authority (MSHDA). However, the transfer of administrative responsibilities from MLB to the Executive Director of the MSHDA was not completed until Executive Order 2014-8, became effective on July 12, 2014.

MLB is one of MSHDA's partners and they currently manage the Hardest Hit Fund (HHF) Blight Elimination programs in Inkster, Hamtramck, Highland Park, and Pontiac, Michigan. Both MLB and MSHDA are housed within the State's Department of Talent and Economic Development.



There are various agreements governing demolition related activities in the City. The following timeline provides an overview of the agreements which are mostly still in effect:



### October 2013

On October 7, 2013, the City of Detroit entered into a Memorandum of Understanding (MOU) with the Michigan Homeowner Assistance Nonprofit Housing Authority (MHA) and the Land Bank. MHA allocated \$100 million of its funds for the purpose of blight elimination in five pilot cities.

Emergency Manager, Kevyn Orr, applied for \$62.1 million to demolish over 4,000 blighted structures. HHF funds are administered by MSHDA directly to its partners based on a Blight Partner Participation Agreement (Agreement). The first Agreement was made between MSHDA and the Land Bank on October 1, 2013 for \$52.3 million to be used specifically for demolition of properties as set forth in the City’s application. This is the first funding received under the Country’s Troubled Asset Relief Program (TARP) after the funds were diverted to the HHF programs. The City of Detroit received the majority of the funding and this program is often referred to as “HHF Round 1” or “HHF1.” The deadline for expending the funds was originally April 30, 2015, but was extended to December 1, 2015.

MHA is the designated eligible entity which oversees and manages the blight elimination and mortgage assistance efforts on behalf of MSHDA.

### November 2013

On November 26, 2013, the Land Bank entered into an IGA with MLB for Implementation of the HHF Blight Program. The purpose of the IGA was to provide the Land Bank with project management assistance in carrying out their responsibilities under the HHF Blight Elimination Programs (BEP). The IGA was set to continue until April 30, 2015 unless canceled by either party according to

the terms in the agreement. The IGA set forth the following duties and responsibilities of each party:

Land Bank Responsibilities

- Identify and acquire real property meeting the BEP requirements;
- Solely responsible for compliance with reporting and documentation requirements under the BEP agreement;
- Solely responsible for all costs and cost overruns associated with the BEP, including but not limited to the cost of acquisition, demolition, abatement, permits, landscaping and maintenance;
- Approve and contract directly with the approved contractors for demolition work based on the terms and conditions negotiated by MLB;
- Pay MLB a project management fee of \$100 for each property services under this Agreement;
- Be responsible for and enter into contracts for appropriate landscape and maintenance for each property following the demolition;
- Absolutely and unconditionally release and forever discharge the State of Michigan (et. al) from all claims arising out of the IGA;

MLB Services

- Provide the Land Bank with all specified documentation required under the BEP and the Land Bank's Hardest Hit File Checklist;
- Oversee the entire demolition process to comply with the BEP agreement, collectively known as "Demolition Project Management Services";
- Provide the Land Bank with all of the required documents (i.e. invoices, sworn statements, waivers, performance bond information, etc.) to ensure contractors are paid on time and the Land Bank is reimbursed on a timely bases from MHA;
- Provide the Land Bank with complete files on all contractors and projects to pass audit requirements;
- With respect to Subcontracts, MLB was responsible for all contractual services performed under the IGA; they were the sole point of contact with regard to contractual matters, including payment approvals of and all charges resulting from the anticipated demolition activities.

Land Bank and MLB Liability

According to the IGA each party accountable only for claims, judgments, or costs arising out of activities carried out by the specific party under the IGA. In the event that a liability or liabilities arise as a result of activities

conducted jointly...such liability is held by the Land Bank and MLB in relation to each party's responsibilities under the joint activities.

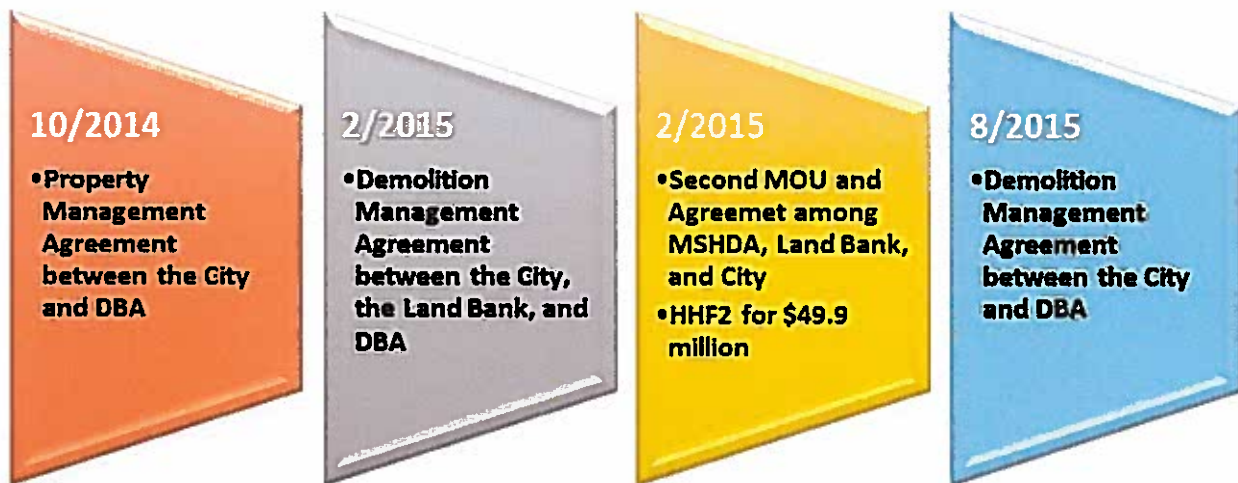
**March 2014**

The City entered into a MOU with the Land Bank on March 14, 2014, to provide \$1.5 million for the Land Bank's Nuisance Abatement Program (NAP). The funding was needed to support City Council's Resolution (February 18, 2014) which authorized the Land Bank to exercise the City's powers to abate public nuisances by pursuing and completing legal or other proceedings against the owners of public nuisance properties.

**April 2014**

The First Land Transfer Agreement from the City to the Land Bank was executed on April 24, 2014. According to the agreement "the Land Bank did not have title to a sufficient number of parcels that include a residential structure to expend the \$52 million allocated to it before the deadline." Unspent monies would need to be returned to the Federal government. This agreement called for the:

- Transfer of 16,399 City-owned properties "As-Is";
- Transfer of the properties for "no considerations" as permitted under the Land Bank Fast Track Act;
- City Council's and the Mayor's approval of transfers of ten or more parcels simultaneously to the same transferee;
- City to receive 33.33% of the Land Banks profits if the residential parcel proceeds exceed the operating costs in any given year.



**October 2014**

A Property Management Agreement between the City (through the Planning and Development Department) and DBA was entered into on October 31, 2014. According to the Agreement, the City, and DBA:

Determined that it was necessary in order to more efficiently improve, operate, maintain, and manage certain commercial buildings and/or

vacant land owned or leased by the City, or owned or leased by a public entity created, in whole or in part, by the City (the “Properties”).

Either party can terminate the Agreement for cause after giving a sixty (60) day written notice of termination. The contract between the City and DBA appears to expire on or near, November 20, 2017.

#### DBA Services

The Scope of Services in this agreement requires DBA to perform the following services:

- Property management functions, including developing and maintaining a property database;
- Facilitation of property transactions including managing the process for securing, maintaining, repairing, leasing, and/or selling properties as authorized by the City.

#### City Responsibilities

- Assign (or loan) qualified City employees, consultants, or subcontractors to work with DBA to complete their services as needed;
- Designate a person to act as the City’s representative with respect to the Services to be performed or furnished by DBA under the Agreement;
- Perform title work necessary to deliver marketable title to be sold or leased;
- Maintain customary property insurance;
- Pay DBA Property Management fees consisting of a Service Fee, salary of the Director, Property Transactions Fees, Property Transaction Costs, and an additional 10% of the City’s Use of certain Quality of Life (QOL) Funds.

#### **February 2015**

On December 18, 2014, the Land Bank applied for a second round of HHF funding known as “HHF Round 2” or “HHF2” for \$49.9 million. According to the Strategic Plan, this round of funding would cover 3,100 demolitions. The Blight Partner Participation Agreement was approved and on February 23, 2015. The Agreement “terminates and all funds allocated must be totally expended eighteen (18) months from the date of the agreement,” or by June 2016.

#### **February 2015**

At the request of the City, the Land Bank entered into a Demolition Management Agreement with DBA on February 2, 2015. Essentially, this agreement set DBA as the program manager to oversee the Land Bank’s entire demolition process. The relationship is that of a professional contractors. Both parties are required to work with the City to develop an Annual Demolition Plan at the beginning of each

year. The term of this Agreement is open and ends when it is terminated by either party. Other duties were spelled out for each party in the Agreement:

Land Bank Duties

- Engage demolition contractors, surveyors, and environmental consultants necessary to complete demolition activities;
- Pay all contractors;
- Pay DBA a fee of \$250.00 for each structure demolished under the Demolition Program.

DBA Duties

- Program manager to oversee the entire demolition process including but not limited to reviewing requests for proposals; recommending the award of contracts; ensuring applicable permits are obtained by the contractors; confirming utility disconnects and environmental clean-up; ensuring demolition completion and clearance and managing the performance of the Contractors who are engaged by the Land Bank to implement the Annual Demolition Plan under the Demolition Program;
- Maintain full and completed books, accounts, documents, and records in auditable form; keep all entries reflecting all actions taken pursuant to the Agreement; make available all such books, accounts, documents, and records for audits, inspections and examinations by the Land Bank and/or the City.

**August 2015**

A two-year Demolition Management Agreement (DMA) was executed between the City (through its Housing and Revitalization Department (HRD)) and its Building Safety, Engineering and Environmental Department (BSEED) and DBA on August 11, 2015. This agreement is similar to the Demolition Management Agreement between DBA and the Land Bank (executed February 2015), and engages DBA to act as Program Manager and “coordinate and implement” the Demolition Program on behalf of the City. This Agreement also requires the parties to work together to develop an Annual Demolition Plan. Specific duties are outlined in the DMA as follows:

City Duties

- Engage all contractors and require contractors to comply with the City of Detroit Demolition Policies and Procedures. This includes making sure all appropriate language is in the contracts, and the Contractors have the required insurances.
- Pay all contractors through BSEED and HRD.

HRD Duties

- Ensure Community Development Block Grant (CDBG) funds are properly used and all reporting is done to comply with federal rules and regulations;
- Prepare and perform all environment requirements including scheduling and performing all necessary environmental testing and abatement;
- Pay DBA an “activity delivery fee” of \$250 for each residential structure and \$2,500 for each commercial structure that is demolished under the Demolition Program;
- Work with the BSEED to use fire escrow funds;
- Pay BSEED for the cost of its services.

**BSEED Duties**

- Identify properties for demolition, conduct inspections, verify property conditions and ownership, coordinate dangerous building designations and demolition orders, and maintain required documentation;
- Issue demolition permits and conduct inspections related to demolitions;
- Verify clearance and conditions after demolition and issue final approvals;
- Release any available fire escrow funding available for demolition.

**DBA Duties**

- Manage performance of the contractors engaged by the City under the Demolition Program;
- Develop a demolition strategy, including the identification of sources of funds available for demolition;
- Coordinate demolitions; conduct progress and final inspections, maintain documentation and provide reports;
- Maintain records in auditable form and make them available for audit;
- Record all liens related to the Demolition Program;
- Enter into and perform demolition and real property stabilization contracts requested in writing and accepted by the City.

The Scope of Services in the Agreement includes very specific, revised protocol for demolition and abatement of commercial structures.



**1/2015**

- Transfer of Properties from City to Land Bank
- 37,000 Plus Parcels

**1/2016**

- Third MOU and Agreement among MSHDA, Land Bank, and the City
- HHF3 for \$21.3 million

**1/2016**

- US Treasury announces up to \$2 billion to be put in a fund to prop up demolition efforts in Detroit and other cities around the country
- This will be know as the Fourth Round of HHF funding or HHF4

**Between January and December 2015**

According to documents provided by the Legislative Policy Division, between January and May 2015, a Second Land Transfer occurred, which transferred 37,000 plus vacant residential parcels from the City to the Land Bank.

The Planning and Development (PDD) has indicated that “34,803 properties were transferred in Winter 2015/2016.” To date, over 54,000 properties have been transferred to the Land Bank.

**January 2016**

The third round of HHF funding (known as “HHF Round 3” or “HHF3”), was awarded to the Land Bank on January 4, 2016 for \$21.3 million. Per the Agreement, it “terminates and all funds allocated must be totally expended eighteen (18) months from the date of the agreement”, or by July 2017. This amount was based on the strategic plan submitted in October 2015 to demolish 1,292 structures.

**February 2016**

A fourth round of HHF funding (known as “HHF Round 4” or “HHF4”) has been announced by the US Treasury. According to news releases, Congress has approved up to \$2 billion to be put in a fund to prop up demolition efforts in Detroit and other cities in Michigan and across the nation. Detroit will get \$41.9 million for demolition purposes.

Board Of Ethics Advisory Opinion #2012-12



CITY OF DETROIT  
BOARD OF ETHICS

660 WOODWARD AVE  
1537 FIRST NATIONAL BUILDING  
DETROIT, MICHIGAN 48226  
PHONE 313-224-2376  
FAX 313-224-2371

HON. HAROLD HOOD, VICE CHAIRPERSON  
PROF. JOCELYN MICHELLE BENSON, MEMBER  
DR. MARSHA FOSTER BOYD, MEMBER  
BETH GREENBERG MORROW, MEMBER  
ALICIA J. SKILLMAN, MEMBER

OCT 05 2012  
*gare w. polley*

October 5, 2012

Hon Brenda Jones, Member  
Detroit City Council  
1340 Coleman A. Young Municipal Center  
Detroit, MI 48226

Re: Request for Advisory Opinion 2012-12

Dear Councilperson Jones;

Enclosed is the Board of Ethics Advisory Opinion decided September 18, 2012. Copies have also been filed with the City Clerk and the Municipal Reference Library.

Please call if you have questions.

Yours <sup>enc</sup> truly,

Handwritten signature of Deborah J. Gaskin in black ink.

Deborah J. Gaskin  
Executive Director



*City of Detroit Board of Ethics*

Hon. Harold Hood, Vice Chairperson  
Prof. Jocelyn Michelle Benson, Member  
Dr. Marsha Foster Boyd, Member  
Beth Greenberg Morrow, Esq. Member  
Alicia J. Skillman, Esq. Member

**Advisory Opinion #2012-12**  
**Issued: October 5, 2012**

**Advisory Opinion #2012-12** A City Director may not serve in a dual capacity as Department Director and Chief Executive Officer of a Non Profit Corporation whose subject matter and work authority is identical to that of the City Department.

**I. Procedural Background**

Request for Advisory Opinion #2012-12 (the "Request"), is dated July 26, 2012, and was received by the Board of Ethics (the "Board") on July 30, 2012. The Request was submitted by a current public servant as defined by Section 2-6-3 of the Detroit Ethics Ordinance (the "Ordinance"), who did not waive confidentiality with respect to identity.

At its meeting on September 18, 2012, the Board determined that the Request met the basic requirements for a Request for Advisory Opinion under Section 2-6-101 of the Ordinance. At this meeting, the Board reviewed a Preliminary Analysis of the Request. After consideration and discussion the Board voted to issue this Advisory Opinion pursuant to Section 2-6-104(B)(3) of the Ordinance.

## **II. Facts Alleged In the Request**

In the Request, the Requestor states in summary as follows:

Please opine on whether a Director can serve in a dual capacity as a Department Director and the CEO of a Non Profit Corporation which will assume many of future responsibilities of the Department and manage City grant funds currently allocated to the Department.

By this request, the Public Servant seeks an advisory opinion as to the applicability of the 2012 Detroit City Charter.

## **III. Applicable Charter Sections and Other Authority**

Section 2-106.1, of the 2012 Detroit City Charter, provides that "The purpose of these standards is to ensure that governmental decisions are made in the public's best interest by prohibiting city officials and employees from participating in matters that affect their personal or financial interests."

Section 2-106.1(2) sets forth the standards of conduct expected of all public servants. The specific charter standards that are applicable to this Request include:

Section 2-106.1(2)(b) which prohibits the use or disclosure of confidential information not available to the public and acquired in the course of official duties;

Section 2-106.1(2)(d) which prohibits "private employment . . . when the such employment or service is in conflict or incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of official duties;"

Section 2-106.1(2)(f) which prohibits the participation "in the negotiation or the making of any city contract, or any other type of transaction, with any business entity in which . . . he/she . . . has a financial interest."

MCL 15.322 bars public servants from indirectly or directly soliciting a contract between their public employer and "any firm, meaning a co-partnership or other unincorporated association of which he or she is a partner, member, or employee."

#### **IV. Application of the Charter to the Facts Presented**

The Boards review of this matter included the consideration of numerous media articles which provided details as to the nature of the relationship between the current City Department and the newly formed non profit entity. The Board determined that many of the functions currently preformed by the current department would be assumed by the new entity. It was also determined that the current department Director was involved in the incorporation of the new entity. Although a job description for the City Director position was not available a position description of the Chief Executive Officer was provided. The Board concluded that the tasks identified were similar if not identical to duties that would be preformed by a City Department Director in general. The articles characterized the dual role as intending to be held simultaneously for at least the first year of operation of the new entity. Another article described the Director as being on loan to the new entity. The motive for creation of the new entity was to streamline a City bureaucracy. Under the new structure only the Director and three others were to retain their position and all other current City staff would be permitted to apply for position with the new entity although all staff would not be offered positions.

In evaluating these facts and applying the 2012 Charter provisions the Board finds that the dual roles are in conflict with the standard of conduct which prohibits the rendering of services for a private or public interest where such employment is in conflict with ones official duties (Section 2-106.1(2)(d)). Holding the position of Department Director suggests a duty to administer the department and related functions in an unbiased objective manner making decision for the best interest of the department and the public's best interest. Employment by a different entity, particularly an entity with which there exists an ownership and or corporate interest by the public servant creates a situation where both entities cannot be simultaneously served ethically. As Director of the Department the Board notes that the position allows the public servant access to confidential information regarding the department that may be compromised or improperly used for the benefit of the newly formed entity. Finally, Section 2-106.1(2)(f), prohibits the participation of a public servant with any entity in which there exists a financial interest. The Board finds that the future relationship with the new entity would likely result in a financial benefit to the public servant at such time as when the current department is eliminated or merged.

Although not subject to enforcement by the Ethics Board the Board also notes the prohibition set forth in MCL 15.322 which bars public servants from indirectly or directly soliciting a contract between their public employer and "any firm, meaning a co-partnership or other unincorporated association of which he or she is a partner, member, or employee." Whether the circumstances of the public servants involvement in the creation of the non profit new entity would violate this statute is also a concern which should be considered.

**V. Conclusion**

A public servant is prohibited from serving as a Department Director and simultaneously holding the position of Chief Executive Officer of a non profit entity formed by the Director which is intended to assume the majority of functions of the City department including the administering of grant funds previously assigned to the City department.

**Detroit Board of Ethics  
660 Woodward Ave., Ste. 1537  
Detroit, Michigan 48226  
(313) 224-2376**

**Dated: October 5, 2012**

## Glossary

\*Definition sourced from [www.dictionary.reference.com](http://www.dictionary.reference.com)

NAME	DESCRIPTION
BSEED	<p>City of Detroit Buildings Safety, Engineering and Environmental Department</p> <p>The BSEED has traditionally housed the City's demolition efforts and continues to oversee the demolition of houses through the Fire Insurance Escrow Fund and dangerous buildings. Its mission is to provide for the safety, health, and welfare of the general public as it pertains to buildings, and their environs in an efficient, cost effective, user friendly and professional manner. BSEED enforces construction, property maintenance, environmental compliance, and zoning codes, which preserve and enhance property values and promote a quality of life to make Detroit a preferred place to reside and conduct business. BSEED is also the City's Environmental Affairs Department.</p>
CDBG	<p>Community Development Block Grant</p> <p>The CDBG program is a Federal grant program operated by the U.S. Department of Housing and Urban Development. This program provides entitlement grants to local governments for community development activities. The grant amount is determined by formula and varies from year to year according to the amount appropriated nationally by the U.S. Congress. The overall goal of Detroit's CDBG program is to develop a viable urban community by providing funding for decent housing, economic opportunities, needed services, and a suitable living environment, primarily for persons of low and moderate income. CDBG funds may be used for a wide variety of activities including home rehabilitation, construction and rehabilitation of community facilities, demolition of blighted buildings, acquisition, relocation, and preparation of property for new development, economic development, public services, planning, and administration of the program.</p>
DBA	<p>Detroit Building Authority</p> <p>DBA is a quasi-governmental body that is governed by a Board in which the City appoints the voting majority of DBA's Board Members and is able to impose its will. Although legally separate, DBA is included in the operations and activities of the City because it was entirely incorporated for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating, or maintaining buildings, automobile parking lots or structures, and recreational facilities for the use of any legitimate public purpose of the City. Financing is provided by the issuance of bonds secured</p>

## Glossary

NAME	DESCRIPTION
	by lease agreements with the City and from grants received by the City.
DLBA	<p>Detroit Land Bank Authority (also referred to as “Land Bank” in the audit report)</p> <p>The Land Bank was created by the City and the Michigan Land Bank in order to assemble or dispose of public property, including tax reverted property, in a coordinated manner to foster the development of that property and to promote economic growth in the City. The City and the DLBA have entered into an enforceable contract for the Land Bank to carry out programs designed to stabilize neighborhoods through Nuisance Proceedings, Blight Abatement, Acquisition and Disposition; and Demolition. Through the Memorandum of Understanding between the City and the Land Bank the City is to provide Quality of Life and bankruptcy exit financing toward this goal.</p>
DMA	<p>Demolition Management Agreement</p> <p>An agreement executed between the City (through its Housing and Revitalization Department) and its Building Safety, Engineering and Environmental Department (BSEED) and the Detroit Building Authority on August 11, 2015. The DMA engages DBA to act as Program Manager and “coordinate and implement” the Demolition Program on behalf of the City.</p>
FIE	<p>Fire Insurance Escrow</p> <p>The City has participated in the State of Michigan’s Fire Insurance Withholding program since July 1982. The State’s program provides participating municipalities with some financial protection against the cost of repairing, replacing, or demolishing a damaged structure following a loss from fire, explosion, vandalism, malicious mischief, wind, hail, riot, or civil commotion. A municipality may receive a portion of a policyholder’s final insurance settlement, which is to be held in a specified escrow account until the structure is repaired, replaced, or demolished. If the structure is not repaired, replaced, or demolished, the municipality must use the funds to repair, replace, or demolish the structure.</p>
GSD	<p>City of Detroit General Services Department</p> <p>The mission of GSD is to support City operations through space planning, urban forestry, and managing municipal facilities, grounds, fleet, and inventory.</p>
HHF	<p>Hardest Hit Fund</p> <p>First announced in February 2010, the Hardest Hit Fund provides \$7.6 billion to the 18 hardest hit states, plus the District of Columbia, to develop locally-tailored programs to</p>

## Glossary

NAME	DESCRIPTION
	<p>assist struggling homeowners in their communities. On February 19, 2016, an additional \$2 billion was allocated to HHF as a part of the Consolidated Appropriations Act, 2016. The total HHF allocation is now \$9.6 billion. HHF programs are designed and administered by each state's Housing Finance Agency (HFA). Most of these programs are aimed at helping unemployed homeowners remain in their homes while they search for new employment and those who owe more on their mortgage than their home is worth. State HFAs have until the end of 2020 to utilize funds allocated under HHF.</p>
HRD	<p><b>City of Detroit Housing and Revitalization Department</b>            The mission of HRD is to invest city resources into multifamily housing, neighborhood commercial districts, and public improvements to create places that retain current and attract new Detroiters. It exists to fully realize its potential as the city's community development investment arm.</p>
HUD	<p><b>US Department of Housing and Urban Development</b>            The United States Department of Housing and Urban Development (HUD) is a Cabinet department in the Executive branch of the United States federal government. Although its beginnings were in the House and Home Financing Agency, it was founded as a Cabinet department in 1965, as part of the "Great Society" program of President Lyndon Johnson, to develop and execute policies on housing and metropolises.</p>
IGA	<p><b>Intergovernmental Governmental Agreement</b>            A contractual agreement between one or more governmental agencies, including, but not limited to, an interlocal agreement to jointly exercise any power, privilege, or authority that the agencies share in common and that each might exercise separately under the Urban Cooperation Act of 1967.</p>
LARA	<p><b>Department of Licensing and Regulatory Affairs</b>            Oversees the licensing and regulation of more than 1.2 million individuals and entities in Michigan on an annual basis. LARA supports business growth and job creation while safeguarding Michigan's citizens through a simple, fair, efficient, and transparent regulatory structure.</p>
LPD	<p><b>City of Detroit Legislative Policy Division</b>            A consolidation of three (3) former, separate divisions:</p> <ul style="list-style-type: none"> <li>• <b>Research &amp; Analysis:</b> Responsible for researching, monitoring, evaluating, and advising on matters, particularly legal. Additional duties include service as chief legal advisor and general counsel to the Honorable Detroit City Council (Council), staffing of</li> </ul>

## Glossary

NAME	DESCRIPTION
	<p>designated task forces and committees, and representing Council at various meetings with the administration and community entities;</p> <ul style="list-style-type: none"> <li>• <b>Fiscal Analysis:</b> Responsible for compiling, studying and reviewing all financial information necessary to advise the Council on budgetary and financial matters and help promote and protect the economic welfare of Detroit's citizens;</li> <li>• <b>City Planning Commission:</b> Responsible for advising on matters pertaining to the social, physical, and economic development of the City and act as the Zoning Commission. The Commission serves both the legislative branch and the citizen of Detroit by acting as a representative of the community, serving as a conduit for opinions from the community and proactively initiating matters for consideration by the Council.</li> </ul>
MHA	<p><b>Michigan Housing Authority</b>            The Michigan Homeowner Assistance Nonprofit Housing Corporation acting through the Michigan State Housing Development Authority, received federal funds in 2010 from the U.S. Department of the Treasury to help Michigan take a step forward through a comprehensive, statewide strategy that is aimed at helping homeowners prevent foreclosure and stabilize communities. Through the StepForwardMichigan.org website, homeowners who have experienced a hardship impacting their ability to pay their mortgage, property taxes, or condominium fees can find out more information about the program and print an application for a Hardest Hit Fund loan.</p>
MLB	<p><b>State of Michigan Land Bank Fast Track Authority</b>            The purpose of the Michigan Land Bank Fast Track Authority is to promote economic growth in this state through the acquisition, assembly, and disposal of public property, including tax reverted property, in a coordinated manner to foster the development of that property, and to promote and support land bank operations at the county and local levels.</p>
MOU	<p><b>Memorandum of Understanding</b>            A document that describes the general principles of an agreement between parties, but does not amount to a substantive contract.</p>
MSHDA	<p><b>Michigan State Housing Development Authority</b>            The Authority created under the State Housing Development Authority act of 1966. Provides financial and technical</p>



## Glossary

NAME	DESCRIPTION
	assistance through public and private partnerships to create and preserve safe and decent affordable housing.
NAP	<p><b>Nuisance Abatement Program</b>                      The Detroit Land Bank Authority launched its improved Nuisance Abatement Program in the Spring of 2014. Its ultimate goal is combating blight in order to rebuild dilapidated neighborhoods for the general health, safety, and welfare of the community. NAP focuses on properties that are boarded, open to trespass, neglected, and/or dangerous throughout the city of Detroit.</p>
NSP	<p><b>Neighborhood Stabilization Program</b>                      Authorized under Section 2301 of Title III of the Housing and Economic Recovery Act of 2008, as amended, Congress appropriated \$4 billion for the Neighborhood Stabilization Program to provide grants to every State and certain local communities to purchase foreclosed-upon or abandoned homes and rehabilitate, resell, or redevelop these homes to stabilize neighborhoods and stem the decline in value of neighboring homes. The Act states that amounts appropriated, revenues generated, or amounts otherwise made available to States and units of general local government under Section 2301 will be treated as though such funds were Community Development Block Grant funds under Title I of the Housing and Community Development Act of 1974.</p>
OAG	<p><b>City of Detroit Office of the Auditor General</b>                      The OAG performs audits of each City agency and prepares written reports which convey the resultant audit findings and recommendations to the City Council, the Mayor and the management of each agency. OAG is under the direction and control of the Auditor General, who is appointed by a majority of city council members serving. The Auditor General shall be a certified public accountant. The term of Auditor General is ten (10) years beginning with the taking of office.</p>
PDD	<p><b>City of Detroit Planning and Development Department</b>                      The mission of PDD is to provide a vision for the physical, social, and economic development of the City.</p>
QOL	<p><b>Quality of Life Funds</b>                      Post-Petition Financing secured to fund the City's Revenue and Restructuring Initiatives outlined in the approved Plan of Adjustment.</p>
RRI	<b>Revenue and Restructuring Initiatives</b>

## Glossary

NAME	DESCRIPTION
	A set of financial and operational initiatives the City must adhere to as set forth in the City's approved Plan of Adjustment.
SIGTARP	<p>Office of the Special Inspector General Troubled Asset Relief Program</p> <p>The Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), to protect taxpayers who funded the bailout known as the \$475 billion Troubled Asset Relief Program (TARP). A watchdog for American taxpayers, SIGTARP is a law enforcement agency with the authority to search, seize, and arrest. SIGTARP has a responsibility to conduct oversight over everything and everyone related to TARP. SIGTARP conducts audits and makes recommendations to improve the effectiveness and efficiency of TARP programs, and to prevent fraud, abuse, and waste.</p>
TARP	<p>Troubled Asset Relief Program</p> <p>The Troubled Asset Relief Program (TARP) is a program of the United States government to purchase assets and equity from financial institutions to strengthen its financial sector that was signed into law by U.S. President George W. Bush on October 3, 2008. It was a component of the government's measures in 2008 to address the subprime mortgage crisis.</p>

**Reporting Views Of Responsible Officials**

The purpose of this section of the report is based on the reporting standards of Section 7.37 Government Auditing Standards of the United States Government Accountability Office which states:

When the audited entity's comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditors' recommendations, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement.

It is OAG's policy to distribute a draft audit report to the Responsible Officials and request their responses (Reporting Views) so that they may be included in the report prior to publishing. Upon receipt of the draft audit report, the Director of DBA asked for an additional week to respond as he had intended to obtain an opinion from the Corporation Counsel regarding the DBA finding. Having obtained the opinion from the Corporation Counsel the Director of DBA informed the Auditor General that as far as he was concerned, the Corporation Counsel's opinion would suffice as his official response.

It has not been common to receive a legal opinion in lieu of a direct response from Responsible Officials. The Corporation Counsel's opinion of the Auditor General's finding contained herein is several pages in length and includes "corrections" and opinions on the Auditor General's finding. Considering the lengthy nature of the response, we thought it necessary to include a written rebuttal in detail.

Having considered DBA's response in significant depth, the Auditor General does not agree with the response and stands by the original finding as cited in this report. The following pages include the Corporation Counsel's opinion of the Auditor General's finding against the DBA, and the Auditor General's statement on the reasons for disagreement.

## Detroit Building Authority Response



CITY OF DETROIT  
LAW DEPARTMENT



COLEMAN A. YOUNG MUNICIPAL CENTER  
2 WOODWARD AVENUE, SUITE 500  
DETROIT, MICHIGAN 48226-3535  
(313) 224-4550 • TTY:711  
(313) 224-5505  
WWW.DETROITMI.GOV

## MEMORANDUM

TO: David P. Massaron, Deputy Chief of Staff, Counsel to the Mayor  
City of Detroit

FROM: Melvin Butch Hollowell, Corporation Counsel *MBH*

RE: Auditor General's Finding and Recommendation Regarding Dual Roles Between  
the Detroit Building Authority and the City of Detroit

DATE: March 30, 2016

You have asked us to review the City of Detroit Auditor General's Draft Audit Finding and Recommendation (the "Audit Finding") regarding individuals who serve simultaneously in roles with the Detroit Building Authority (the "DBA") and the City of Detroit (the "City"). The Audit Finding asserts there are two conflicts of interest between the DBA and the City: (1) By simultaneously holding the office of Chief Operating Officer of the City of Detroit and Director of the DBA, Dave Manardo has a conflict of interest, and (2) by simultaneously working as Deputy Chief Operating Officer of the City and Demolition Contractor for the DBA, Rebecca Christensen has a conflict of interest.

SUMMARY CONCLUSION

Based on factual corrections and an analysis of the relevant law, we believe that the Audit Finding's assertion of conflict of interest is misplaced and inaccurate.

This is not a situation involving an alleged conflict between the City and an outside contractor or entity. The DBA functions as a unit of City government. The Audit Finding essentially states that the City is in conflict with itself, which is impossible. Moreover, individuals serving in multiple roles within component units of local government is a common practice within City government and across the state, and is widely accepted as an effective governance tactic.

FACTUAL CORRECTIONS

The Audit Finding contained a number of factual errors. Corrections to those errors are summarized as follows:

- Dave Manardo's position is "Group Executive, Operations" within the Mayor's office, not "Chief Operating Officer". He is an employee of the City and is not currently paid under a personal services contract, though he was paid under a personal services contract previously.



- Rebecca Christensen served as “Director, Commercial Property Projects” for the DBA, not “Demolition Contractor”; she has never served as a demolition contractor for the DBA. Her position within the City’s leadership structure is “Executive Director, Operations”, not “Deputy Chief Operating Officer”. Her salary is \$130,000, not \$102,000, and it is paid by the City, not the DBA. She transitioned from the DBA to the City as of December 21, 2015, and has never served both entities at the same time.

This memorandum will proceed according to the facts as corrected. Given that simultaneous employment/contract work with the City and DBA is the entire focus of the Audit Finding, and that the Ms. Christensen has never worked for the City and the DBA simultaneously (either as an employee or contractor), the assertions in the Audit Finding are facially inapplicable to her. Therefore, our analysis will focus exclusively on Mr. Manardo.

### ANALYSIS

#### *The DBA Functions as a Unit of City Government, Which Cannot Be in Conflict with Itself*

The Audit Finding observes that Mr. Manardo is “a public official who has direct responsibility for DBA, [and] is also paid by the DBA”, but it incorrectly suggests this dual role constitutes a conflict of interest. It implies an arms-length relationship between parties with unaligned objectives, as might be the case in an arrangement between the City and a private outside contractor. This implication is inaccurate. Although the PMA establishes a contractual relationship between the DBA and the City for purposes of certain activities, the broader nature of the relationship between the City and the DBA is not arms-length. The DBA functions as a department of the City, as it has for nearly forty years. The City’s 2014 audit contains a helpful description of the relationship between the DBA and the City:

The DBA is governed by a Board in which the City appoints the voting majority of the DBA’s Board Members and is able to impose its will. Although legally separate, the DBA is included in the operations and activities of the City because it was entirely incorporated for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating, or maintaining buildings, automobile parking lots or structures, and recreational facilities for the use of any legitimate public purpose of the City. Financing is provided by the issuance of bonds secured by lease agreements with the City and from grants received by the City.<sup>1</sup>

The DBA was incorporated by the City; its members are appointed and may be removed by the Mayor (who serves as a member himself) and City Council; it may be dissolved by the City. In short, the DBA functions as a unit of City government, like most building authorities across the state.<sup>2</sup> The assertion that Mr. Manardo’s situation constitutes a conflict of interest equates to an

<sup>1</sup> City of Detroit Comprehensive Annual Financial Report, FY 2014, *Summary of Significant Accounting Policies*, p. 64.

<sup>2</sup> See, e.g. *Alan v. Wayne County*, 388 Mich 210 (1972).



assertion that the City is in conflict with itself—a notion that finds no support in law.

Moreover, the Audit Finding’s use of the City’s organizational chart to support an assertion of conflict of interest is misplaced. The organizational chart is not a source of legal authority; it does not establish divisions that are not otherwise recognized by the City Charter, statute, or some other source of legal authority. The organizational chart is simply a tool designed to make management and reporting more efficient and clear. It does not establish legal checks and balances. Thus there is no legal significance to the fact that an individual may occupy roles in multiple levels within the same column on the organizational chart.

***The Audit Finding Disregards Shared Leadership in Other Departments/Agencies***

The Audit Finding disregards common practice within City government—a practice blessed by the City Charter and state law, and universally accepted across the state.<sup>3</sup> Elected and appointed officials regularly serve on boards and commissions of component agencies and authorities—including the DBA, the board of which counts the Mayor among its members. These agencies and authorities, while separate legal entities, work with the City in pursuance of the public health, safety and welfare of citizens of the City. In direct contrast to the notion of conflict of interest, these arrangements are generally viewed as good government practice. Examples of shared leadership within City government include:

City Council:

- President serves as Chair of Elections Commission and oversees Elections Department/ City Clerk.
- President oversees Board of Ethics Budget and makes appointments to Ethics Board.
- President oversees police and fire budget on City Council and serves on Police and Fire Retirement Board.
- President oversees budget of Office of Inspector General (“OIG”), OIG appointed by City Council.
- Member serves as trustee of General Retirement System (“GRS”) Board.
- No current member serves on Planning Commission; however, City Charter provides members are eligible to serve.

Mayor:

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<sup>3</sup>For example, the cities of Kalamazoo, Warren, Marquette, Novi, St. Clair Shores, Sterling Heights and Warren (as well as many others), along with the State of Michigan, all have elected and/or appointed officials serving on multiple agency and department boards.



- Serves as Chair of Downtown Development Authority (“DDA”) Board; serves as member of DBA Commission.

City Clerk:

- Oversees elections; serves as member of Elections Commission.

Corporation Counsel:

- Represents Police and Fire departments; serves on Police and Fire Retirement Board and represents Board of Police Commissioners.
- Represents Building, Safety Engineering and Environmental Department and oversees Board of Zoning Appeals.
- Serves as member of DDA Board; Elections Commission.

Finance Director/Deputy CFO:

- Serves as member of Brownfield Redevelopment Authority Board, Detroit Transit Corporation (“DTC”) Board; DDA Board; GRS Board.

Mayor’s Deputy Chief of Staff:

- Serves as member of Detroit Transit Corporation Board; DDA Board.

Interim Director, Planning and Development:

- Serves as ex officio member of Brownfield Redevelopment Authority Board.

Director, Department of Transportation:

- Serves as member of DTC Board.

Group Executive, Neighborhoods:

- Serves as member of DDA Board.

***The PMA Does Not Alter the Relationship between the City and DBA***

The Audit Finding states that the DBA and City have violated Article XI of the PMA, which provides the following:



The DBA warrants and covenants that it does not have and that it will not have during the performance of this Agreement, any direct or indirect proprietary or other interest in any concern, business or entity which would conflict in any manner or degree with the performance of the Services under this Agreement. The DBA further warrants and covenants that no officer, commissioner, member or employee of the City or any other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or the proceeds hereof.<sup>4</sup>

The Audit Finding concludes that Mr. Manardo's situation is a "clear conflict of interest" and a "direct violation of the [PMA]." It does not state which clause under Article XI is violated by Mr. Manardo's situation. The first clause clearly intends to address interests in *outside* entities, rather than involvement with the parties to the PMA; therefore it is inapplicable. It is likely the Audit Finding is relying on the second clause as the source of the conflict; that clause is also inapplicable to Mr. Manardo. Mr. Manardo does not have any "personal or financial interest, direct or indirect" in the PMA or its proceeds, and his mere employment by the DBA does not create such an interest. Mr. Manardo's salary is not paid from the proceeds of the PMA, nor does his employment by the DBA represent an interest in the PMA. There is nothing in the PMA suggesting that an individual's service as Group Executive, Operations would constitute a conflict of interest with that same individual's service as Director of the DBA. To the contrary, such service is consistent with the legal and historical alignment of the DBA and the City discussed previously.

### ***The Conflict of Interest Statute Cited By the Audit Finding Is Inapplicable***

The Audit Finding cites Act 317, Michigan Public Acts of 1968, as amended ("Act 317").<sup>5</sup> Although the Audit Finding does not provide any commentary or analysis as to why Mr. Manardo's situation constitutes a conflict of interest under Act 317, by citing it, we assume the Audit Finding intends to suggest a conflict exists under that statute.

Section 2 of Act 317 prohibits a public servant from being a direct or indirect party to any contract between himself or herself and the public entity he or she serves.<sup>6</sup> It also prohibits a public servant from directly or indirectly soliciting any contract between that public entity and him or herself or any company of which he or she is a partner, owner or employee.<sup>7</sup> Neither of these prohibitions applies to Mr. Manardo's situation, as they (like Act 317 in general) apply to "contracts".<sup>8</sup> Mr. Manardo is an employee of the DBA and a Group Executive within the Mayor's administration; neither role involves a contract. He does not own, control or work for a private

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<sup>4</sup> PMA, Sec 11.01.

<sup>5</sup> MCL 15.321 *et seq.*

<sup>6</sup> MCL 15.322(1).

<sup>7</sup> MCL 15.322(2).

<sup>8</sup> *See, e.g.*, 2000 Op. Atty. Gen. No. 7054; 1985 Op. Atty. Gen. No 6276.





company that is providing contract services to the City, nor is he an independent contractor providing services to the City.

The only contract involved in Mr. Manardo’s situation is the PMA itself. Mr. Manardo is an employee of the DBA, technically a “contractor” of the City for certain purposes by operation of the PMA. Act 317 specifically provides that the prohibitions set forth in Section 2 do not apply to “contracts between public entities.” The City and the DBA are each public entities.<sup>9</sup> Therefore, the PMA is excepted from Act 317 and cannot be the source of a conflict of interest under Act 317.

***The Board of Ethics Advisory Opinion Cited by the Audit Finding is Inapplicable***

The Audit Finding cites Board of Ethics Advisory Opinion #2012-12 (“Opinion 2012-12”) as another source of authority supporting the conclusion that Mr. Manardo’s situation constitutes a conflict of interest. Opinion 2012-12 addresses whether or not an individual may simultaneously serve as a director of a City department and as CEO of a non-profit corporation that will—upon the department’s imminent dissolution—assume many of the future responsibilities of that department<sup>10</sup> and manage grant funds that were at the time allocated to the department. The Board of Ethics found that the individual was prohibited from serving in both roles because the individual’s “future relationship with the new entity would likely result in a financial benefit to the public servant at such time when the current department is eliminated or merged.”<sup>11</sup>

The Audit Finding’s conclusion that Mr. Manardo’s situation is a conflict of interest according to the findings in Opinion 2012-12 is misplaced. As an initial matter, the Audit Finding states that the “DBA is a quasi-governmental body”. This statement is inaccurate; as stated previously the DBA is a public entity. It has no private, non-governmental qualities and thus is not “quasi-governmental”. The source of the conflict in Opinion 2012-12 was not a public entity; it was a non-profit entity (at most quasi-governmental, and possibly non-governmental) to which a dissolving department’s responsibilities were about to be transferred. The outsourcing or partial outsourcing of a governmental function can be controversial, and the new entity is in a natural position of competing interests with the City, creating a clear and natural conflict for an individual whose allegiance straddles both entities. In contrast, the DBA and the City are not naturally in conflict, but rather in alignment. The execution of the PMA for purposes of certain activities does not alter that alignment.

<sup>9</sup> See generally, City Charter; Home Rule City Act, Act 279, Michigan Public Acts of 1909, as amended, MCL 117.1 *et seq.*; Act 31, Michigan Public Acts of 1948 (1<sup>st</sup> Ex. Sess.), as amended, MCL 123.951 *et seq.*

<sup>10</sup> The individual who requested Opinion 2012-12 did not waive confidentiality, thus the specific department involved and other facts are addressed generically by the Board of Ethics.

<sup>11</sup> Opinion 2012-12, p.3.



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**Auditor General's Disagreement With The Audited Entity's Response**

The Office of the Auditor General (OAG) has reviewed the response from the Detroit Building Authority (DBA) regarding **Audit Finding 1. There Is A Conflict Of Interest In The Executive Leadership Between The Detroit Building Authority And The City Of Detroit.**

DBA submitted as its response a Memorandum from Corporation Counsel, to the Deputy Chief Of Staff, Counsel to the Mayor, dated March 20, 2016 and titled in reference to the "Auditor General's Finding and Recommendation Regarding Dual Roles Between the Detroit Building Authority and The City of Detroit" dated March 30, 2016 (see **Attachment A** of this report.)

The OAG offers the following rebuttals to statements made in the Memorandum.

**Alleged Factual Corrections**

1. **Audit Finding Statement:** Mr. Manardo stated that he is not on the City of Detroit Payroll and he is still being paid through DBA under a Personal Services Contract administered through the City's Human Resource Payroll Department. Mr. Manardo stated that he does not anticipate any change in his contract [even with the appointment as Chief Operating Officer.]

➤ **DBA's Response:** The response states that:

Dave Manardo's position is "Group Executive, Operations" within the Mayor's office, not "Chief Operating Officer." He is an employee of the City and is not under a personal service contract, though he was paid under a personal services contract previously.

❖ **OAG Rebuttal:** During our initial interview with Mr. Manardo, he stated that he was an employee of DBA and was paid by DBA. This was corroborated by salary information received from DBA dated November 11, 2015. Mr. Manardo also stated that he was appointed as "COO on October 1, 2015, when Gary Brown transitioned to the Detroit Water and Sewerage Department."

Corporation Counsel contradicts their own assertion that Mr. Manardo is an employee of the City (and not DBA) by the following statements made later in their response:

- ◆ [Mr. Manardo's]... "mere employment by the DBA" (Page 5, Paragraph 2);
- ◆ [Mr. Manardo]...his employment by the DBA..."; "...service as Director of the DBA." (Page 5, Paragraph 2);
- ◆ Mr. Manardo was "an employee of DBA" (Page 5, Paragraph 4);
- ◆ "Mr. Manardo is an employee of DBA" (Page 6, Paragraph 1);

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2. **Audit Finding Statement:** Mr. Manardo, who is a public official who has direct responsibility for DBA, is also paid by DBA is a clear conflict of interest...”

➤ **DBA's Response:** The response asserts that the “DBA functions as a unit of city government, which cannot be in conflict with itself.”

❖ **OAG Rebuttal:** We understand that DBA is recognized as a component unit in the City's financial statements because of the relationship to the City and excluding it would cause the City's financial statements to be misleading or incomplete. As noted, DBA “**functions as**” a unit of the City government, and in “**form**” (only) is a part of the City's operations. Unlike departments and agencies of the City, DBA is not bound by City policies and procedures. DBA was incorporated by the City as a building authority for purposes of certain activities. However, DBA is in fact, a **separate legal** entity governed by a distinct and separate Board of Directors, irrespective of the composition of the Board. The DBA's financial statements are audited by separate, external, independent auditors, and are given to the City to be included as a component unit for financial reporting purposes.

3. **Audit Finding Statement:** Organization charts for DBA and the City of Detroit Operations clearly demonstrate the conflict of interest since the Director of DBA reports to the City's COO and in essence has authority of himself albeit in two different roles.”

➤ **DBA's Response:** The Organizational chart is not a source of legal authority...; The Organizational chart is simply a tool designed to make management and reporting more efficient and clear.

❖ **OAG Rebuttal:** Organizational charts exists to provide general information for the overall structure, how people and functions relate to one another, and who to see about each function. They are used to convey, at a glance, the line of decision-making authority from the top management of an organization down through its divisional managers and departmental managers.

OAG's Finding is supported by documentation provided by DBA, or obtained from the City's website, and by statements made during initial interviews with Mr. Manardo.

4. **Audit Finding Statement:** The Detroit Building Authority (DBA) and the City of Detroit (City) has violated the Property Management Agreement between DBA and the City (through the Planning and Development Department) and Compiled Laws of the State of Michigan by creating and allowing a Conflict of Interest to exist in their Executive Leadership.

➤ **DBA's Response:** The Audit Finding disregards common practice within City government... Elected and appointed officials regularly serve on the boards and commissions of component agencies and authorities, including the DBA...

❖ **OAG Rebuttal:** DBA provided several examples of “shared leadership within City government.” In the examples, the shared leadership relationship is one

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of oversight or governance where the public servant serves (also) as a “member of” a board or commission.

In this case, however, Mr. Manardo (the public servant) is not a “member” of the governing board of DBA. But in fact, as Executive Director, he is hired by the Board, reports to the Board, and is an employee/staff person for DBA. Mr. Manardo is paid a salary, whereas members of the Board are not normally entitled to any compensation for services rendered.

We feel this distinction is worth noting, and therefore his leadership roles as Executive Director of DBA and as the Group Executive over the DBA, does constitute a conflict of interest in principle, even if not in practice.

5. **Audit Finding Statement:** Article XI of the Agreement [PMA] has a clear statement warranting against conflicts of interest.

...DBA further warrants and covenants that no officer, commissioner, member or employee of the City or any other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or the proceeds hereof.

- **DBA's Response:** Mr. Manardo does not have any “personal or financial interest, direct or indirect” in the PMA or its proceeds, and his mere employment by DBA does not create such an interest. Mr. Manardo's salary is not paid from the proceeds of the PMA...
- ❖ **OAG Rebuttal:** As stated previously, and as Corporation Counsel concedes throughout their response, Mr. Manardo is in fact an employee of DBA. As such, his salary is paid by the DBA. The PMA and Demolition Management Agreement (DMA) are contracts that govern DBA's relationship and operations within the City of Detroit and lays out their major source of funds. As Executive Director, Mr. Manardo is directly involved with securing, maintaining, and increasing revenues for DBA.

In his role as Group Executive of Operations, and according to the organizational charts, Mr. Manardo oversees and (we presume) reviews DBA's activities and the execution of the PMA and DMA. In practice and in the normal course of his activities as COO, contracts and other agreements from DBA would fall under his oversight. The potential for conflict of interests in decision making is heightened given that Mr. Manardo is directly involved in contracts or agreements that could benefit him personally directly or indirectly as Executive Director of DBA.

6. **Audit Finding Statement:** The MCL Act 317 law prohibits a public servant from soliciting, negotiating, renegotiating, approving, or representing a party to a contract with a public entity, except in certain situations. According to the law, the public servant shall not be a party, directly or indirectly, to any contract between himself or herself and the public entity of which he or she is an officer or employee.

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- **DBA's Response:** Mr. Manardo is an employee of DBA and a Group Executive within the Mayor's administration; neither role involves a contract.
- ❖ **OAG Rebuttal:** As stated previously, and as Corporation Counsel concedes throughout their response, Mr. Manardo is in fact an employee of DBA. The PMA and DMA are both contracts between DBA and the "City" a public entity. Mr. Manardo is in fact directly or indirectly linked to a contract between himself (as Executive Director of DBA) and the public entity (the City of Detroit) that he serves as Group Executive.

7. **Audit Finding Statement:** The Ethics Board ruled the following in their Advisory Opinion #2012-12, issued October 5, 2012:

A City Director may not serve in a dual capacity as Department Director and Chief Executive Officer of a Non Profit Corporation whose subject matter and work authority is identical to that of the City Department.

- **DBA's Response:** DBA is not a "quasi-governmental body," it is a "public entity." DBA wrote "that the source of the conflict in Opinion 2012-12 was not a public entity; it was a non-profit entity (at most quasi-governmental and possibly non-governmental...)" The response went on to note that:

Outsourcing or partial outsourcing of a governmental function can be controversial, and the new entity is in a natural position of competing interests with the City creating a clear and natural conflict for an individual whose allegiance straddles both entities.

- ❖ **OAG Rebuttal:** The response from DBA presents a conflicting view of itself and its form of government by stating that it is not "a quasi-governmental agency." Definitions of quasi-governmental entities/corporations include:
  - They are a type of corporation in the private sector that is backed by a branch of government that has a public mandate to provide a given service. Contrary to popular opinion, employees of quasi-public corporations do not work for the government;
  - They are separate entities and are also non-profit entities;
  - They are supported by the government but managed privately (i.e. a quasi-governmental health-care agency);
  - A quasi-governmental organization, corporation, business, or agency or a "quasi-autonomous non-governmental organization" is an entity that is treated by national laws and regulations to be under the guidance of the government but separate and autonomous from the government;
  - They are agencies that are created and funded by the government but enjoy operational and political independence.

Perhaps the DMA itself best describes the relationship between DBA and the City:

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The relationship of the DBA and the City shall be that of a professional contractor and, except as provided herein, no liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions or liabilities arising out of a contract of hire or employer/employee relationship either express or implied shall arise or accrue to either Party as a result of this Agreement and undertaking.

Regarding the Board of Ethics Opinion, we want to highlight the fact that the non-profit entity that was the source of the conflict in Opinion 2012-12, was also established with a public mandate to provide a given service. The new entity was not competing with the City. On the contrary, the new entity was sanctioned and established with the full blessing of the City, and was authorized by the administration to use public funds to facilitate its startup and cover initial operating costs. Health care services for the citizens of Detroit would now be administered through the new entity versus a City department.

DBA was initially established under Michigan Law Act 31 of 1948, Building Authorities, which allows cities to establish and incorporate organizations to provide a specific public service. However, in recent years, the administration has transferred several activities, once performed by City agencies and departments to DBA, as listed below:

- **Commercial Property Management:** In October 2014, all commercial property management activities were transferred to DBA. They are now responsible for the management, marketing, and sale of city-owned commercial properties; an activity that was previously carried out by the Planning and Development Department (PDD). DBA is also responsible for creating and maintaining a database of all city owned commercial property, managing all of the properties within the database, and for managing the sale of the property;
- **Demolition:** According to Mr. Manardo, Mayor Duggan asked DBA to consolidate all demolition activities because demolition had been spread out among multiple agencies and the processes and standards varied. DBA was tasked with developing a single specification for demolition work and a single set of expectations to manage it. As stated previously, DBA operates as program managers as defined in the DMA executed in August 2015.
- **City Leases:** DBA is also responsible for managing city leases, which consist of property leased by and from the city, cellular towers and billboard leases.

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We feel that DBA's responses are imprecise and misguided, and that substantively, the same situation exists with the transfer of activities to DBA, as it did with the transfer of activities to the non-profit. We believe there exists a "clear and natural conflict" for Mr. Manardo, whose allegiance straddles both entities.