

City of Detroit

OFFICE OF THE AUDITOR GENERAL



Performance Audit Of The Public Lighting Authority

May 2022



Office of the Auditor General

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MEMORANDUM

DATE: June 7, 2022

TO: Honorable City Council
Mayor Mike Duggan

FROM: Mark Lockridge, CPA *MWL*
Auditor General

RE: Performance Audit of the Public Lighting Authority

CC: Beau Taylor, Executive Director, Public Lighting Authority
Hakim Berry, Group Executive, and Chief Operations Officer
Regina Greear, Deputy CFO, Office of the Chief Financial Officer,
Office of Departmental Financial Services
Jeanet Kulcsar, Director of Strategy, Office of the Chief Financial
Officer
John Naglick, Chief Deputy CFO/Finance Director, Office of the
Chief Financial Officer
John Prymack, Interim Director, Public Lighting Department
Jay Rising, Chief Financial Officer, Office of the Chief Financial
Officer
Steve Watson, Deputy CFO, Office of the Chief Financial Officer,
Office of Budget

Attached for your review is our audit report of the Public Lighting Authority. This report contains our audit purpose, scope, objectives, approach and methodology, and conclusions; background; our audit findings and recommendations; and the responses from the Public Lighting Authority, and the Office of the Chief Financial Officer, Office of Departmental Financial Services.

We would like to thank the employees of the above-named organizations for their cooperation and assistance extended to us during this phase of the audit.

Copies of all of the Office of the Auditor General reports can be found on the City's Website: <https://www.detroitmi.gov/government/auditor-general>.

**PERFORMANCE AUDIT OF THE PUBLIC LIGHTING AUTHORITY
MAY 2022**

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Agency/Department Legend*

- Public Lighting Authority (PLA)
- Office of the Chief Financial Officer, Office of Departmental Financial Services (ODFS) and Office of Budget (OB)

**PERFORMANCE AUDIT OF THE PUBLIC LIGHTING AUTHORITY
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EXECUTIVE OVERVIEW

In July 2017, the Office of the Auditor General was requested by the Detroit City Council to conduct a performance audit of the Public Lighting Authority. Our audit encompasses Public Lighting Authority (PLA) activities from the period of July 1, 2015 to June 30, 2020.

To quote the City's Law Department:

The Authority was created in 2013 to provide an equitable and reasonable method and means of financing, operating, and maintaining a lighting system to supply lighting in sufficient quantities to the City of Detroit. At the time of its creation, the City's streetlight system was in disrepair and badly in need of improvement. That same year, the City and the Authority entered into the Interlocal Agreement to define the roles and responsibilities of each of the Parties with respect to the operation, maintenance, and management of the System¹.

Our review of PLA's billings to and payments from the City revealed that they were significantly higher than their actual operating and maintenance costs and in excess of the "Annual Cap Amount." As a result of this "ambiguous" language in the Agreement, PLA has amassed and retains a large amount of cash on its balance sheet.

The Law Department reviewed the Interlocal Agreement and has concluded that² :

- The Interlocal Agreement does not provide a methodology of how the Annual Cap Amount was derived nor any assumptions regarding the size of the lighting system or other factors the Parties may have relied upon in determining that Cap.
- Both Parties [the City and PLA] believed the Authority was entitled to be reimbursed for actual costs.
- The provisions discussed above reveal certain inconsistencies with regard to whether the Parties intended an absolute threshold on the City's payment obligation, rendering the contract indefinite or ambiguous.

We also found significant deficiencies in PLA's accounting practices and a lack of adequate and proper oversight over its professional services contracts. PLA also made improper payments of bonuses to their employees and contractors during the scope of the audit.

The Public Lighting Authority versus The Public Lighting Department

The distinction between the two organizations can be summed up in a recent quote by the leadership of PLA: "A more appropriate name for PLA would have been the 'Street Lighting Authority' as they are solely responsible for improvements and maintenance of

¹ APPENDIX B "Memo from the Law Department: "Payment of Public Lighting Authority Invoices Under Interlocal Agreement," p 1" on page 55 of this report.

² APPENDIX B "Memo from the Law Department: "Payment of Public Lighting Authority Invoices Under Interlocal Agreement," p 5." on page 55 of this report.

the City's street lighting system as stated in a memorandum from the City's Law Department³:

By the maintenance and operation agreement, the City is simply outsourcing maintenance of certain public lighting equipment." The Authority does not provide or generate electrical energy. Instead, the City shall purchase all the electricity necessary to power the System from a third-party power provider.

In short, the City's Charter and the Interlocal Agreement are clear in that the Public Lighting Department (PLD) is responsible for the delivery of energy (i.e. electrical power.) According to the City's Charter (Article 7 Chapter 9 Public Lighting, Section. 7-904. Powers and Duties): PLD:

The [Public Lighting] Department shall supervise and control all public lighting and public lighting plants and may:

- Furnish and sell light, heat, and power to any person, firm, division, or corporation within or outside of the city to the extent permitted by law; and
- Exercise other powers and perform other duties necessary to carry out its functions.

Citywide Public Lighting Audits

Although PLA's audit was a separate request by City Council, it was conducted as a part of our comprehensive focus on the City's public lighting activities. To date we have published two reports on the City's Public Lighting Department:

1. Audit of the Public Lighting Department Interim Report On Salvage Operations (February 2020)
2. Audit of the Public Lighting Department Second Interim Report On Operational Revenues (September 2020)

As independent internal auditors, we approach our audits with an unbiased focus on "adding value and improving an organization's operations." According to the American Institute of Certified Public Accountants (AICPA), "the concept of accountability for use of public resources and government authority is key to our nation's governing processes." The "Generally Accepted Government Auditing Standards (GAGAS)"⁴ states that:

Government auditing is essential in providing accountability to legislators, oversight bodies, those charged with governance, and the public. GAGAS engagements provide an independent, objective, nonpartisan assessment of the stewardship, performance, or cost of government policies, programs, or operations, depending upon the type and scope of the engagement.

³ APPENDIX C: "Memo from the Law Department: "Public Lighting Authority and Detroit City Charter." p 9" on page 71 of this report"

⁴ Generally Accepted Government Auditing Standards (GAGAS) 2018 Revision, Compiled by the Comptroller General of the United States Government Accountability Office, <https://www.gao.gov/yellowbook>.

Responsibility for monitoring the implementation of recommendations is set forth in Section 7.5-105(4) of the City Charter which states in part that:

Recommendations that are not put into effect by the department shall be reviewed by the Finance Director⁵ (or his Designee) who shall advise the Auditor General and the City Council of the action being taken with respect to the recommendations.

⁵ The 2012 City Charter does not reflect that the position and responsibilities of the "Finance Director" were replaced with the creation of the Office of the Chief Financial Officer and its positions under the "Emergency Manager Order No. 41" signed into law on September 25, 2014.

AUDIT PURPOSE, SCOPE, OBJECTIVES, APPROACH AND METHODOLOGY, AND CONCLUSIONS

Audit Purpose

The Audit of the Public Lighting Authority was 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 performance audit conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) as compiled by the United States Government Accountability Office except for a Peer Review (see ***“Appendix A: Generally Accepted Government Auditing Standards”*** for more information on GAGAS” on page 52 of this report.)

The definition of Audit Scope is defined in GAGAS Section 8.10:

Scope is the boundary of the audit and is directly tied to the audit objectives. The scope defines the subject matter that the auditors will assess and report on, such as a particular program or aspect of a program, the necessary documents or records, the period of time reviewed, and the locations that will be included.

The initial audit scope was from July 1, 2015 through June 30, 2020. However, we limited the scope of this audit to the Public Lighting Authority's (PLA) activities from July 1, 2018 through June 30, 2020.

Audit Objectives

The objectives of the audit were to:

- Assess PLA's internal controls related to financial transactions.
- Determine PLA's compliance with Finance Directives, policies, plans, procedures, laws, and regulations.
- Evaluate the effectiveness and efficiency of core operations of the PLA.

Audit Approach and Methodology

To accomplish our objectives, our audit approach and methodology included:

- Reviewing the State law, Articles of Incorporation of PLA, City Charter, Executive Orders, financial reports, budget reports, organization charts, Finance Directives, Chief Financial Officer Directives, and any other reports or directives pertinent to PLA Operations.
- Gathering and reviewing policies and procedures of core operations and other similar data.

- Conducting audit-planning meetings to determine the scope and audit objectives, and to determine the financial transactions and/or areas to audit.
- Developing questions regarding transactions, processes and procedures, controls, functions, records, and personnel.
- Interviewing relevant personnel of PLA, City, Michigan Finance Authority, and Trustee Bank.
- Observing, documenting, and testing relevant processes, procedures, contracts, and agreements.
- Examining financial transactions and observing financial operations.
- Conducting any necessary additional testing and completing any other audit steps necessary to draw conclusions to the relevant objectives.
- Developing recommendations for all findings.

*Note: See “**Appendix A: Generally Accepted Government Auditing Standards**” for more information on Fieldwork, Developing Findings, Reporting Conclusions and Recommendations in a Performance Audit on page 52 of this report.*

Conclusions

Based upon the results of our audit, we have concluded that:

- There is a lack of effective internal controls over various financial processes and transactions resulting in:
 - PLA’s billings to, and payments from the City that were significantly over the annual cap amounts and exceeded actual operating and maintenance costs.
 - A lack of segregation of duties over receipts and disbursements.
- PLA does not comply with some of its internal accounting policies and procedures, and some policies and procedures are outdated and inadequate resulting in:
 - Unreconciled, stale-dated outstanding checks, journal entry posting errors, and idle/inactive bank accounts.
 - Policies that have conflicting conditions within their contents.
- There are deficiencies in PLA’s operations relating to the procurement, contracting, and administration of professional services contracts, evidence by:
 - A lack of a competitive procurement process for professional services contracts.
 - Payments against an expired contract and payments over the contract limit.

- Improper payment of bonuses to employees and contractors;
- PLA not providing contract information timely during the audit.

We also concluded that PLA accumulated and retains significant excess utility user tax dollars over its bond debt related obligations.

BACKGROUND

The Public Lighting Authority was established during the City of Detroit's fiscal crisis because the citywide lighting issues had not been addressed and the lighting system had not been maintained. The City did not have the ability to take on the long-term debt needed to replace the entire system. The City's Emergency Manager collaborated with lawmakers in Lansing, Michigan to enact state laws that paved the way for the creation of the Public Lighting Authority (PLA.)

PLA is a municipal corporation authorized by the Michigan Legislature via "Act 392". This was one of three bills in a "tie-barred package"⁶ that:

- Authorized the establishment of lighting authorities (Act 392).
- Amended the City Utility User Tax⁷ (UUT) Act to direct \$12.5 million from the utility user tax imposed by the City to PLA for operational and financing purposes (Public Act 393 of 2012).
- Amended the City Income Tax Act to authorize City that establishes a lighting authority to assess a higher income tax rate to hold the City harmless for the \$12.5 million revenue loss (Public Act 394 of 2012.)

According to the City's Law Department⁸:

The Act only applies to the City of Detroit and was designed to give the City the option of creating a separate lighting authority to address both the condition of PLA's infrastructure and the threats posed by potential bankruptcy. The act was effective on December 19, 2012. City Council approved the Articles of Incorporation, which basically track the language of the Act, on February 5, 2013.

The City filed the Articles on Incorporation on April 5, 2013. PLA was established for the purpose of providing an equitable and reasonable method and means of financing, operating, and maintaining a street lighting system in the City.

PLA's anticipated purpose was to make a multi-year, large scale, city-wide investment in the public lighting infrastructure, including poles, ballasts, circuits, transformers, and distribution connections.

PLA's street lighting system investment activities were funded through the sale of bonds. In 2013, PLA sold \$60.0 million in short-term bonds to fund its start-up costs. Then, on July 2, 2014, PLA issued a series of long-term, thirty-year bonds totaling \$185.0 million. The bonds were sold at premium of \$11.2 million and PLA received \$196.2 million in total bond proceeds. A portion of the proceeds from sales of the long-term bonds was used to pay off the previous short-term bond debt.

⁶ Tie Barred Package: A bill which is part of a group or package of bills that is necessary to accomplish a single legislative goal.

⁷ Utility Users Tax Revenues are revenues collected by the City in accordance with City Utility Users Tax Act (Michigan Act 100 of 1990).

⁸ Memo from Sharon Blackmon, Senior Assistant Corporation Counsel to John Naglick, Chief Deputy CFO/Finance Director, "Public Lighting Authority and Detroit City Charter, dated March 12, 2022.

The bond debt incurred by PLA to finance the City’s street lighting system is repaid by a dedicated and restricted revenue stream from the City’s Utility Users Tax revenues totaling \$12.5 million per year as required under Act 392.

On October 23, 2013, the City’s Emergency Manager (EM) issued Emergency Manager Order No. 18: Approval of Certain Agreements Related to the Public Lighting Authority. Three Agreements were approved as follows: Interlocal Agreement Between the City of Detroit and PLA for the Operations, Maintenance and Management of A Public Lighting System (the O&M Interlocal Agreement); Interlocal Agreement Between the City of Detroit and PLA for Construction and Finance of A Public Lighting System (the C&F Interlocal Agreement); Trust Agreement Between and Among City of Detroit, the Public Lighting Authority, and the Trustee (the Trust Agreement).

PLA is majorly funded by the City of Detroit General Fund dollars. Its revenues and expenditures during the audit period are detailed in the table below:

PLA Revenues and Expenditures						
July 1, 2015 to June 30, 2020						
Fiscal Year	2015	2016	2017	2018	2019	2020
	<i>In Millions</i>					
Revenues	\$19.3	\$22.6	\$23.6	\$23.8	\$23.2	\$26.5
Less Expenditures	(16.7)	(16.8)	(16.3)	(21.1)	(22.2)	(22.9)
Net Increase in Net Position	\$2.6	\$5.8	\$7.3	\$2.7	\$1.0	\$3.6
Net Position, Beginning of Period	16.5	19.1	24.9	32.2	34.9	35.9
Net Position, End of Period	\$19.1	\$24.9	\$32.2	\$34.9	\$35.9	\$39.5

PLA Is A Blended Component Unit In The City’s Financial Reports

According to the City’s 2021 “Annual Comprehensive Financial Report”⁹:

Because the PLA is in substance a part of the City’s operations, its financial statements are blended (Blended Component Unit) with the City’s financial statements in the ACFR’s Enterprise Fund Section.

The PLA, under the provisions of Michigan Public Act 392, is governed by a board, and the City appoints the voting majority of the PLA’s board members and is able to impose its will. The PLA is legally [a] separate entity and was formed to develop and implement a plan to improve the City’s public lighting system. The PLA is funded through the issuance of bonds, which will be paid back with revenue from the City’s utility tax, which meets the criteria for the PLA to be a blended component unit.

⁹ City of Detroit “2021 Annual Comprehensive Financial Report” pp 14, 40; <https://detroitmi.gov/departments/office-chief-financial-officer/financial-reports>.

PLA's Executive Leadership

Since its inception, Detroit's Public Lighting Authority has had three leaders:

1. **Odis Jones** was the Chief Executive Officer from July 2013 until February 2016.
2. **Nicolette Carlone** was PLA's Chief Financial Officer in February 2014 until promoted to Chief Operating Officer in August 2015. She held this position until she became the Chief Executive Officer in February 2016.
3. **Beau Taylor** was named Executive Director of PLA in August of 2017. Mr. Taylor came to PLA after having served as director of the City's Public Lighting Department.

PLA's Governing Body

City of Detroit elected municipal officials play a significant role in PLA including the adoption of its articles of incorporation and the appointment of the board of directors. The Act mandates the creation of a five-member board of directors comprised of Detroit residents for the governance of the PLA. The composition of the board of directors is outlined whereby two members are appointed by the mayor and two members are appointed by City Council. The fifth member is appointed by the City Council from a list of names provided by the mayor. The act also requires that the board contain a licensed professional engineer, a certified public accountant, and a licensed attorney.

The current PLA Board is led by Dr. Lorna Thomas, who has been the Chairperson since 2013.

The minutes of the Board of Directors, and PLA's annual reports can be found on their website: <http://www.publiclightingauthority.org/about-us/>.

AUDIT FINDINGS AND RECOMMENDATIONS

Finding #1. Billings To, And Payments From The City Were Significantly Over The Annual Cap Amounts And Exceeded Actual Operating And Maintenance Costs

Overview of Conditions

Based on our review:

- A. The Public Lighting Authority (PLA) requested budget appropriations, and billed the City, significantly more than annual cap amounts per the interlocal agreements, and more than their actual operating and maintenance costs.
- B. The Office of the Chief Financial Officer, Office of Budget, budgeted for amounts significantly more than PLA's annual cap amounts per the interlocal agreements, and more than their actual operating and maintenance costs. They neither requested nor required PLA to submit evidence of actual costs.
- C. The City budgeted for and paid PLA significantly more than annual cap amounts per the interlocal agreements, and more than their actual operating and maintenance costs. The Office of the Chief Financial Officer, Office of Departmental Financial Services failed to properly analyze the invoices received from PLA against the existing agreements. They neither requested nor required PLA to submit evidence of actual costs.

Background

The "Operating And Maintenance Interlocal Agreement" (herein referred to as the "O&M Interlocal Agreement") provides the necessary funding for PLA to operate and maintain the City's lighting system. PLA's operating and maintenance costs are funded through the City's General Fund dollars. Section 4.1 of the O&M Interlocal Agreement outlines how PLA operating and maintenance costs should be calculated and what the City should pay:

The City shall pay the Authority the following amounts for the Services, provided that **in no event, shall the City be obligated to pay more in any given year than \$8,024,000 (the "Annual Cap Amount")**, excluding any payments for Extraordinary Maintenance:

- a. Operations and Maintenance Costs: \$9.62 per month per Overhead-Fed Streetlights, and \$17.66 per month per Underground-Fed Streetlight.
- b. Extraordinary Maintenance Costs: The actual costs of any Extraordinary Maintenance performed during the second previous quarterly period, such that the City will pay the Extraordinary Maintenance costs performed for the period of January through March of any year on the Quarterly Statement for the July through September Quarter of that year.
- c. Administrative Costs: One Hundred and Twenty-Six Thousand and Two-Hundred and Fifty Dollars (\$126,250) per month for the operation of the Authority.

The amounts to be paid shall increase annually by the lesser of (i) three percent (3%) or (ii) the percentage increase in the Consumer Price Index (CPI) over the prior year.

In summary, the O&M Interlocal Agreement provides for operating and maintenance costs based on the total number of streetlights in the City as maintained in PLA’s database, reimbursement for extraordinary maintenance costs, and a standard allocation for administrative costs. PLA’s “Annual Cap” amount of \$8,024,000, includes operating, maintenance, and administrative costs, but excludes extraordinary maintenance costs.

As per the O&M Interlocal Agreement, PLA invoiced the City quarterly, and the City paid PLA based on the amounts invoiced.

Detail of Conditions

A. PLA billings and payments are above the annual cap amount.

Our analysis revealed that PLA has billed the City, and the City paid amounts above the annual cap amount since fiscal year 2016. In accordance with the O&M Interlocal Agreement, PLA submits a quarterly bill to the City as outlined in Section 4.1. (a), (b) and (c) noted above. The quarterly invoice includes a cover letter from the Director of PLA along with details of the amount being requested for payment. The invoice is approved for payment by a representative of the Office of the Chief Financial Officer, Office of Departmental Financial Services (ODFS) Division. We noted that the “Annual Cap” amounts were not mentioned in the cover letters nor on the actual invoices. The City’s ODFS representative approved the payments based on what PLA invoiced. PLA was not required to submit to the City “actual costs” incurred.

Based on our calculations, the amounts billed from PLA and paid by the City to PLA significantly exceeded the “Annual Cap” amounts as shown in the table below:

Billings And Payments Above The Annual Cap Amount						
Fiscal Year Ended June 30	Percentage Increase In CPI Over Prior Year (A)	Annual Cap Amount Before CPI Adjustment (B)	CPI Adjustment Increase (C)	Annual Cap Amount Allowed After Annual CPI Adjustment(D)	PLA O&M Billings & Payments(E)	O&M Billings & Payments Above Annual Cap Amounts(F)
2014	-	\$8,024,000	-	\$8,024,000	\$ 757,500	-
2015	0.8%	\$8,024,000	\$ 64,192	\$8,088,192	\$ 5,527,177	-
2016	0.7%	\$8,088,192	\$ 56,617	\$8,144,809	\$ 8,886,743	\$ 741,934
2017	2.1%	\$8,144,809	\$171,041	\$8,315,850	\$10,025,928	1,710,078
2018	2.1%	\$8,315,850	\$174,633	\$8,490,483	\$10,302,828	1,812,345
2019	1.9%	\$8,490,483	\$161,319	\$8,651,802	\$10,099,883	1,448,081
2020	2.3%	\$8,651,802	\$198,992	\$8,850,794	\$10,453,826	1,603,032
Billings And Payments Above The Annual Cap Amount Including Extraordinary Maintenance Costs						\$7,315,470
Less: Extraordinary Costs from FY2016 to FY2020(G)						(542,689)
PLA Total Net Billings And Payments Above The Annual Cap Amount (Excluding Extraordinary Maintenance Costs)						\$6,772,781

- Notes: (A) The “Consumer Price Index (CPI)” data is provided by the U.S Department of Labor Bureau of Labor Statistic as updated on January 13, 2021. We used the annual average of the CPI and quoted the CPI from the “US Inflation Calculator” for the “Percentage Increase in CPI Over Prior Year.”
- (B) The “Annual Cap Amount Before CPI Adjustment” is equal to the prior year’s ending Annual Cap Amount.
- (C) The “CPI Adjustment Increase” is calculated by multiplying the “Annual Cap Amount Before CPI Adjustment” times the “Percent Increase in CPI Over Prior Year.”
- (D) The “Annual Cap Amount Allowed After Annual CPI Adjustment” is calculated by adding the Annual Cap Amount Before CPI Adjustment (Prior Year Amount) and the current year “CPI Adjustment Increase.”
- (E) Represents operating and Maintenance costs billed by PLA and paid by the City. These amounts include “Extraordinary Maintenance Costs” which are not subject to the Annual Cap amount per the O&M Interlocal Agreement.
- (F) “O&M Billings & Payments Above Annual Cap Amounts” is the difference between the “Annual Cap Amount Allowed After Annual CPI Adjustment” versus “PLA’s O&M Billings & Payments.”
- (G) “Extraordinary Costs from FY2016 to FY2020” is sourced from our analysis of PLA’s invoices during this period.

- B. PLA’s annual budget appropriation requests exceeded the annual cap amounts. Since 2016, PLA requested fiscal year budget appropriations that far exceeded the “Annual Cap” amounts and provided false statements to City Council and the OCFO Office of Budget to support the inflated budget requests. The following table shows the amount PLA requested for their annual operating budget(s) versus the “Annual Cap” amounts allowed for operating and maintenance costs:

Fiscal Year Ended June 30,	Budget Amount PLA Requested For City Council Approval	Annual Cap Amount Allowed After Annual CPI Adjustment	PLA Requested Budgeted Amount Above Annual Cap Amount
2016	\$ 8,900,000	\$8,144,809	\$ 755,191
2017	\$10,000,000	\$8,315,850	\$1,684,150
2018	\$10,500,000	\$8,490,483	\$2,009,517
2019	\$10,500,000	\$8,651,802	\$1,848,198
2020	\$10,500,000	\$8,850,794	\$1,649,206

PLA has consistently misquoted the O&M Interlocal Agreement in their responses to budget questions posed by the Legislative Policy Division on behalf of City Council. In their response to questions relating to the fiscal year 2016-2017 “request for a \$10.0 million appropriation,” PLA correctly quoted the \$8.0 million Annual Cap amount as stated in the O&M Interlocal Agreement. However, they added “55,000 lights up to” *inferring* that the original agreement was based on a certain number of lights. Then, PLA explained that the budget requested “increase of \$2.0 million was based on an estimate of 70,000 streetlights.”

It should be noted that the number of streetlights O&M is based on is not stated, identified, nor listed in the agreements. It is our understanding that the O&M Interlocal Agreement was based on approximately 65,000 lights in the City's lighting system. PLA (actual) quarterly billings in 2020 was consistently based on approximately 67,000 lights.

During the 2020-2021 budget hearings it was stated that "the maximum amount per year per the memorandum of understanding (MOU) is \$10.5 million." However, we have confirmed that there is no MOU or interlocal agreement or any other document which increased the annual cap amount from \$8.0 million to \$10.5 million dollars.

- C. PLA actual operating and maintenance costs are below the annual cap amounts. We have determined that PLA actual operating and maintenance costs are below the "Annual Cap" amount, resulting in additional surplus funding and the accumulation of large cash balances.

PLA's Audited Financial Statements reflect the following expense categories broken down by Operating versus Non-operating expenses (costs:)

Operating Expenses Categories and Descriptions	
Contractor Operating and Maintenance Payments	Actual amounts paid to the contractors who perform operations and maintenance of street lighting system
Administrative Costs	Includes employee compensation, professional fees, occupancy, office expenses, insurance, public relations, and other administrative type expenses
Depreciation Expense	Non-cash expenditures which record the reduction in the useful life of the City's Streetlighting System (Asset)
Special Projects	Includes extraordinary costs and streetscape projects authorized by the City. Streetscape projects are fully reimbursed by the City of Detroit
Non-operating Expenses	
Bond Interest Expense	Interest expense on PLA's bond debt is paid semiannually by PLA
Loss of Deposition of Capital Assets	Sale of capital assets at a loss
Bond Costs	Bond related expenses such as bond issue cost and bond rating fees

For purposes of analyzing PLA's "actual" operating and maintenance expenses, we include "Contractor Operating and Maintenance Costs" and "Administrative Costs" (only) and exclude the following costs:

- Depreciation Expenses are excluded as this is strictly a "non-cash" accounting entry to record the reduction in the useful life of an asset.

- Special Project and Streetscape projects are excluded from the calculation of O&M costs relating to the “Annual Cap” amounts. Also, Streetscape project costs are fully reimbursed by the City.
- Non-operating expenses are funded by the City’s Utility Users Tax and not from the General Fund budget and therefore are excluded from this analysis.

The following table shows the difference between PLA’s actual O&M costs versus the Annual Cap Amounts from 2016-2020:

Fiscal Year Ended June 30	Contractor’s Operating and Maintenance Payments ^(A)	PLA Administrative Costs ^(A)	PLA Actual O&M Costs Subject To The Annual Cap Amount ^(A)	Annual Cap Amount Allowed After Annual CPI Adjustment ^(B)	PLA Actual O&M Costs Below The Annual Cap Amount ^(C)
2016	\$3,431,910	\$4,592,560	\$8,024,470	\$8,144,809	\$ 120,339
2017	\$4,006,367	\$3,657,098	\$7,663,465	\$8,315,850	652,385
2018	\$3,596,000	\$2,903,237	\$6,499,237	\$8,490,483	1,991,246
2019	\$4,457,623	\$3,291,897	\$7,749,520	\$8,651,802	902,282
2020	\$2,856,761	\$3,032,903	\$5,889,664	\$8,850,794	2,961,130
Total PLA Actual O&M Costs			\$35,826,356^(D)		
Total PLA Actual O&M Costs Below The Annual Cap Amount					\$6,627,382

- Notes:*
- (A) Source: PLA audited financial statements of fiscal years 2016 to 2020.
 - (B) The “Annual Cap Amount Allowed After Annual CPI Adjustment” is calculated by adding the Annual Cap Amount Before CPI Adjustment (Prior Year Amount) and the current year “CPI Adjustment Increase.”
 - (C) These amounts represent the calculated difference between PLA’s actual O&M Costs versus the Annual Cap Amounts from 2016-2020.

In summary, we found that PLA’s actual Operating and Maintenance costs (O&M) are \$13.4 million less than the actual amount PLA billed to and were paid by the City:

Comparison of Actual O&M Costs to O&M Billings and Payments Fiscal Years 2016-2020		
Actual O&M Costs	O&M Costs Billed To And Paid By The City	Actual O&M Costs versus O&M Billings and Payments
\$35,826,356 ^(D)	\$49,769,208	\$13,942,852
	Less: Extraordinary Maintenance Costs	(542,689)
	Net Amount of Excess Billings and Payments	\$13,400,163
PLA Total Net Billings and Payments Above The Annual Cap Amount (Excluding Extraordinary Maintenance Costs)		\$6,772,781
Total PLA Actual Operating and Maintenance Costs Below The Annual Cap Amount		6,627,382
Net Amount of Excess Billings and Payments		\$13,400,163

Criteria

The following criteria applies to these conditions:

A. The O&M Interlocal Agreement

Section 4.1 of the agreement states: Operation and Management Fees Costs. The City shall pay the Authority the following amounts for the Services, provided that in no event, shall the City be obligated to pay more in any given year than \$8,024,000 (the “Annual Cap Amount”), excluding any payments for Extraordinary Maintenance:

- a. Operations and Maintenance Costs: \$9.62 per month per Overhead-Fed Streetlights, and \$17.66 per month per Underground-Fed Streetlight.
- b. Extraordinary Maintenance Costs: The actual costs of any Extraordinary Maintenance performed during the second previous quarterly period, such that the City will pay the Extraordinary Maintenance costs performed for the period of January through March of any year on the Quarterly Statement for the July through September Quarter of that year.
- c. Administrative Costs: One Hundred and Twenty-Six Thousand and Two-Hundred and Fifty Dollars (\$126,250) per month for the operation of the Authority.

The amounts to be paid under this Section 4.1 shall increase annually by the lesser of (i) three percent (3%) or (ii) the percentage increase in the CPI over the prior year.

B. CFO Directive No. 2018-102-002 Comprehensive Financial Planning

- **Section 6.1** states that the City shall prepare and implement short-term (1-4 years) and long-term (5-10 years) integrated plans to guide the budget process and ensure the City delivers programs and services to the public in an efficient and effective manner within the availability of its resources.
- **Section 6.2** states that comprehensive financial planning shall be based on the following principals:
 - **6.2.1.** Revenue estimates shall be prepared on a conservative basis to minimize the possibility that economic fluctuations could jeopardize ongoing service delivery during the fiscal year.
 - **6.2.2.** Expenditure estimates shall be prepared on a conservative basis and anticipate needs that are reasonably predictable.

C. Memorandum From the City of Detroit’s Law Department, Chief Legal Counsel, Re: Payment of Public Lighting Authority Invoices under Interlocal Agreement, March 17, 2022

We received a copy of a “Memorandum” From the City of Detroit’s Law Department, Chief Legal Counsel, Pamela Parrish, addressed to John Naglick, Chief Deputy CFO/Finance Director, Office of the Chief Financial Officer, dated March 17, 2022 (see **APPENDIX B “Memo from the Law Department:**

“Payment of Public Lighting Authority Invoices Under Interlocal Agreement” on Page 55 of this report.)

The Law Department responded to the following question from the OCFO:

You have asked whether the City of Detroit is authorized to pay the Public Lighting Authority ("Authority") for operations, maintenance, and administrative costs in excess of the Annual Cap Amount established for those expenses in the Interlocal Agreement between the City of Detroit and the Authority for the Operation, Maintenance and Management of a Public Lighting System ("interlocal Agreement" or "Agreement".)

The Law Department concluded:

A review of the terms of the Interlocal Agreement, and the practical interpretation of the Agreement by the Parties supports a finding that the Parties intended that **actual operations and maintenance costs were reimbursable to the Authority**, and that the Annual Cap Amount was not intended by either Party to be a limitation on the amount that could be reimbursed.

Effects

- Failure to comply with the O&M Interlocal Agreement led to overpaying PLA above the stipulated annual cap amount. The overpayment increases the burden of the City taxpayers to operate and maintain the City’s street lighting systems and reduces funding for other departments and potentially other city services.
- Paying PLA amounts significantly over PLA’s actual operating and maintenance costs also reduces the general funds available for other departments and potentially other city services and it does not accurately reflect true costs to operate the street lighting system.
- The overpayments resulted in a significant amount of cash “sitting idle” in PLA’s O&M investment bank account. This cash was not available for use by the City to invest or use for City services.

Causes

According to PLA representatives:

- PLA management never knowingly/intentionally misled City Council about the annual cap amount in the Interlocal agreement. They believed the annual cap amount was increased to \$10.5 million from \$8.0 million in an updated agreement or memorandum of understanding (MOU). It was not until we informed them during the audit that they realized “there was no MOU and the annual cap amount is \$8.0 million.”
 - *Note: Based on our audit, PLA used the “number of streetlights times the flat-rate per light fee” to calculate the billings and invoice the City. Since the number of streetlights increased over years (from the initial amounts in the agreement,) at some point, the*

invoiced amount exceeded the annual cap amount. There is no updated agreement or MOU with an increased O&M annual cap amount from \$8.0 million to \$10.5 million.

- The annual cap amount of \$8.0 million reflected the initial plan for the construction of 46,000 streetlights. The actual number of streetlights as of June 30, 2020 was 67,121, which is comprised of 55,307 overhead streetlights and 11,814 underground streetlights. PLA explained that the increase in the number of lights is due to a decision by Mayor Duggan to install “mid-block lighting” which was not a part of the original plan. Adding the mid-block lights increased the number of lights by more than 20,000.
 - The O&M agreement was not amended to reflect this change (i.e. - the annual cap amount of \$8.0 million did not reflect the increased number of streetlights from 46,000 to 67,121.)
 - *Note: We confirmed that the base number of streetlights relative to the annual cap amount was not stipulated in the agreement in the O&M Interlocal Agreement. Nonetheless, based on our review, the annual cap amount is more than sufficient to cover PLA’s actual O&M costs for the 67,121 streetlights.*
- City Council and the Office of Budget were responsible for the O&M annual amount increases to \$10.5 million since they approved PLA O&M budget.
- As the system ages, maintenance and upkeep costs will increase so they are “front-loading” O&M funding to generate a surplus and to prepare for the future additional costs.

According to ODFS representatives:

They were aware of PLA billings above the annual cap amount of \$8.0 million in the interlocal agreement. However, they received misinformation from the Directors of PLA and the Public Lighting Department (PLD) during the City’s budgeting process. They relied on information presented during City Council’s budget hearings when the Director’s consistently referred to “an increase in the annual cap amounts from \$8.0 million to \$10.5 million via an updated interlocal agreement and/or an updated memorandum of understanding.

Recommendations

We recommend that PLA:

- A. Invoice the City according to the O&M Interlocal Agreement. Total O&M annual invoice amount should not exceed the annual cap amount.
- B. Repay the City for the O&M overpayment of \$6.8 million, or at a minimum, determine the funds needed for future maintenance and operations.
- C. Request an O&M budget amount according to the O&M Interlocal Agreement. Inform the City Council, the Office of Budget and OCFO that there is an annual cap amount in the Interlocal Agreement.

- D. Follow CFO Directive No. 2018-101-002 Comprehensive Financial Planning to anticipate O&M expense needs and request the O&M budget amount.
- E. Request the City to amend the O&M Interlocal Agreement to properly fund PLA streetlights repair and maintenance.

We recommend that OCFO's Office of Departmental Financial Services:

- F. Review and understand the O&M Interlocal Agreement and approve payments in accordance with the terms of the contract (i.e. Agreement) and in accordance with the Law Department's conclusion that "actual operations and maintenance costs were reimbursable to the Authority."
- G. Disallow the payment if the amount is above the annual cap amount or in excess of the actual O&M costs.

We recommend that the OCFO's Office of Budget:

- H. Review and understand the O&M Interlocal Agreement and ensure that PLA's budget requests are in accordance with the terms of the contract (i.e. Agreement) and in accordance with the Law Department's conclusion that "actual" operations and maintenance costs were reimbursable to the Authority."

Finding #2. PLA Did Not Follow Some Of Its Own Accounting Policies And Procedures Relating To Banking Activities

PLA did not follow some of its own accounting policies and procedures resulting in unreconciled, stale-dated outstanding checks, journal entry posting errors, and idle/inactive bank accounts.

Conditions

A. Outstanding Checks

In one of PLA’s bank accounts (as of June 30, 2020) we found five (5) checks totaling \$8,366 that were outstanding for more than six (6) months. Out of the five checks, four were issued to PLA employees. These checks have not been investigated nor cleared at the time this report was written.

One of the checks was outstanding for more than one year and it was a replacement check for a fraudulent payroll action. According to records obtained from PLA, on May 25, 2019, a person accessed PLA’s email system and requested human resource personnel to change one of the employee’s payroll direct deposit information. On June 25, 2019, a “replacement” payroll check in the amount of \$7,754.61 was issued to the fraudster per his request. Fortunately, the human resource staff person did not change any direct deposit information as requested via the fraudulent email. The employee’s pay continued to be deposited to the correct direct deposit account. The replacement check was voided but remained an open item in PLA’s bank statements and bank reconciliations for more than one year before it was removed from the “Outstanding Checks” list.

In July 2020, the CFO wrote off one check and as of March 2021, four checks were still outstanding. To date, even after several requests, PLA has not provided any documentation supporting write-off/adjusting journal entries or proof that “stop payment” orders have been issued for the outstanding checks.

B. Errors in posting accounting activity.

For fiscal years 2019 and 2020, “Bond Rating Fees” were posted to the wrong general ledger account. We uncovered the error after learning that PLA had incurred \$5,000 of bond rating fees. These fees are paid to an external company who evaluates PLA’s bond ratings in the financial markets. We noted that the expenses did not show in the appropriate account – Trustee Fees. Instead, they were posted to “Prepaid Rent” in error.

C. Inactive Bank Accounts

PLA has two inactive bank accounts with the following balances detailed below:

PLA Inactive Bank Accounts				
Bank	Type of Bank Account	Date of Last Transaction	Status	Balance
Fifth Third	IV Escrow	July 18, 2016	Inactive	\$0.00
Fifth Third	Donation	January 29, 2019	Inactive	>\$80,000

Criteria

The following criteria applies to these conditions:

A. PLA Accounting Policies and Procedures Manual

1. **Section IX. Bank Accounts and Reconciliations** state that:

- a. All bank statements are given unopened to the CFO. The CFO reviews the statements, initials, and submits to the CPA Firm for reconciliation.
- b. The CFO gives the statements to the CPA firm for timely reconciliation as follows: a comparison of dates and amounts of deposits as shown in the accounting system and on the statement, a comparison of inter-account transfers, an investigation of any rejected items, a comparison of cleared checks with the accounting record including amount, payee, and sequential check numbers.
- c. The Chief Financial Officer/CPA firm will verify that voided checks, if returned, are appropriately defaced, and filed.
- d. The CFO/CPA Firm will investigate any checks that are outstanding over six months.

2. **Section III. Chart of Accounts and General Ledger** states that:

The general ledger is automated and maintained using Quick Books Pro accounting software. All input and balancing are the responsibility of the Administrative Assistant/CPA firm with final approval by the CFO. The CFO/CPA firm shall review the general ledger on a periodic basis for any unusual transactions.

3. **Section XIII. End of Month and Fiscal Year End Close** states that

- a. The CFO will review and sign off on all month and year end journal entries.
- b. At the end of each month and fiscal year end, the CFO will review all balance sheet accounts including verification of the following balances: cash accounts match the bank reconciliations, fixed assets accounts reflect all purchases, write-downs and retirements, accounts receivable and payable accounts match outstanding amounts due and owed.
- c. The income and expense accounts review will include reconciliation to amounts received and expended and verification that payroll expenses match the payroll reports including federal and state payroll tax filings.

B. PLA Standard Policies and Procedures Manual

Policy #2315 Fraud Prevention and Investigation states that the:

Executive Director/CEO shall be responsible for developing internal controls designed to prevent and detect fraud, financial impropriety, or

financial irregularities in PLA. Any member of PLA's administration team should be on alert for any indication of fraud, financial impropriety, or irregularities within her/his areas of responsibility and should be directly held responsible for reporting such acts of impropriety.

A. CFO Directive No. 2018-105-001

Establishes a policy for preparing, supporting, reviewing, approving, and posting manual journal entries. The following subsections of the policy relate specifically to bank reconciliations:

Subsection 6.4.1. The Office of Controller is responsible for performing all bank reconciliations for all bank accounts.

Subsection 6.4.3. All bank accounts shall be reconciled to the general ledger no later than 30 days after the month-end.

Subsection 6.4.5. Each bank reconciliation should be cleared of all variances, no later than 60 days of the month-end, and any outstanding items after that must be escalated to the Deputy CFO- Controller/Chief Accounting Officer and the Treasurer.

Effects

- Payee's can still cash a check if they have physical possession of it and/or the company did not request a "stop payment" notice with the bank. It does not matter if the check is listed as outstanding on a company's books, and/or it has been classified as "voided or cancelled" if they do not have the actual check. The payee could cash it at any time. This opens the door for duplicate payments, and potentially fraud, waste, and abuse.
- The accuracy and appropriateness of journal entries cannot be determined without sufficient and adequate supporting document. Also, this opens the door to duplicate entries, and potentially fraud, waste, and abuse.
- The lack of timely reconciliations of accounting records can lead to over- and understatements of assets, liabilities, revenues, and expenses. This can lead to errors and misstatements in the financial reports.
- Not complying with PLA Accounting Policies and Procedures reduces the effectiveness of the policy and the concurrent controls it is designed to impose. Non-compliance also impairs PLA's ability to properly record all assets in the accounting system and safeguard its assets. The ability to detect theft of assets is weakened when either adequate controls are not in place, or when the controls that are in place are not followed.

- Funds that sit and remain idle in the inactive accounts are more susceptible to fraud, waste, and/or abuse. Also, a bank account will turn into a dormant account if it has not had any activities such as deposits, withdrawals, money transfers, or checks written for an extended period of time. Financial institutions may charge service fees on dormant accounts and automatically close a dormant account with zero balance.

Causes

According to PLA representatives:

- There were only five outstanding checks have that were outstanding for more than six months, and the amount was not significant.
- The bond rating fees were posted to the wrong account by error.
- PLA might use the inactive Escrow or Donation accounts in the future.

Recommendations

We recommend that PLA:

- A. Follow its own "Accounting Policies and Procedures Manual" and investigate any checks that are outstanding for over six months. Appropriate action should be taken to resolve or clear aged outstanding checks by stopping payment of the check if PLA does not have physical possession of the check. Also, appropriate corresponding entries should be made in the General Ledger to void the check, clear it from the list of outstanding checks, and restore the funds to the cash book balance.
- B. Provide adequate and sufficient supporting document for all journal entries.
- C. Monitor bank accounts and when appropriate close inactive accounts.

Finding #3. PLA Accumulated And Retains Significant Excess Utility User Tax Dollars Over Its Bond Debt Related Obligations

As of June 30, 2020, PLA has accumulated and retains \$22.8 million of Utility User Taxes in excess of bond debt related obligations.

Conditions

Our review of funding to PLA from the City’s Utility Users Tax (UUT) revealed that PLA has accumulated and retained \$22.8 million of Utility User Taxes in excess of bond debt related obligations. The following table provides an overview of the sources and amounts of the excess funding:

Fiscal Years Ended June 30	Funding Source	Funding To PLA From City UUT	PLA Bond Debt Related Expenses	Excess UUT Funding Retained In PLA
		Millions		
2013 - 2014	Prior to Trust Agreement Funding	\$19.5	\$3.0	\$16.5
2015 - 2020	Trust Agreement Funding	75.0	68.7	6.3
Totals UUT Funding and PLA Bond Debt Related Expenses		\$94.5	\$71.7	\$22.8

Of the excess funding, PLA has direct control of \$19.6 million, and the remaining \$3.2 million is in a Wilmington Trust/PLA bank account, which is under the control of the bond’s trustee.

It is our understanding that there are no agreements or documents indicating or stipulating that PLA or the Trustee, can or should retain custody of these excess funds over and above bond debt related expenses. As noted previously, PLA’s operations costs are fully covered and paid for from General Fund dollars (see ***“Finding #1: PLA Billings and Budget Requests, and The City Payments to PLA, Were Significantly Over The Annual Cap Amounts and Actual Operating and Maintenance Costs”*** on Page10 of this report.)

A. Excess Funding Prior To The City’s Trust Agreement

Funding to PLA in fiscal years 2013 and 2014 was authorized during the time of the City’s bankruptcy and by the City’s Emergency Manager. City Council nor the Administration participated in authorizing the use of, and the amounts of Utility Users Taxes earmarked for repayment of the public lighting system bond debt. In fiscal year 2013, before the issuance of the long-term bond, PLA received \$1.2 million UUT funding from the City and incurred total expenses in the amount of \$0.2 million. PLA retained \$1.0 million of excess funding in fiscal year 2013.

In fiscal year 2014, PLA received a total of \$18.3 million from the City, comprised of \$17.5 million UUT funding and \$0.8 million for operations and management fees. PLA only incurred bond service expenses of \$1.5 million and other

operating expenses of \$1.3 million, totaling \$2.8 million. This resulted in PLA retaining \$15.5 million of excess funding fiscal year 2014.

The following table summarizes the \$16.5 million in excess funding PLA accumulated and retained during the City’s bankruptcy and under the Emergency Manager:

Fiscal Year Ended June 30,	Funding To PLA From City	PLA Total Expenses	Excess UUT Funding Retained In PLA
	<i>Millions</i>		
2013	\$ 1.2	(\$ 0.2)	\$ 1.0
2014	18.3	(2.8)	15.5
Totals UUT Funding and PLA Expenses	\$19.5	(\$ 3.0)	\$16.5

B. Excess Funding Under The City’s Trust Agreement

Under the City’s Trust Agreement, funding to PLA from the Utility Users Tax (UUT) exceeded PLA bond debt related obligations for fiscal year 2015 to fiscal year 2020 in excess of \$6.3 million. According to the “Trust Agreement,” the Trustee allocates \$12.5 million of City’s UUT receipts every year to PLA to pay the bond principal, interest, and other bond debt related expenses.

The following table details the amount of excess funding attributable to bond debt payments under the City’s Trust Agreement and the amount of funding PLA receives from the City’s Utility Users Taxes:

Fiscal Year Ended June 30,	Actual Bond Debt Service Payments ^(A)	Annual UUT Funding From City To PLA	Variance Between City’s UUT Funding And PLA’s Bond Service Payments
	<i>Millions</i>		
2015	\$11.1	\$12.5	\$1.4
2016	11.6	12.5	0.9
2017	11.5	12.5	1.0
2018	11.5	12.5	1.0
2019	11.5	12.5	1.0
2020	11.5	12.5	1.0
Total	\$68.7	\$75.0	\$6.3

Notes: (A) “Actual Bond Debt Service Payments” are sourced from PLA’s Audited Financial statements for fiscal years 2015-2020.

Criteria

The following criteria applies to these conditions:

A. The Trust Agreement

- **Section 104.** PLA Fund; City Disbursement Fund. (a) A PLA Fund is hereby created within the Trust Fund, as provided in Section 105 herein below. The monies in PLA's Trust Fund shall be used by the Authority for any purpose permitted by Act 392, provided that no Utility Revenues shall be deposited to PLA Fund so long as the bonds are outstanding and no additional obligations have been issued.
- **Section 104 (c):** In the event that the Authority has no remaining expenses or use for money as permitted by Act 392, any balance in PLA Fund shall be (i) transferred to the Debt Retirement Escrow Fund for disbursement to the Bond Trustee in accordance with Section 103 hereof, or (ii) if no Obligations remain Outstanding, upon agreement by the Parties (other than the Trustee), transferred to a general City Disbursement Fund. (the "City Disbursement Fund"), which the Trustee is hereby directed to create within the Trust Fund. The Trustee is hereby authorized to disburse moneys from the City Disbursement Fund to the City for deposit to the General Fund of the City in the City's account specified on Exhibit E attached hereto, free, and clear of all liens as provided in Sections 105((a)(ii), 105(b)(iii) and 105(d).

B. PLA Bond Indenture Clause

ARTICLE IV Optional Redemption of the Bonds

Section 401. Optional Redemption of the Bonds. The Bonds maturing on and after July 1, 2025 will be subject to redemption prior to their stated maturity, at the option of the Issuer, in whole, or in part in denominations of \$5000 or any integral multiple thereof, in any order of maturity determined by the Authority at any time, in either case on or after July 1, 2024, at par plus accrued interest to the date of redemption.

Effects

- Excess UUT to PLA increases the burden of the City taxpayers to operate and maintain the City's street lighting systems and reduces funding for other departments and potentially other city services.
- Significant amount of cash sat idle in PLA's main bank account due to City's excess UUT funding. Potentially, this is cash that is not available for use by the City to invest, pay off the bond debt, or use for City services. It should be noted that PLA is obligated to pay five percent (5%) interest on its outstanding bonds. The idle cash could potentially be used to pay down the debt and reduce bond interest expense over the life of the bonds.

Causes

PLA representatives stated that:

- The excess UUT money was used to cover PLA administrative costs and operating expenses. However, as previously stated in this report, all of PLA's administrative and operating expenses are billed to and paid by the City. All bond debt related expenses are funded through the Utility Users Tax annual payments.
- They are "reserving" the excess cash to cover future expenditures relating to the newly installed yet aging lighting system. They stated that maintenance costs will be a lot higher after ten years and that they are not planning on getting "extra money" from the City in the future years.

Recommendation

We recommend that PLA work with the City's Executive Offices, and the appropriate divisions within the Office of the Chief Financial Officer (Office of Treasury, Office of Departmental Financial Services) to determine the best use of the excess funding. This should be based on a well-developed strategic plan for the future and administration of the City's street lights, PLA, and the retirement of the bond debt.

Resolved Recommendation to Restrict Excess UUT Funds

We applaud the City's Legislative Policy Division (LPD) for questioning the classification of the PLA's excess UUT funds during their reviews of the City's fiscal years 2019 and 2020 Annual Comprehensive Financial Reports¹⁰. They requested the OCFO team to work with PLA's CFO to show excess utility users tax payments to PLA as "restricted for debt service in future PLA financial statements that are eventually incorporated into the City's ACFR."

PLA's original fiscal year 2020 financial statements did not reflect this change. However, as noted in the City's 2021 ACFR, PLA recorded a Prior Period Adjustment¹¹:

During the year, Public Lighting Authority reclassified its net position components to properly reflect restrictions of its net position for the year ended June 30, 2020. The adjustment resulted in a decrease of the unrestricted net position and increase of the restricted net position by \$24,529,982, respectively. This reclassification did not impact total beginning net position.

¹⁰ Effective, December 15, 2021, the Governmental Accounting Standards Board (GASB) agreed to draw up a proposal to change the name Comprehensive Annual Financial Report (CAFR) to Annual Comprehensive Financial Report (ACFR). In fiscal year 2021, the City's renamed its financial statements to comply with the recommendation. The GASB also encouraged earlier application. For purposes of this report and consistency, we have opted to use the new naming convention for all references to the City's financial reports.

¹¹ City of Detroit "2021 Annual Comprehensive Financial Report" p56; <https://detroitmi.gov/departments/office-chief-financial-officer/financial-reports>.

Finding #4. PLA Does Not Utilize Best Practices For The Procurement Of Professional Services

We found that PLA procurement practices for professional services are inadequate, and they do not utilize best practices for these services, including the lack of procuring services through competitive bids.

Conditions

- A. PLA's procurement policies exclude the procurement of professional services. The current "PLA Standard Policies and Procedures Manual - Policy #2020", titled "Competitive Purchasing and Bids" (The Policy) states that PLA:

Shall competitively bid all purchases of goods, equipment, supplies, and construction and construction-related services when the aggregate value of the purchase exceeds One Hundred Thousand Dollars (\$100,000).

According to the Miriam Webster Dictionary, the legal definition of "professional services" is:

A service requiring specialized knowledge and skill usually of a mental or intellectual nature and usually requiring a license, certification, or registration.

PLA's policy does not include the procurement of its necessary professional services which include financial, auditing, legal and other services. It only covers the purchasing of goods and construction related services. And consequently, there is no threshold for requiring competitive bids for professional services.

- B. None of PLA's professional service contracts were competitively bid. The total cost of professional services for fiscal years 2019 and 2020 was \$2.1 million. We reviewed the professional service categories of Accounting Fees, Legal Fees, Auditing Fees, and Consulting Fees. These categories comprise \$1.7 million or 81% of the total professional service fees for fiscal years 2019 and 2020. None of the professional service agreements we reviewed were competitively bid.
- C. There is no formal contract between PLA and the professional services firm that provides its accounting services.
1. PLA has been using a certified public accounting firm (CPA firm) to provide a person to fulfill the position of its Chief Financial Officer (CFO). They have used the same firm for the past eight years beginning with PLA's formation in April 2013. There is no formal contract, only "one page engagement letters" which details the contractor (the CFO) hours of work and the cost of the services.
 2. According to the engagement letters, the CFO is engaged for 24 hours of work per week. PLA pays the CPA firm \$175,200 per annum or \$14,600 per month for the work of a part-time CFO. Given an hourly rate of \$140.38, the effective annual salary is \$292,000 on a full-time basis calculated below:

Full Time Equivalent Annual Salary Calculation			
Annual Cost	= \$14,600 per month	X 12 months	= \$175,200 annual cost per year
Total Contracted Hours	= 24 per week	X 52 weeks	= 1,248 hours per year
Pay Rate per hour	= \$175,200 annual cost	÷ 1,248 hours per year	= \$140.38 pay rate per hour
Full Time Equivalent Annual Salary	= \$140.38 pay rate per hour	X 2,080 hours per year	= \$292,000 Full Time Equivalent Annual Salary

3. In addition to the monthly payments/annual salary to the CPA firm, PLA paid the CFO improper annual bonuses totaling \$9,000 (from 2016 to 2020.)
4. Even though the current contractor/CFO is a member of a professional CPA firm, their State of Michigan CPA expired, and they are now a “registered” rather than a “licensed” CPA. For clarity, to be licensed (and remain licensed) in the State of Michigan, an individual must earn:
 - Forty hours annually of continuing professional education courses.
 - Including a minimum of eight hours in auditing and accounting.
 - And two hours in ethics.
 - The content of one hour of the four hours of ethics required in a two-year license cycle must cover the laws and rules of Michigan.

According to the State of Michigan Department of Licensing And Regulatory Affairs “if an individual seeks to use the CPA title and engage in the practice of public accounting, the individual shall apply for a license.” Conversely, “if an individual only seeks to use the CPA title, the individual shall apply for a registration and does not need to meet the continuing education requirements.”

Criteria

The following criteria applies to these conditions:

A. Public Act 392 of 2012 Municipal Lighting Authority Act

Section 11 (4) states that:

Following the appointment of the authority board, the board shall implement a best value supply chain and procurement practice and shall annually report to the governing body of the local government.”

B. State of Michigan Department of Treasury Accounting Procedures Manual for Local Units of Government in Michigan

Chapter 2-Financial Policies: Best Practices Purchasing Policy

- Purchasing Policy: Purpose - In general, the purpose of a purchasing policy is to encourage the efficient purchasing of appropriate goods or services at appropriate prices.
- Approval Process - The policy should define a process to purchase goods and services. The policy may distinguish between types of purchases (such as intergovernmental purchases, professional services, utilities, or emergency situations) and by dollar threshold. Based on the types of service and dollar limitations, the policy should direct: (1) when competitiveness must be introduced (documented oral quotes, sealed bids, etc.); and (2) when additional approval is required (department head, supervisor, manager, or governing body).

C. City of Detroit's Purchasing Ordinance

- **Section 17-5-153:** The Purchasing Ordinance requires competitive bidding for purchases and contracts that are major as defined by the ordinance (except in cases of emergencies).
- **Section 17-5-153:** According to the Purchasing Ordinance, requests for proposals, qualifications, information, or quotations shall be issued by the contracting department for all professional services contracts to be awarded.

D. City of Detroit's Finance Directive 104, Section A. Competitive Bidding

Competitive bidding is required for the purchase of all goods and non-professional services, and some personal services, regardless of dollar value.

E. State of Michigan's Procurement Policy

Chapter 5.1 Competitive Solicitation Requirements:

The State of Michigan requires the use of competitive solicitation of bids for the procurement of goods and services. The State of Michigan Procurement Policy defines competitive solicitation of bids as the formal or informal process of obtaining quotes, bids, or proposals from vendors to determine contract award based on factors such as pricing, product cost, supply situation, quality, timeliness, and best from responsive and responsible vendors. This is a requirement for State of Michigan procurement.

Causes

PLA's executive management stated that:

- The CPA firm has been engaged since PLA's inception.
- They are happy with the CPA firm and they see no reason to bid out the contract at this point.
- The use of the CPA firm as the CFO, is to have an outside set of eyes on the finances.

Effects

Competitive bidding involves a proposal that includes both operational and financial details and allows for transparency, equal opportunity, and ensures that the final contract represents the best practice. By not following good procurement practices, PLA cannot demonstrate that it is getting the best value for its professional services dollars. Also, it helps to ensure that the contractor will perform up to the detailed standards of efficiency and scope of work. The lack of a competitive bid process increases the risk of procurement fraud, and can lead to waste, resulting in greater costs to the organization.

Recommendations

We recommend that PLA:

- A. Update its standard policies and procedures manuals (specifically "PLA Standard Policies and Procedures Manual - Policy #2020", titled "Competitive Purchasing and Bids") to include requiring competitive bids for the procurement of all goods and services within an agreed upon and Board approved threshold.
- B. Establish a threshold for competitive bidding of professional services contracts. The minimum threshold should be low enough to ensure that all goods and services are procured at the best value (*see "Note of Concerns – Item D: The Threshold For Board Review And Approval Of Contracts Is Too High" on page 51 of this report regarding this subject.*)
- C. Solicit bids for all professional service contracts above the threshold.
- D. Consider hiring a full-time CFO that is directly accountable to the Executive Director and the Board of Directors. They would be a full-time employee dedicated to the accounting and finances of PLA.

Finding #5. PLA's Accounting Policies And Procedures Manual Is Outdated, Inadequate, And Has Some Conflicting Policies

Conditions

Our review revealed that PLA's "Accounting Policies and Procedures Manual" (Accounting Manual) is outdated and has some conflicting policies.

A. The Accounting Manual has not been updated since PLA was established.

1. PLA was established in 2013. Their "Accounting Policies and Procedures Manual" is still in its original state as released in April 2014. Based on our review, it has neither been reviewed nor updated.
2. The organizational structure reflected in the manual does not reflect PLA's current organization. The Manual includes the following positions that are vacant, and it is not clear if this is a reflection of a structured revised by management:
 - Human Resources Coordinator: There is no longer a Human Resources Coordinator at PLA, and the Chief Administration Officer (CAO) performs the duties assigned to this position.
 - Chief Administrative Officer: The position of the CAO is not included in the manual.
 - Accounts Payable Clerk: The following responsibilities are assigned to the Accounts Payable Clerk by PLA Accounting Policies and Procedures Manual:
 1. Overall responsibility for data entry into the accounting system and integrity of account system data.
 2. Process invoices and prepares checks for signature.
 3. Maintains general ledger related accounts.
 4. Prepare all reimbursements and check requests.
 5. Manages Accounts Payable.
 6. Mails vendor checks.
 7. Manages entire Purchase Order system.

There is no longer an Accounts Payable Clerk at PLA. Instead, the CAO is handling many of above-mentioned duties. However, the Accounting Policies and Procedures Manual makes no reference to the Chief Administrative Officer having accounting responsibilities.

- B. The Accounting Manual presents conflicting accounting roles and responsibilities. The Manual presents conflicting accounting roles and responsibilities, and it does not clearly define the distinct role and responsibilities of the Chief Financial Officer aside from its certified public accounting professional services firm (i.e. – CPA firm.) PLA currently hires a CPA firm to provide a person to fulfill the position of its Chief Financial Officer (CFO.)

In some instances, the manual includes references to the “CFO” and a “CPA firm” as separate positions/individuals. In other instances, it refers to both the “CFO” and the “CPA firm” as one entity/one position/one individual as demonstrated below in the some of the procedures relating to performing “Bank Reconciliations.” The Manual states that:

1. All bank statements are given unopened to the CFO. The CFO reviews the statements, initials, and submits to the CPA Firm for reconciliation.
2. The CFO gives the statements to the CPA firm for timely reconciliation.
3. The Chief Financial Officer/CPA firm will verify that voided checks, if returned, are appropriately defaced and filed.

In #1 and #2 (the first two policies/procedures) the duties are prescribed for two separate individuals. However, in #3 (the third procedure,) it is not clear who should perform the procedure as the Manual refers to both the CFO and the “CPA firm” together.

In all cases, even though duties are assigned separately to the CFO versus the CPA firm, they are actually being performed solely by the CFO since PLA’s CFO is an employee of the “CPA firm.”

C. The Accounting Manual does not prescribe adequate segregation of duties over some of its financial processes and transactions.

Section II of PLA’s “Accounting Policies and Procedures Manual” lists the division of responsibilities. The division of responsibilities for the CFO/CPA firm includes multiple instances of incompatible duties as listed below:

- Receives bank statements.
- Reconciles all bank accounts.
- Makes bank deposits.
- Receives all accounting department mails.
- Has access to all bank accounts.
- Manages cash flow.
- Processes all inter-account bank transfers.
- Is a signor on all bank accounts.
- Prepares monthly and year-end financial reports.

The lack of segregation of duties is discussed further in this report (see ***Finding #6: There Was A Lack of Good Internal Controls Over Various Financial Processes And Transactions***” on page 35 of this report.)

- D. The Accounting Manual does not make reference to a key management position. The Chief Administrative Officer (CAO) job description includes one accounting related responsibility, which is, to ensure payments to all contractors. However, the Manual makes no reference to the CAO, or to the CAO having responsibilities over accounting/financial transactions. Neither does it mention that the CAO may assume those responsibilities when vacancies occur. As stated above, the CAO performs many of the accounting/financial duties assigned to the Accounts Payable Clerk.

Criteria

The following criteria applies to these conditions:

- A. United State Government Accountability Office Standards for Internal Control in the Federal Government September 2014

Principal 12- Implement Control Activities:

12.01 Management should implement control activities through policies. The following attributes contribute to the design, implementation, and operating effectiveness of this principal:

- Documentation of Responsibilities through Policies
- Periodic Review of Control Activities.

12.02 Management documents in policies the internal control responsibilities of the organization.

12.05 Periodic Review of Control Activities: Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the control activities are designed and implemented appropriately.

- B. The State of Michigan Department of Treasury Accounting Procedures Manual for Local Units of Government in Michigan - Chapter 1 – Internal Control

- **Monitoring Section** recommends making sure that policies and operating procedures in every department are written down and communicated to employees. Such documentation provides day to day guidance and will make training easier.
- **Components of the Control Activity (Checks and Balances)** Section states that organization charts should be developed that clearly communicate the lines of authority. Job descriptions should be maintained to ensure that employees are aware of the duties they are expected to perform and where those responsibilities end.

C. PLA Accounting Policies and Procedures Manual

It states in the Introduction of the Accounting Manual that the policies will be reviewed annually and revised as need by the staff and approved by the Executive Director.

Causes

According to a PLA employee:

- Updating the manual has not been seen as a priority by PLA.
- Since there are few transactions in accounting, it would not be a good use of resources to have two people in accounting.

Effects

- The lack of policies and procedures that include good internal controls reduces the effectiveness of the policy and the concurrent controls it is designed to impose. The ability to detect theft of assets is weakened when adequate controls and/or control policies are not in place.
- In addition, persistent violation of rules, policies, and procedures can result in:
 - Potentially rendering them ineffective and useless.
 - A diminished view of the culture and ethics of the organization.
 - Employees perceiving that the rules, policies, and procedures do not matter and that they are not important.
 - Work being left undone.

Recommendations

We recommend that PLA:

- A. Review the Policies and Procedures Manual annually and update it to align policies and procedures with the current needs and organizational structure of the Authority.
- B. Ensure that the Accounting Policies and Procedures Manual reflect an appropriate division of responsibility and adequate segregation of duties based on the organizational structure of the Authority.
- C. Fill all positions in the Manual if necessary or change the Manual to reflect current needs and organizational structure of the Authority.

Finding #6. There Is A Lack Of Segregation Of Duties And Good Internal Controls Over Various Financial Processes And Transactions

PLA lacks good internal controls over various financial processes including a lack of adequate segregation of duties over financial transactions. Due to the lack of adequate segregation of duties, one person has the ability to perform nearly all of the procedures in the cash receipts and cash disbursements processes.

Background

Cash Receipts

PLA primary cash receipts are from the City of Detroit in the form of wire transfers direct to their bank accounts, for bond payments and for operating and maintaining the City's lighting system. Occasionally, PLA also receives paper checks from private donations, insurance reimbursements for damaged poles, and other miscellaneous payments/receipts.

Cash Disbursements

PLA disburses cash (i.e. – expenditures) for the following:

- Investments in the City's lighting system.
- Maintenance and operating expenses for the City's lighting system.
- Departmental operating expenses (i.e., office supplies, payroll, insurance, etc.)
- Required periodic payments of interest and principal relating to the bonds that were sold to fund the initial investment in City's lighting system.

Cash disbursements are primarily through "paper checks" which are mailed to vendors for payment. Bond payments, on the other hand, are processed through wire/interbank transfers between PLA's various trust accounts which is performed by the bond trustee.

Conditions

- A. There is a lack of segregation of duties over cash receipts and incompatible duties are performed by a single person in PLA.

The CFO receives vendor payment checks, makes deposits in the bank, authorizes and transfers money between bank accounts, and enters cash receipts in the cash receipts journal in PLA's QuickBooks financial system. The CFO also makes adjusting, month-end, and year-end closing journal entries, reconciles general ledger revenue accounts, receives bank statements, and performs bank reconciliations.

The following table shows types and components of incompatible duties in PLA's cash receipts activities and who performs them:

Duties That Should Be Segregated	Cash Receipts Activities Related To Segregation Of Duties	Performed By
Custody of Assets	<ul style="list-style-type: none"> • Receives Bank Statements • Receives cash receipts (i.e., checks) • Makes deposits into bank accounts 	CFO
Authorization	<ul style="list-style-type: none"> • Authorizes and transfers money between bank accounts 	CFO
Bookkeeping	<ul style="list-style-type: none"> • Enters cash receipts into the Cash Receipts Journal in the QuickBooks Financial System • Makes adjusting, month-end, and year-end closing journal entries • Prepares financial statements 	CFO
Reconciliation	<ul style="list-style-type: none"> • Reconciles general ledger revenue accounts • Performs bank reconciliations 	CFO

B. There is a lack of segregation of duties over disbursements and incompatible duties are performed by a single person in PLA.

The CFO has access to blank and voided checks, prepares checks for payments (disbursements), sign checks to pay vendors and disburse funds, makes adjusting and accrual entries in PLA's QuickBooks financial system, void checks, writes-off outstanding checks, reconciles general ledger cash disbursement accounts, receives bank statements, and performs bank reconciliations.

The following table shows the types of incompatible duties performed by the CFO in PLA cash disbursement cycle:

Duties That Should Be Segregated	Disbursements Activities Related To Segregation Of Duties	Performed By*
Custody of Asset	<ul style="list-style-type: none"> • Has the only access to create and void checks in Quickbooks • Receives bank statements 	CFO
Authorization	<ul style="list-style-type: none"> • Signs checks to pay vendors and disburse funds 	CFO
Bookkeeping	<ul style="list-style-type: none"> • Makes adjusting, month-end, and year-end closing journal entries • Writes off outstanding checks • Prepares financial statements 	CFO
Reconciliation	<ul style="list-style-type: none"> • Reconciles general ledger expenditures (disbursements) accounts • Performs bank reconciliations 	CFO

**Note: Some activities listed above may have also been performed by the Chief Administrative Officer. However, as noted in Finding #5, on page 31 of this report, the CAO is not listed as having any financial responsibilities in the Accounting Manual.*

C. There is a lack of good internal controls over proper authorization for check requests.

While reviewing PLA's "Other Revenues" we randomly selected seven transactions that were recorded as reimbursements from the City (i.e.- revenues to PLA,) but supported by disbursement/payments to vendors.

Our review of these payments revealed that two of the seven (or 28.6%) of the check requests were not properly authorized as detailed below:

1. A check request for \$33,626 was prepared and approved by one PLA contractor to pay another PLA contractor. The PLA contractor approving the payment was not the CEO of the organization.
2. A PLA employee prepared a check request for \$197,148 which was approved by the CAO even though the CAO does not have approval authority over financial transactions.

Criteria

The following criteria applies to these conditions:

A. The State of Michigan Department of Treasury Accounting Procedures Manual for Local Units of Government in Michigan

- **Chapter 1 - Internal Control**

Duties must be segregated among different people to reduce the risk of errors or misappropriation. No one person should have control over all aspects of the financial transactions. An individual is not to have responsibility for more than one of the three transaction components: authorization, custody, and recordkeeping. When the work of one employee is checked by another, and when responsibility for the custody of the assets is segregated from the recordkeeping related to that asset, there is an appropriate segregation of duties. Duties must also be designed to be consistent with laws and regulations which may assign certain duties to particular elected officials or management.

Segregation of Duties

The functions of authorizations, recordkeeping, and custody of assets should be segregated where possible. For example, ideally the process of cash collection and depositing should be performed by an employee who is independent from general ledger recordkeeping and bank reconciliation.

- **Chapter 4 - Cash Receipting Procedures - Internal Controls**

Separation of duties should be considered where possible. For example, collections should be reconciled by an individual not involved in the receipting process. Ideally, the process of cash collection and depositing should be performed by an employee who is independent from general ledger recordkeeping and bank reconciliation.

- **Chapter 5--Cash Disbursement Procedures**

- Checks should not be returned to the originating office for distribution.
- Bank accounts must be promptly reconciled (within the month following the bank statement date) by an individual not involved in the receipt/bank deposit process. In small units of government when segregation of duties is not possible, a second official must review the reconciliation.
- Adequate security must be provided over unused checks.
- All functions (i.e., deposit, write checks, issue/send checks, reconcile account) regarding a checking account should not be performed by the same individual.
- Numerically controlled or computer numbered checks must be used.
- Checks should be prenumbered and the numerical sequence be accounted for.

B. United State Government Accountability Office Standards for Internal Control in the Federal Government September 2014

Principal 10- Design Control Activities:

- **10.03** Management should design appropriate types of control activities for the entity's internal control system.
- **Segregation of Duties:** Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction event.
- **10.13:** Segregation of duties helps prevent fraud, waste, and abuse in the internal control system. If segregation of duties is not practical within an operational process because of limited personnel or other factors, management designs alternative control activities to address the risk of fraud, waste, or abuse in the operational process. Management considers the need to separate control activities related to authority, custody, and accounting of operations to achieve adequate segregation of duties. In particular, segregation of duties can address the risk of management override. Management override circumvents existing control activities and increases fraud risk. Management addresses this risk through segregation of duties.

C. PLA Accounting Policies and Procedures Manual

Section II. Division of Responsibilities states that the Executive Director approves all reimbursements and check requests.

Effects

- The segregation of duties is one of the primary controls. The four key functional duties and responsibilities: custody, authorization, record keeping, and reconciliation, should be properly segregated. Lack of segregation of key duties and responsibilities will increase the risk of fraud or errors. Any deficiencies of segregation of duties can offset the effectiveness of control systems. Additionally, when the proper segregation of duties breaks down, fraud (i.e. asset misappropriation) is more likely committed, particularly if the duties are cash related.
- The lack of policies and procedures for good internal controls reduces the effectiveness of the policy and the concurrent controls it is designed to impose. The ability to detect theft of assets is weakened when adequate control is not in place. In addition, persistent violation of rules, policies, and procedures can result in:
 - Potentially rendering them ineffective and useless.
 - A diminished view of the culture and ethics of the organization.
 - Employees perceiving that the rules, policies, and procedures do not matter and that they are not important.
 - Work being left undone.

Causes

- PLA's management indicated that they decided not to fill the position of the Accounts Payable Clerk, because they are a small office, and they did not feel it was needed. They reiterated that by contracting the CFO through an outside accounting firm would provide for "outside eyes on the finances."
- PLA Accounting Policies and Procedures Manual does not include appropriate segregation of incomparable duties, which resulted in incomparable duties being assigned to CFO and CAO.

Recommendations

We recommend that PLA:

- A. Ensure that financial responsibilities are segregated among various staff and management.
- B. Review and update the Accounting Policies and Procedures Manual to assign the incompatible duties to different individuals.
- C. Provide appropriate management oversight. Ensure that when segregation of duties is not possible, mitigating steps are in place, including but not limited to the Executive Director having access to Quickbooks and periodically reviewing financial transactions.
- D. If possible, hire additional accounting staff to assume some of the financial responsibilities.

- E. Document roles and responsibilities for all key processes. Periodically rotate the key duties among appropriate level of employees.
- F. Require the Executive Director to approve all reimbursements and check requests as outlined in PLA policies and procedures.

If adequate segregation of duties cannot be achieved, compensating controls (i.e. supervisory review, or secondary signature) must be implemented to reduce the possible risks. We strongly recommend that PLA perform more independent reviews on current Segregation of Duties, by using top-down, risk-based analysis to identify incompatible duties and take all necessary corrective actions.

Finding #7. There Is A Lack Of Proper Oversight Of PLA Contracts

Conditions

We reviewed PLA contracts and vendor payments from July 1, 2018 through June 30, 2020 and found the following relating to one particular contractor providing personal services. We found that the contractor:

- A. Worked and was paid under an expired contract for more than a year.
We reviewed the contract and payments for a personal service contractor. We found that the contractor worked without a valid contract from April 2018 through December 12, 2019.
- B. Was paid \$63,470 above the payment limits on the contract.
The personal service contract entered into April 2017, expressly stated the contractor was not to be paid more than \$75,000 in a 12-month period. A review of the payments to the contractor showed that for the period April 2017 through December 2020 the contractor was paid \$63,470 (or 23.8%) more than the contract maximum as detailed in the following table:

Payments Over The Contract Compensation Limits					
Description/ Contract Period	April 2017 To March 2018	April 2018 To March 2019	April 2019 To December 2019	January 2020 To December 2020	Total Compensation
Annual Contract Compensation Limit	\$75,000	\$75,000 ^(A)	\$56,250 ^(B)	\$60,000	\$266,250
Dollar Amounts paid	\$78,000	\$99,120	\$79,400	\$73,200	\$329,720
Amounts Over The Compensation Limits	\$3,000	\$24,120	\$23,150	\$13,200	\$63,470
Percentage Amounts Over The Compensation Limits	4.0%	32.2%	41.2%	22.0%	23.8%

Notes: (A) There was no contract in place from April 2018 to March 2019. For purposes of our calculation, we used the same compensation limit from the prior year contract of \$75,000.

(B) There was no contract in place from April 2019 to December 2019. For purposes of our calculation, we prorated the compensation limit based the same compensation limit from the previous year contract of \$75,000 prorated for nine months (\$6,250 per month X nine months = \$56,250 prorated compensation limit.)

C. Received bonuses that were not included in the compensation clauses of the contract.

The contractor received annual bonuses in December 2017, 2018, and 2019 of \$2,000, \$2,000, and \$3,000 respectively, totaling \$7,000. These amounts are included in the “Payments Over the Contract Compensation Limits” table above.

Criteria

The following criteria applies to these conditions:

A. Personal Service Contract

The personal services contract specifically states that any changes to the agreed upon terms must be made in writing and approved by both parties.

C. City Council Approval

Section.17-5-91 of the City’s Purchasing Ordinance requires City Council approval for all contracts and amendments for personal services regardless of dollar value.

D. Bonus Clause

The specific personal service contract contains no bonus clause.

Cause

According to a PLA representative, management treated many of these contractors as employees of PLA.

Effects

- By not having proper oversight of contracts or effectively managing expenditures on contracts, PLA is not properly controlling its budget, and leaving itself open to possible misuse of funds.
- Failure to uniformly enforce a contract or document the reasons for exceptions reduces the effectiveness of the contract and the concurrent controls it mandates. It also creates an impression that PLA contracts are not important and can therefore be deliberately or inadvertently ignored.

Recommendations:

We recommend that PLA:

- A. Review the contract terms and payroll registers to ensure employees are paid according to their contract terms.
- B. Assign the task of contract monitoring to a high-level employee that reports the spending against contracts monthly. Require written approval of the Executive Director for payments above contract limits.
- C. Implement financial policies and controls that require sufficient justification and proper approvals prior to paying amounts over and above contract limits.

- D. Prepare contracts that are realistic in the amount of time required to complete tasks and the amount of funds that should be included for each contract to accomplish the job.
- E. Submit annual budget requests to the Detroit City Council that include details of any bonuses that are planned to be awarded. City Council should be fully aware of City funds that are used to pay bonuses to contractors and PLA employees.

Finding #8. PLA Made Improper Payment Of Bonuses To Employees And Contractors

Conditions

Our review of PLA’s payroll revealed the following bonuses paid to employees and contractors. The majority of the bonuses were non-contractual, and only a portion of the Executive Director’s bonus was contractual:

Annual Bonuses Paid To PLA Personnel						
Bonus Recipient/ Year	2016	2017	2018	2019	2020	Total
PLA Employees’ Annual Bonuses	\$38,000	\$28,000	\$34,000	\$48,000	\$20,000	\$168,000
Executive Director Bonuses	0	0	12,000	13,000	10,000	35,000
Contractors Annual Bonuses	6,000	8,000	4,000	9,000	0	27,000
Total Annual Bonuses Paid To PLA Personnel	\$44,000	\$36,000	\$50,000	\$70,000	\$30,000	\$230,000

A. PLA paid annual bonuses to full-time employees.

From 2016 to 2018, all PLA employees each received a \$2,000 annual bonus. The bonuses were increased to \$3,000 each in 2019. However, in 2020, according to PLA’s management, “most high-level employees and contractors did not receive bonuses because of the global pandemic.” However, ten employees received reduced bonuses of \$2,000 each. The following table show the amounts of bonuses PLA paid to its employees:

Annual Bonuses Paid To PLA Employees						
Description	2016	2017	2018	2019	2020	Total
Number of Employees Receiving Bonus	19	14	17	16	10	
Amount of Bonus Per Employee	\$2,000	\$2,000	\$2,000	\$3,000	\$2,000	
Total PLA Employees’ Annual Bonuses	\$38,000	\$28,000	\$34,000	\$48,000	\$20,000	\$168,000

B. PLA’s Executive Director received annual bonuses above the maximum allowed by the contract.

According to the contract (effective August 14, 2017), the Director “can receive up to \$10,000 annually” as approved by the Board of Directors. Our review revealed that from 2018 to 2020, the Executive Director received an additional \$5,000 in bonuses over and above the maximum stated in the contract as detailed in the chart below and in *Note (B)* below:

Annual Bonuses Paid To PLA Executive Director						
Type of Bonus/ Year	2016	2017	2018	2019	2020	Total
Annual Director Bonus per Contract	N/A ^(A)	N/A ^(A)	\$10,000	\$10,000	\$10,000	\$30,000
Additional PLA Employee Bonus	N/A ^(A)	N/A ^(A)	2,000 ^(B)	\$3,000 ^(B)	\$0	\$5,000
Total Executive Director Annual Bonuses	\$0	\$0	\$12,000	\$13,000	\$10,000	\$35,000

Notes: (A) For 2016 and 2017, based on our review of payroll records, no Director received a bonus.

(B) \$5,000 in bonuses over and above the maximum amount allowed per the contract.

C. PLA paid annual bonuses to contractors.

PLA's personal services contractors received bonuses that were not in their contractual compensation arrangements. One of the recipients is a part-time employee and only worked for PLA for 24 hours a week, but they received the same annual bonus as the full-time employees. From 2016 to 2020, PLA contractors received a total of \$27,000 in bonuses as shown in the table below:

Annual Bonuses Paid To PLA Contractors						
Description	2016	2017	2018	2019	2020	Total
Number of Contractors Receiving Bonus	3	4	2	3	0	
Amount of Bonus	\$2,000	\$2,000	\$2,000	\$3,000	\$0	
Total PLA Contractors Annual Bonuses	\$6,000	\$8,000	\$4,000	\$9,000	\$0	\$27,000

D. PLA's Board of Directors did not formally approve the bonuses.

Excluding the Director's contractual arrangement, and based on our review, PLA's Board of Directors did not formally approve any of the other bonuses. The Executive Director indicated that the bonuses were based on annual informal discussions with the Board Chairperson.

Criteria

The following criteria applies to these conditions:

- A. None of the 1099 contractual employees who received bonuses had a bonus clause included in the compensation of their contracts.

B. The current Executive Director's contract includes the following language related to a bonus:

4.2 Performance Incentives. Contingent on budget restrictions, in addition to the annual base salary, the Executive Director shall be eligible up to a \$10,000 performance bonus based upon his performance as measured by annual goals that are mutually agreed upon by the Board and the Executive Director each fiscal year.

Causes

PLA's current Executive Director explained that the bonuses were already in place prior to 2017 and were in effect when the leadership changed. It was stated that originally bonuses were based on a percentage of salary but was later changed to a flat amount of \$2,000 for all employees "just to be fair." It was also stated that although PLA's Board did not officially approve the bonuses, it was verbally discussed with the Board's President. The Executive Director did confirm that some contract employees do receive bonuses, on the basis "that these are people that feel like full-time employees." Bonuses were paid because the employees and contractors "did a good job."

Regarding the bonuses, PLA's management explained that in 2019 they decided to raise the bonuses to \$3,000 per employee because many defected light bulbs had to be replaced due to defects in 19,500 lights. It was stated that "the entire workforce had worked very hard that year."

The Executive Director further indicated that they did give bonuses in 2020, "but the 'high-level' people did not receive bonuses in an effort to tighten [their] belts in light of the pandemic."

Effects

- Including bonus amounts (that have not been approved by PLA's Board) in annual budget requests made to the City undermines the public trust in the Board's oversight of PLA.
- In addition, providing bonuses to contractual employees that are not specifically included in the written contracts can cause the contractor to expect the bonus going forward and can cause issues if and when not all contractual employees receive bonuses but those that are considered "like a full-time employee" do. Furthermore, these practices may increase the risk of non-compliance with the Internal Revenue Service's rules for determining whether workers are independent contractors or employees.
- For FY 2020, when bonuses were given to some, but not all employees because of the global pandemic, this can cause resentment among the workforce. There is an increased risk of employee complaints, allegations of bias, preferential treatment, retaliation, and other unfair labor practices when policies do not exist or do not clearly define when a bonus will be awarded, the criteria for earning the bonus and how amounts will be calculated.

Recommendations:

We recommend that PLA:

- A. Implement human resources policies and procedures that detail how bonus amounts are determined, when they are paid, and who receives them. The policies and procedures should include both contractual and non-contractual bonuses.
- B. Ensure that all bonuses are approved by PLA's Board of Directors prior to payment.
- C. Include details of planned or projected bonuses in their annual budget requests to the City's OCFO Office of Budget and Detroit City Council to ensure full transparency and accountability of the usages of public funds.
- D. Implement measures to prevent double bonuses being paid to a single person in a single year. This would eliminate a person being paid both a contractual and a non-contractual bonus in the same year.

Finding #9. PLA Was Not Timely In Providing Contract Information

Condition

In September 2020, we requested copies of all contracts from PLA for the period July 1, 2017 through June 30, 2020. We were provided seventeen contracts in response to our initial request. However, through a review of accounts payable activity, we later found an additional ten companies that were providing goods and/or services to PLA during the period. We requested the contracts documentation for this activity in February 2021.

PLA responded to this request and soon thereafter, provided contract information for (only) three of the companies identified in our review. However, it was not until we made a final request for documentation in December 2021, that PLA provided us with contract information for the remaining seven companies.

Criteria

The following criteria applies to the condition:

City of Detroit Charter (2012) Section 7.5-105 states that “the Auditor General shall have access to all financial records, human resource records, and other records necessary to perform his/her functions.”

Cause

PLA did not respond to multiple requests for documentation citing issues relating to the global pandemic such as not having staff on site and some records were not available in electronic formats.

Effect

The lack of timely responses to the Office of the Auditor General’s request for documentation can lead to an audit “Scope Limitation” and can result in an adverse audit opinion.

Recommendation

We recommend that PLA respond to and provide all requested documentation in a timely manner.

NOTE OF CONCERNS

The following are “Note of Concerns” relating to the operations and other matters of the Public Lighting Authority (PLA):

- A. PLA’s operating and management agreements have not been reviewed nor updated since they were established.

The Public Lighting Authority (PLA) was established when Detroit was under the State-forced leadership of an Emergency Manager, during the City’s bankruptcy. PLA operates under three main financing/operational arrangements:

- a. Trust Agreement.
- b. Operation Maintenance and Management (O&M) Interlocal Agreement.
- c. Construction and Financing (C&F) Interlocal Agreement.

During our review, we noted that these agreements have not been reviewed by the City nor updated since the inception of PLA. Of particular concern are the facts that:

- Stipulations in the Trust agreements, relating to bond debt repayment were set in place prior to the sale of the bonds, including the \$12.5 million annual requirement of Utility Users Tax (UUT) to be used toward bond payment requirements.
- The O&M and the C&F Interlocal Agreements do not reflect the current nor future needs of PLA. As an example, PLA continues to assert that the dollar amounts of operating and maintenance costs they request from the City “is needed because operational costs will increase as the lighting system ages.” Yet the “anticipated increases” are not supported by studies or cost analysis and the funding provided to PLA thus far, has resulted in excess dollars remaining idle in their bank accounts.

To remedy this situation, we recommend that PLA’s governing documents are reviewed and updated to better align with the current and future needs of PLA. At a minimum, the following items should be considered in the review and the resulting updated agreements:

- a. Redefine all scope of services to reflect current conditions and needs.
- b. Redefine the responsibilities of each party to align with the updated scope of services.
- c. Determine the appropriate funding to support PLA’s operating and maintenance costs in accordance with the updated agreements.
- d. Establish adequate oversight protocols for PLA and appropriate Divisions within the OCFO.

B. There is a lack of adequate oversight over the City's public lighting activities and financials.

Our audit of the City's public lighting system revealed a lack of adequate oversight by the Office of the Chief Financial Officer (OCFO) as detailed below:

1. The City has paid PLA more than the "cap" amount included in the O&M agreement. During past budget hearings before City Council, the leadership in both PLA and PLD insisted that the cap amount had been increased through an amended agreement. However, this is a false statement as the agreement has not been amended. Members of the OCFO Office of Department Financial Services, admitted that they paid amounts over and above the cap amount because "that is what PLA invoiced the City."
2. The City's OCFO Office of the Treasury paid trustee fees to Wilmington Trust for 2019 and 2020 even though the bond indenture states the fees are the responsibility of PLA. The Office was unaware of the overpayments until it was revealed to them by our office during the course of this audit. The City has since recouped the overpayments.
3. As of June 30, 2020, PLA has approximately \$58.3 million in its bank accounts, comprised of approximately \$10.0 million in cash and \$48.3 million in investments. The monies are spread among several bank accounts, but can grouped as follows:
 - i. \$28.2 million in O&M Banks Account.
 - ii. \$24.5 million in Trust Accounts.
 - iii. \$5.6 million in Commercial Bank Accounts.

Included in the total cash and investment amount siting in PLA bank accounts is \$29.6 million of amounts the City overfunded PLA and an accumulation of investment income of \$2.1 million.

We believe the City should investigate the appropriateness of this amount of cash remaining on PLA's books, the appropriateness of its investments, and who should benefit from investment income. With the exception of minor donations in the earlier years of its existence, the City is PLA's only revenue funding source.

C. PLA's Board of Directors are not operating according to their By-laws.

The By-laws for PLA's Board of Directors ("Board") require that they meet annually (every July) and set a standard meeting schedule for the upcoming year. The By-laws also require that the Board meet in September, November, March, and May of each fiscal year. PLA's fiscal year is from July 1st through June 30th. We reviewed the meeting dates of the Board and found that:

- In fiscal year 2018-2019, the Board met six times, however, five of the meetings were held on a "non-standard" meeting month, and only one meeting was held in the month of May:

- No meeting was held in July of 2018 to set the calendar for the upcoming year.
- In fiscal year 2019-2020 the Board met only three times. They met in September and October 2019 and then not again until May 2020. Even factoring in the global pandemic that began in March of 2020, the Board did not meet in the five months preceding the pandemic.
- For fiscal year 2020-2021 PLA Board met in August and October of 2020 and then not again until June 30, 2021, the final day of the fiscal year.
 - No meeting was held in July of 2020 to set the calendar for the upcoming year.

It is essential for the Board of Directors to establish a standard calendar, post it to the public and adhere as close to the schedule as possible. This is necessary for the effective governance of the Public Lighting Authority. It is at the meetings that the Board conducts official business including (1) receiving and reviewing financial reports, (2) approving contracts as required above stated thresholds, (3) evaluating and approving other personnel matters, (4) obtaining a status on the organization's annual audit, and (5) hearing from members of the public.

Our very own City Council has shown that even during the height of the Covid pandemic, they were able to continue to meet the statutory requirements of the Open Meetings Act by hosting public meetings virtually, and now both in-person and virtual.

D. The threshold for Board review and approval of contracts is too high.

The current threshold for Board approval of contracts is currently \$250,000. Based on statements from PLA management, the threshold was initially set at a "high level" to expedite non-major construction and other contracts during the initial phase of replacing the City's lighting system. As stated earlier in this report, for fiscal years 2019 and 2020, professional service contracts made up \$2.1 million in expenditures. Yet, none of the expenditures were approved or even reported to the Board because they were below the \$250,000 threshold.

We recommend and PLA leadership agrees that the approval threshold can and should be lowered to reflect the current operating environment and provide a greater level of oversight on financial transactions.

APPENDIX A

Generally Accepted Government Auditing Standards

The following excerpt is related to Generally Accepted Government Auditing Standards as compiled by the United States Government Accountability Office (GAO) for Performance Audits. According to the GAO and GAGAS¹²:

§1.21: Performance audits provide objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective actions, and contributing to public accountability.

§1.22 Performance audit objectives vary widely and include assessments of program effectiveness, economy, and efficiency; internal control; compliance; and prospective analyses. Audit objectives may also pertain to the current status or condition of a program. These overall objectives are not mutually exclusive. For example, a performance audit with an objective of determining or evaluating program effectiveness may also involve an additional objective of evaluating the program's internal controls. Key categories of performance audit objectives include the following:

- a. Program effectiveness and results audit objectives. These are frequently interrelated with economy and efficiency objectives. Audit objectives that focus on program effectiveness and results typically measure the extent to which a program is achieving its goals and objectives. Audit objectives that focus on economy and efficiency address the costs and resources used to achieve program results.
- b. Internal control audit objectives. These relate to an assessment of one or more aspects of an entity's system of internal control that is designed to provide reasonable assurance of achieving effective and efficient operations, reliability of reporting for internal and external use, or compliance with provisions of applicable laws and regulations. Internal control objectives also may be relevant when determining the cause of unsatisfactory program performance. Internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Internal control comprises plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity.
- c. Compliance audit objectives. These relate to an assessment of compliance with criteria established by provisions of laws, regulations, contracts, or grant agreements, or other requirements that could affect the acquisition, protection, use, and disposition of the entity's resources and the quantity, quality, timeliness, and cost of services the entity produces and delivers. Compliance requirements can be either financial or nonfinancial.
- d. Prospective analysis audit objectives. These provide analysis or conclusions about information that is based on assumptions about events that may occur in the future, along with possible actions that the entity may take in response to the future events.

¹² Government Auditing Standards (Yellow Book) 2018 Revision; www.gao.gov/yellowbook.

APPENDIX A

Generally Accepted Government Auditing Standards

There are four “Elements of a Finding” in a Performance Audit. The following excerpt(s) from GAGAS describe how auditors develop Findings:

§8.116 As part of a performance audit, when auditors identify findings, they should plan and perform procedures to develop the criteria, condition, cause, and effect of the findings to the extent that these elements are relevant and necessary to achieve the audit objectives.

§8.125 **Condition:** Condition is a situation that exists. The condition is determined and documented during the audit.

§8.124 **Criteria:** To develop findings, criteria may include the laws, regulations, contracts, grant agreements, standards, measures, expected performance, defined business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. The term program includes processes, projects, studies, policies, operations, activities, entities, and functions. Criteria provide a context for evaluating evidence and understanding the findings, conclusions, and recommendations in the report.

§8.126 **Cause:** The cause is the factor or factors responsible for the difference between the condition and the criteria and may also serve as a basis for recommendations for corrective actions. Common factors include poorly designed policies, procedures, or criteria inconsistent, incomplete, or incorrect implementation; or factors beyond the control of program management. Auditors may assess whether the evidence provides a reasonable and convincing argument for why the stated cause is the key factor contributing to the difference between the condition and the criteria.

§8.127 **Effect** or potential effect: The effect or potential effect is the outcome or consequence resulting from the difference between the condition and the criteria. When the audit objectives include identifying the actual or potential consequences of a condition that varies (either positively or negatively) from the criteria identified in the audit, effect is a measure of those consequences. Effect or potential effect may be used to demonstrate the need for corrective action in response to identified problems or relevant risks.

GAGAS, also provides the following “Reporting Standards for Performance Audits”:

§9.27 **Conclusions:** Report conclusions are logical inferences about the program based on the auditors’ findings, not merely a summary of the findings. The strength of the auditors’ conclusions depends on the persuasiveness of the evidence supporting the findings and the soundness of the logic used to formulate the conclusions. Conclusions are more compelling if they lead to the auditors’ recommendations and convince the knowledgeable user of the report that action is necessary.

§9.23 **Recommendations:** When feasible, auditors should recommend actions to correct deficiencies and other findings identified during the audit and to improve programs and operations when the potential for improvement in programs, operations, and performance is substantiated by the reported findings and conclusions. Auditors should make recommendations that flow logically from

APPENDIX A

Generally Accepted Government Auditing Standards

the findings and conclusions, are directed at resolving the cause of identified deficiencies and findings, and clearly state the actions recommended.

§9.28 Effective recommendations encourage improvements in the conduct of government programs and operations. Recommendations are effective when they are addressed to parties that have the authority to act and when the recommended actions are specific, feasible, cost effective, and measurable.

§5.84 Requirement: Peer Review Intervals. An audit organization not already subject to a peer review requirement should obtain an external peer review at least once every 3 years. The audit organization should obtain its first peer review covering a review period ending no later than 3 years from the date an audit organization begins its first engagement in accordance with GAGAS.

Memo from the Law Department: “Payment of Public Lighting Authority Invoices Under Interlocal Agreement”



LAW DEPARTMENT

Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 500
Detroit, Michigan 48226-3437

Phone 313•224•4550
Fax 313•224•5505
www.detroitmi.gov

MEMORANDUM

To: John Naglick, Chief Deputy CFO/Finance Director

From: Pamela Parrish, Chief Legal Counsel *PP*

Re: Payment of Public Lighting Authority Invoices under Interlocal Agreement

Date: March 17, 2022

Issue Presented: You have asked whether the City of Detroit is authorized to pay the Public Lighting Authority (“Authority”) for operations, maintenance, and administrative costs in excess of the Annual Cap Amount established for those expenses in the Interlocal Agreement between the City of Detroit and the Authority for the Operation, Maintenance and Management of a Public Lighting System (“Interlocal Agreement” or “Agreement”).

Background:

The Authority was created in 2013 to provide an equitable and reasonable method and means of financing, operating, and maintaining a lighting system to supply lighting in sufficient quantities to the City of Detroit. At the time of its creation, the City’s streetlight system was in disrepair and badly in need of improvement. That same year, the City and the Authority entered into the Interlocal Agreement to define the roles and responsibilities of each of the Parties with respect to the operation, maintenance, and management of the System.¹

¹ Capitalized terms not defined in this memorandum are defined and have the same meaning as in the Interlocal Agreement.

Memo from the Law Department: “Payment of Public Lighting Authority Invoices Under Interlocal Agreement”

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From its creation, the Authority expected to make multi-year, largescale, city-wide investments in public lighting infrastructure including poles, ballasts, circuits, transformers, and distribution connection. To that end, the Authority developed a Public Lighting Authority Lighting Plan (“Lighting Plan”) in 2013 to set forth the Authority’s plan for the installation of the public lighting system. The Lighting Plan was approved by City Council and calls for the installation of 46,000 streetlights. (Exhibit A) In 2014, the Authority amended the Lighting Plan (“Amended Lighting Plan”) to modify the design criteria, resulting in an increase in the number of streetlights from approximately 46,000 to approximately 64,500. (See Exhibit B)

The City has received the Street Light Maintenance Quarterly Invoice (“Invoice”) dated Feb. 8, 2022, and due April 1, 2022. This and similar invoices are contemplated by the Interlocal Agreement. The Invoice reports that 67,121 streetlights were completed over the quarter and requests a total payment of \$2,600,815.74. The invoiced amount includes \$378,750.00 for three (3) months of administrative costs at \$126,250.00 per month which is the monthly charge set forth in the Agreement. The remaining \$2,222,065.74 reflects Operations and Maintenance (“O&M”) costs for the actual number of streetlights serviced (67,121) at the rate of \$9.62 per month per overhead-fed streetlight and \$17.66 per month per underground-fed streetlight during the quarter. (See Exhibit C)

Section 4.1 of the Interlocal Agreement provides that the City **shall not** be obligated to pay more in any given year than \$8,024,000.00). There is only \$321,553.00 remaining of those funds for the current year. If the Cap is strictly adhered to, there will be a shortfall of approximately \$2,279,263.00.

Discussion:

Section 4.1 of the Interlocal Agreement provides:

Operation and Management Fees and Costs. The City shall pay the Authority the following amounts for the Services, provided that in no event, shall the City be obligated to pay more in any given year than \$8,024,000 (the “Annual Cap Amount”), excluding any payments for Extraordinary Maintenance:

- (a) **Operations and Maintenance Costs:** \$9.62 per month per Overhead-Fed Streetlight, and \$17.66 per month per Underground-Fed Streetlight.

**Memo from the Law Department: “Payment of Public Lighting Authority
Invoices Under Interlocal Agreement”**

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- (b) **Extraordinary Maintenance Costs:** The actual costs of any Extraordinary Maintenance performed during the second previous quarterly period, such that the City will pay the Extraordinary Maintenance costs performed for the period of January through March of any year on the Quarterly Statement for the July through September quarter of that year.
- (c) **Administrative Costs:** One Hundred and Twenty-Six Thousand and Two-Hundred and Fifty Dollars (\$126,250) per month for the operation of the Authority.

The amounts to be paid under this Section 4.1 shall increase annually by the lesser of (i) three percent (3%) or (ii) the percentage increase in the CPI over the prior year.

The question presented, in a nutshell, is whether the Annual Cap Amount (or “Cap”) referenced above establishes the maximum amount the City can pay the Authority for Services in any given year.

The Authority maintains that the Annual Cap Amount was intended to be the City's maximum obligation based upon an agreed upon system of 46,000 streetlights. Once the number of lights was increased to 64,500 under the Amended Lighting Plan, the Authority argues the Cap no longer applies and that it is entitled to be reimbursed for the actual number of Streetlights provided at the per light rates set forth above.

The City has not formally sought to amend the definition of the Annual Cap Amount. However, it has repeatedly requested budget appropriations in excess of that amount. In 2017, the City sought and obtained budget approval to pay the Authority more than \$10M for Services rendered under the Interlocal Agreement. Since that time, the City has been successful in obtaining City Council approval for a \$10M plus budget for the years 2018 – 2022. (See Exhibit D)

The question presented here is one of contract interpretation.

Courts have held that contracts are to be interpreted according to the plain and ordinary meaning that would be apparent to the reader of the contract. *In re Smith*, 480 Mich. 19, at 24; 745 N.W.2d 754 (2008). If a review of the plain language of a contract is clear and there exists no ambiguity or inconsistency, a court will not look to extrinsic evidence (evidence derived from outside sources) to determine the parties' intent in drafting a

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contract. *Universal Underwriters Ins. Co. v. Kneeland*, 464 Mich. 491, at 496; 628 N.W.2d 491 (2001) (“Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement.”)

By definition, the term Annual Cap Amount imposes a limit on the amount the City can be obligated to pay for Services under the Interlocal Agreement in any given year. The definition of this term is written in plain English, is understandable and its meaning appears clear. Thus, consideration of this term in isolation may support a view that the Parties intended a rigid application of the Cap in all circumstances. However, a review of the entire contract suggests the presence of conflicting provisions which casts doubt on that interpretation.

As stated above, the contract establishes an Annual Cap Amount limiting the annual obligation of the City to \$8,024,000.00. An intention to strictly apply the Annual Cap Amount would obviate the need to consider actual operations, maintenance, and administrative costs.² However, in Section 4.1 (a) the Parties established monthly, per light charges for overhead-fed and underground-fed streetlights. Also, Section 4.2 requires the authority to submit an estimate of quarterly costs no later than 30 days prior to the beginning of each new quarter. Each estimate is to include the number and type of Streetlights expected to be serviced in the respective quarter.

A similar approach can be seen in Section 5.1.2 where the Authority commits to submit a detailed reconciliation of “actual out-of-pocket costs and expenses incurred by the Authority in the performance of the Services for such fiscal quarter based on the actual number of Streetlights serviced.”

The requirement to estimate the number of lights and submit actual cost data in these provisions is indicative of the Parties intent to rely upon actual costs and expenses in

² The annual cap Amount is comprised of operations, maintenance, and administrative costs. Administrative Costs are fixed at \$126,250 per month. The Invoice includes administrative charges for 3 months at the above rate. Thus, the drivers of the increased costs are the operations and maintenance costs, and they are the focus of this analysis.

Memo from the Law Department: “Payment of Public Lighting Authority Invoices Under Interlocal Agreement”

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making quarterly payments. Otherwise, why would there be a need for such detailed information?³

Moreover, the proviso in Section 4.1 for an annual increase in the Cap is not only antithetical to an absolute cap, it also inserts a degree of uncertainty in the amount of the annual payment for any given year going forward.

The provisions discussed above reveal certain inconsistencies with regard to whether the Parties intended an absolute threshold on the City’s payment obligation, rendering the contract indefinite or ambiguous.

If a contract is determined to be inconsistent on its face, it is ambiguous and a factual analysis is required to determine the intent of the parties. *Petovello v. Murray*, 139 Mich. App. 639, at 642, 362 N.W.2d 857 (1984). In such circumstance, the Michigan courts have considered extrinsic evidence to ascertain the intent of the parties. *People v. Rydzewski*, 331 Mich. App. 126, at 140, 951 N.W.2d 356 (2020).

One of the key factors Michigan Courts will consider is the practical interpretation of an agreement by the parties. See, *Detroit Greyhound Employees v Aetna Life Ins. Co.*, 381 Mich. 683, at 685-686; 167 N.W.2d 274 (1969). (If a contract by its terms is uncertain or ambiguous, the practical interpretation by the parties and the manner in which they have effectuated the contract is entitled to great weight.)

A look at the history of invoicing and payment between the Parties supports the view that they intended the Authority to be reimbursed for actual costs incurred. Our records show that the Authority has invoiced, and the City has paid the actual operation and maintenance costs incurred by the Authority throughout the life of the Interlocal Agreement.

In 2015 and 2016, the Authority was paid \$8,209,787.95 and \$7,398,700.50 respectively. Beginning in 2017, the City appropriated (with City Council approval) \$10M or more for

³ The Interlocal Agreement does not provide a methodology of how the Annual Cap Amount was derived nor any assumptions regarding the size of the lighting system or other factors the Parties may have relied upon in determining that Cap. Notwithstanding that omission, the facts here, including the regular submission and payment of invoices in excess of the Cap, support a conclusion that both Parties believed the Authority was entitled to be reimbursed for actual costs.

APPENDIX B

**Memo from the Law Department: “Payment of Public Lighting Authority
Invoices Under Interlocal Agreement”**

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costs associated with this Agreement.⁴ In the years 2018-2021, the City reimbursed the Authority for operations, maintenance, and administrative costs in excess of \$10M. (See Exhibit D)

Conclusion:

A review of the terms of the Interlocal Agreement, and the practical interpretation of the Agreement by the Parties supports a finding that the Parties intended that actual operations and maintenance expenses were reimbursable to the Authority, and that the Annual Cap Amount was not intended by either Party to be a limitation on the amount that could be reimbursed.

⁴ In 2017, the City reimbursed the Authority \$12 M, a portion of which was for extraordinary maintenance and repair charges.

EXHIBIT A

APPENDIX B

**Memo from the Law Department: “Payment of Public Lighting Authority
Invoices Under Interlocal Agreement”**



Exhibit A

legal, accounting, engineering, public relations, construction, and maintenance through contracting. Gregory Terrell & Company will provide financial accounting, the Allen Law Group, P.C. will provide legal service and Berg Muirhead and Associates will provide public relations.

2. Facility Background

The Detroit street light system is in need of repair and improvement. Detroit’s street light system of 88,000 lights is in disrepair, with approximately 55,000 lights being fed by DTE Electric and the remaining 33,000 being fed by Public Lighting Department (PLD). Although it is estimated that half of the lights in the system are not working, the status of the street light system is unknown and will require a survey of each light. Most of the underground fed lighting circuits within Detroit are made up of series circuits consisting of multi-generation light fixtures.

3. Scope and Schedule

The implementation of the lighting plan is being segregated into a short-term and long-term plan. Two pilot areas have been chosen for the short-term plan implementation, the outcomes of which will inform the long-term process. (See Appendices C and D for maps of the selected areas). Both the short and long-term plans will be implemented in several segments, specifically consisting of survey, design and construction work. All contracts will be awarded pursuant to a competitive bid process. The short-term plan implementation will commence in 2013 with completion projected in 1st quarter 2014. The field survey will include collecting status information on each pole and recording in a geographical mapping system. The owner’s engineer will provide engineering, material specifications and work packages for construction. A specific improvement will be converting “series” circuits to “multiple” circuits. The overhead and underground construction contractors will perform all field installations and provide field records. Quality and safety audits will be performed throughout the project. Each area has approximately 2,500 lights, for a total of approximately 5,000 street lights.

The long term plan, scheduled from 1st quarter 2014 through 4th quarter 2016, would consist of progressive geographic implementation using Detroit zip codes, as shown on Appendix E, as improvement project areas. (See also Appendix F for the long term schedule of project areas). New project areas will begin approximately every other month and take approximately nine months to complete. The final number of street lights will be approximately 46,000. After the two pilot areas, contiguous areas will be addressed including those defined as high priority areas by the City of Detroit. To inform the public of changes and facilitate outage reporting, public notice will be made by way of door hangers and public meetings.

The project design criteria are as follows:

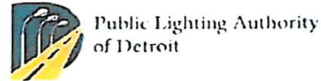
- a) Lighting will remain essentially the same in densely populated areas and thoroughfares

EXHIBIT B

APPENDIX B

**Memo from the Law Department: "Payment of Public Lighting Authority
Invoices Under Interlocal Agreement"**

Exhibit B



Electric and the remaining 33,000 being fed by the City Public Lighting Department ("PLD"). Initial survey results reveal that approximately half of the lights in the system are not working. Most of the underground fed lighting circuits within Detroit are made up of series circuits consisting of multi-generation light fixtures.

3. Scope and Schedule

The lighting plan will be implemented in two discrete phases: an overhead-fed light phase to be completed in 4th Quarter 2015; and an underground-fed light phase to be completed in 4th Quarter 2016. Generally, overhead lights are located in residential neighborhoods, on collector roads, and on select portions of major thoroughfares. Underground-fed lights are generally located on major thoroughfares, in addition to select residential neighborhoods that contain ornamental street lights.

The work plan consists of survey, design and construction work. All contracts will be awarded pursuant to a competitive bid process, and shall include credit pursuant to the PLA's best value policy. The owner's engineer will provide engineering, material specifications and work packages for construction. The overhead and underground construction contractors will perform all field installations and provide field records. Quality and safety audits will be performed throughout the project.

Each phase of the Lighting Plan will be implemented progressively by Detroit zip code. (See Appendix A, Zip Code Schedule Summary).

B. Lighting Plan Criteria

1. Number of Lights.

The City of Detroit street lighting system shall consist of approximately 64,500 lights upon completion of the capital improvements.

2. Location of Lights and Other Criteria.

a. Light Locations

- i. All intersections & dead ends will have one street light.
- ii. Residential blocks greater than 300 feet will generally have one mid-block street light.
- iii. Residential blocks greater than 700 feet will generally have two (2) or more mid-block street lights.
- iv. Lights on major thoroughfares will be located based on the results of an engineering analysis.
- v. Lights that do not meet the preceding criteria located in alleys or on blocks less

EXHIBIT C

Memo from the Law Department: "Payment of Public Lighting Authority Invoices Under Interlocal Agreement"

Exhibit C



Public Lighting Authority

400 Monroe Street, Suite 485
Detroit, Michigan, 48226
313-324-8291 Phone
313-638-2805 Fax
www.pladetroit.org

OUR MISSION is to improve, modernize and maintain the street lighting system in Detroit.

February 8, 2022

City of Detroit
Office of the Mayor
Coleman A. Young Municipal Center
2 Woodward Avenue, 11th Floor
Detroit, MI 48226

RE: Street Light Maintenance Quarterly Invoice

Dear Mayor Duggan:

The Public Lighting Authority (the "Authority") respectfully submits this quarterly Operations & Maintenance Invoice to the City of Detroit (the "City") pursuant to the Interlocal Agreement (the "Agreement") for the Operation, Maintenance and Management of a Public Lighting System which was executed on December 13, 2013 (which is attached to this letter for your reference).

The Authority is submitting this invoice in the amount of two million, six hundred thousand, eight hundred fifteen dollars and 74/100 (\$2,600,815.74). This amount includes the cost for the operations & maintenance of the actual lights completed, sixty-seven thousand, one hundred twenty-one (67,121), through December 2021.

This invoice also includes the administrative costs of the Authority from April – June 2022. The administrative costs are equal to one hundred twenty-six thousand, two hundred fifty dollars (\$126,250.00) per month, per the Agreement. For the months of July 2021 – September 2021, we calculated the variance between estimated and actual lights to be zero dollars and 00/100 (\$0). For the period of July through September 2021, we incurred extraordinary costs of zero dollars and 00/100 (\$0.00).

In addition to the invoice, we are also submitting a "Certificate of Activity" showing the number of lights completed along with the number of lights forecasted to be completed by the end of the quarter along with their locations within the city. Per Article V, payment is due the first day of each quarter, April 1, 2022.

If you have any questions regarding the above or attached information, please feel free to contact me.

With warm regards,

Beau Taylor
Executive Director
Public Lighting Authority

cc: Dr. Lorna Thomas, Board Chair, Public Lighting Authority
Mohamed Hassan, Chief Financial Officer, Public Lighting Authority
Hakim Berry, Chief Operating Officer, City of Detroit
Jay B. Rising, Acting Chief Financial Officer, City of Detroit
Charles Raimi, Law Department, City of Detroit
John Naglick, Jr. Chief Deputy Chief Financial Officer/Finance Director
Dan Woitulewicz, Financial Consultant

Memo from the Law Department: "Payment of Public Lighting Authority Invoices Under Interlocal Agreement"

EXHIBIT B
Public Lighting Authority
Operations and Maintenance
April 1, 2022 - June 30, 2022

Table 1: Summary of Estimated Costs For This Quarter

Cost Category	Total
Operations and Maintenance Costs (See Table 2)	\$ 2,222,065.74
Extraordinary Maintenance Costs (See Table 3)	\$ -
Administrative Costs (See Table 4)	\$ 378,750.00
Quarterly Variance for Operations and Maintenance Costs (See Table 5)	\$ -
Estimated Quarterly Total Costs	\$ 2,600,815.74

Table 2: Estimated Operations and Maintenance Costs

Period	Estimated Number of Streetlights	Per Streetlight Cost	Total
April, 2022			
Overhead-Fed Streetlight	-		
Underground-Fed Streetlight	-		
Overhead-Fed Streetlight (LED) *	55,307	\$ 9.62	\$ 532,053.34
Underground-Fed Streetlight (LED)	11,814	\$ 17.66	\$ 208,635.24
May, 2022			
Overhead-Fed Streetlight	-		
Underground-Fed Streetlight	-		
Overhead-Fed Streetlight (LED)	55,307	\$ 9.62	\$ 532,053.34
Underground-Fed Streetlight (LED)	11,814	\$ 17.66	\$ 208,635.24
June, 2022			
Overhead-Fed Streetlight	-		
Underground-Fed Streetlight	-		
Overhead-Fed Streetlight (LED)	55,307	\$ 9.62	\$ 532,053.34
Underground-Fed Streetlight (LED)	11,814	\$ 17.66	\$ 208,635.24
Operations and Maintenance Costs - Quarterly Subtotal			\$ 2,222,065.74

Table 3: Actual Extraordinary Maintenance Costs

Period	Total Actual Cost of Extraordinary Maintenance	Actual Number of Streetlights Serviced	Per Streetlight Total	Total Actual Cost of Extraordinary Maintenance
October, 2021	\$ -	0	\$ -	\$ -
November, 2021	\$ -	0	\$ -	\$ -
December, 2021	\$ -	0	\$ -	\$ -
Extraordinary Maintenance Costs - Quarterly Subtotal				\$ -

Table 4: Administrative Costs

Period	Total
April, 2022	\$ 126,250.00
May, 2022	\$ 126,250.00
June, 2022	\$ 126,250.00
Administrative Costs - Quarterly Subtotal	\$ 378,750.00

Table 5: Actual vs. Estimated Operations and Maintenance Costs

Period	Estimated Number of Streetlights	Actual # of Streetlights	Unit Cost	Variance
October, 2021				
Overhead-Fed Streetlight (LED)	55,307	55,307	\$ 9.62	\$ -
Underground-Fed Streetlight (LED)	11,814	11,814	\$ 17.66	\$ -
November, 2021				
Overhead-Fed Streetlight (LED)	55,307	55,307	\$ 9.62	\$ -
Underground-Fed Streetlight (LED)	11,814	11,814	\$ 17.66	\$ -
December, 2021				
Overhead-Fed Streetlight (LED)	55,307	55,307	\$ 9.62	\$ -
Underground-Fed Streetlight (LED)	11,814	11,814	\$ 17.66	\$ -
Operations and Maintenance Costs - Quarterly Subtotal				\$ -

APPENDIX B

Memo from the Law Department: "Payment of Public Lighting Authority Invoices Under Interlocal Agreement"

PUBLIC LIGHTING AUTHORITY
 CERTIFICATE OF ACTIVITY
 April 1, 2022 - June 30, 2022

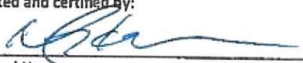
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Zip Code	48203	Exceptions:	
Zip Code	48204	Exceptions:	
Zip Code	48205	Exceptions:	
Zip Code	48206	Exceptions:	
Zip Code	48207	Exceptions:	
Zip Code	48208	Exceptions:	
Zip Code	48209	Exceptions:	
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Zip Code	48223	Exceptions:	
Zip Code	48224	Exceptions:	
Zip Code	48227	Exceptions:	
Zip Code	48228	Exceptions:	
Zip Code	48234	Exceptions:	
Zip Code	48235	Exceptions:	
Zip Code	48236	Exceptions:	
Zip Code	48238	Exceptions:	
Zip Code	48239	Exceptions:	
Zip Code	48201	Exceptions:	
Zip Code	48226	Exceptions:	
Date of Acceptance			February 8, 2022
Number of Street Lights Forecasted			67,121
Number of Street Lights Completed			67,121
Northern Boundary			See attached map
Southern Boundary			See attached map
Western Boundary			See attached map
Eastern Boundary			See attached map

In addition to the Street Lights located within the Managed System Area, the following operations, maintenance, and management of the following property, facilities, or other System assets, including any easements or rights-of-way, shall also be assumed by the PLA:

Type of Asset	N/A
General Location	N/A

A map of the Managed System is attached to this Certificate of Completion as Exhibit A

Submitted and certified by:



2/8/22

Mohamed Hassan
 Chief Financial Officer

Date

EXHIBIT D

Memo from the Law Department: "Payment of Public Lighting Authority Invoices Under Interlocal Agreement"

Exhibit D

Pamela Parrish

From: James George
Sent: Monday, March 14, 2022 4:32 PM
To: Pamela Parrish
Subject: RE: Public Lighting Authority Contract

Hi Pam,
 Please see the PLA payment history below per request:

Fiscal Year	Budget	Actual	
2015		\$8,209,787.95	
2016		\$7,398,700.50	
2017	\$10,000,000	\$12,000,000.00	Extra ordinary repair and maintnance paid per MOU
2018	\$10,500,000	\$10,312,860.30	
2019	\$10,600,000	\$10,150,446.30	
2020	\$10,500,000	\$10,403,262.96	
2021	\$10,478,263	\$10,403,262.96	
2022	\$10,478,263	\$7,702,447.22	amount paid year-ro-date
Totals	\$62,556,526	\$76,580,768.19	

From: Pamela Parrish <parrishp@detroitmi.gov>
Sent: Monday, March 14, 2022 2:43 PM
To: James George <georgej@detroitmi.gov>
Subject: Public Lighting Authority Contract

Hi James,
 Will you please give me a call to discuss the above- referenced matter at your earliest convenience.
 Thx,
 Pam
 Cell: 313-686-6005

Pamela T. Parrish
 Chief Legal Counsel

APPENDIX C
**Memo from the Law Department: “Public Lighting Authority
And Detroit City Charter”**



LAW DEPARTMENT

Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 500
Detroit, Michigan 48226-3437

Phone 313•224•4550
Fax 313•224•5505
www.detroitmi.gov

TO: John Naglick
Chief Deputy CFO/Finance Director

FROM: Sharon Blackmon
Senior Assistant Corporation Counsel

DATE: March 14, 2022

RE: Public Lighting Authority and Detroit City Charter

INTRODUCTION

You have forwarded two questions regarding the control and management of the City’s public lighting. This function was formerly controlled by the Public Lighting Department (PLD) as outlined in the 2012 Detroit City Charter and is now largely controlled by the Public Lighting Authority (PLA) as authorized by 2012 PA 392, the Municipal Lighting Authority Act (MLAA), MCL 123.1261 *et seq.* Not surprisingly, some confusion exists as to the relationship between the PLA and the PLD.

Two issues have been raised by the Auditor General’s office. The first issue is found in the Auditor General’s *Audit of the Public Lighting July 1, 2015 – June 30, 2020*, report dated, February 14, 2022, which states as follows:

According to the City’s Charter (Article 7 Chapter 9 Public Lighting, Section. 7-904. Powers and Duties): the Department is:

The [Public Lighting] Department shall supervise and control all public lighting and public lighting plants and may:

Furnish and sell light, heat and power to any person, firm, division, or corporation within or outside of the city to the extent permitted by law; and

Exercise other powers and perform other duties necessary to carry out its functions.

In our view, PLD is required to supervise and control all public lighting in the City. However, we did not see any evidence of PLD’s

APPENDIX C
**Memo from the Law Department: “Public Lighting Authority
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active supervision or control of citywide public lighting during the scope of the audit of PLA. See, Audit, *supra*, p 19.

In addition to this concern regarding the relationship between the PLD and the PLA, Laura Goodspeed asked the following question via email dated February 14, 2022:

I'm hoping that the Law Department can also provide clarity on the following clause in Chapter 9 Sec. 7-905. – Limitations on Sale of Assets.:

The City may not grant any public utility franchise for public lighting which is not subject to revocation at the will of the City Council unless the proposition is first approved by three-fifths (3/5) of City voters voting on the question at a regular or special election.

SHORT ANSWER

The Charter's grant of authority to the PLD is superseded by several state statutes enacted in the face of bankruptcy. The most important of those statutes for this analysis is the Municipal Lighting Authority Act (MLAA), which provided for the creation of the PLA and outlined the extent of its powers. Under the authority of the MLAA and the agreements entered into by the City pursuant to the MLAA, the supervision and control of the public lighting system is now the PLA's responsibility.

The Charter's language regarding the granting of a public utility franchise is essentially identical to language found in the Michigan Constitution. The agreements under which the PLA operates however, do not establish or create a public utility franchise. No property is transferred to the PLA and the extension or improvement of existing utility facilities do not create a franchise.

LAW AND ANALYSIS

The PLA was created pursuant to the Municipal Lighting Authority Act, MCL 123.1261, *et seq.* The purpose and intent of the Municipal Lighting Act is as follows:

- (1) It is the intent of this act to provide an equitable and reasonable method and means of financing, operating, and maintaining a lighting system to supply lighting in sufficient quantities to a local government.
- (2) The powers of the authority shall be carried out in a manner authorized by this act.

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Memo from the Law Department: “Public Lighting Authority
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(3) A local government, by majority vote of its governing body, may incorporate an authority comprising the territory within its respective limits for acquiring, constructing, consolidating, purchasing, operating, or maintaining a municipally owned lighting system. The authority is a public municipal corporation with the rights, powers, and duties as provided in this act.
MCL 123.1265. (Emphasis added.)

The PLA is a “public municipal corporation” with the authority to sue and be sued in its own name. MCL 123.1271(1), (2)(d). In addition, it may determine the location of projects, issue bonds, adopt its own bylaws, acquire real or personal property, and engage professional services as needed to implement the purposes of the MLAA. MCL 123.1271 (2)(a),(e),(f),(h), and (i). The PLA must report annually to City Council. MCL 123.1271(4).

The act contemplates a significant role by elected municipal officials, specifically as to the adoption of the articles of incorporation, MCL 123.1269, and the appointment of the board of directors, MCL 123.1273. The Act mandates the creation of a five-member board of directors for the governance of the PLA. MCL 123.1273 (1). The composition of the board of directors is outlined at MCL 123.1273(2). Two members are appointed by the mayor and two members are appointed by City Council. The fifth member is appointed by the City Council from a list of names provided by the mayor. MCL 123.1273(2)(a), (b), (c). The act also requires that the board contain a licensed professional engineer, a certified public accountant, and a licensed attorney. MCL 123.1273(4), (5), (6).

The Act only applies to the City of Detroit¹ and was designed to give the City the option of creating a separate lighting authority to address both the condition of PLD’s infrastructure and the threats posed by potential bankruptcy. The act was effective on December 19, 2012. City Council approved the Articles of Incorporation, which basically track the language of the Act, on February 5, 2013. The City filed for bankruptcy on July 13, 2013. On October 23, 2013, pursuant to the Local Financial Stability and Choice Act, MCL 141.1541, *et seq.*, the Emergency Manager approved the agreements between the City and PLA providing for PLA management and operation of the City’s public lighting system.²

Because the MLAA, in conjunction with an amendment to the Utility Tax Act, PA 392 2013, basically created a cordon sanitaire for 12.5 million dollars collected under the Utility Users Tax to be pledged to the PLA for the issuance of revenue bonds, it drew the unwanted attention of

¹ The Act applies only to cities with a population greater than 600,000. MCL 123.1263.

² Those agreements were the Interlocal Agreement for the Construction and Financing of a Public Lighting System, the Interlocal Agreement for the Operation, Maintenance and Management of a Public Lighting System, and the Restated Trust Agreement regarding the use of revenues received from the Utility Tax. Under the terms of the Local Financial Stability and Choice Act, City Council had ten days to approve or disprove the agreements. MCL 141.1559(1).

APPENDIX C
**Memo from the Law Department: “Public Lighting Authority
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the City’s creditors during the bankruptcy proceedings. On December 6, 2013, Judge Steven Rhodes, US Bankruptcy Judge, entered an order approving the agreements between the City and the PLA.³

PUBLIC LIGHTING DEPARTMENT’S AUTHORITY

The Auditor General is concerned that the PLD appears to exercise no supervision or control of lighting in Detroit in apparent violation of the 2012 Charter. The Auditor General suggests that the PLA’s role is not permitted by the Charter.

The City Charter is subject and subordinate to the Constitution and statutes of the state of Michigan. The Charter recognizes this at Section 1-102, which provides as follows:

The City has the comprehensive home rule power conferred upon it by the Michigan Constitution, subject only to the limitations on the exercise of that power contained in the Constitution or this Charter **or imposed by statute.** (Emphasis added.)

The MLAA authorizes the delegation of the “financing, operating, and maintaining a lighting system . . .” to a Public Lighting Authority. MCL 123.1265(1). This language delegates the supervision and control of lighting to the PLA. Public lighting in Detroit is managed by the PLA pursuant to its creation and chartering by City Council and various agreements entered into during the Emergency Manager’s tenure pursuant to MCL 141.1541 *et seq.*

In *Detroit City Council v Mayor of Detroit*, 283 Mich App 442 (2009), the Court reviewed a conflict between a statute authorizing the transfer of Cobo Hall to a regional authority but only with Council approval. When City Council voted against the transfer, the mayor vetoed the approval. The statute authorizing the transfer contained no provision for a mayoral veto of council’s rejection of the transfer. The Charter, however, gave the mayor veto authority.

The Court ruled that the Charter provisions were preempted by the statute, observing as follows:

[T]he city of Detroit is organized and operates under the Home Rule City Act. See Detroit Charter, § 1–101. The Michigan Constitution provides certain powers to home rule cities:

³ See, *In re: City of Detroit, Mich*, Case No 13-53846, US Bankruptcy Court, ED Mich, Order Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents With the Public Lighting Authority and Granting Other Related Relief, Dec 6, 2013, Dkt No 1955.

APPENDIX C
**Memo from the Law Department: “Public Lighting Authority
And Detroit City Charter”**



Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section. [Const. 1963, art. 7, § 22.]

Our Supreme Court has stated that this provision “specifically provides that ordinances are subject to the laws of this state, i.e., statutes.” *AFSCME v Detroit*, 468 Mich. 388, 410, (2003). Similarly, under the Home Rule City Act, the laws and ordinances relating to a home rule city's municipal concerns are subject to the general laws of Michigan. See MCL 117.4j(3) (providing that a home rule city's ordinances are “subject to the constitution and general laws of this state”). In other words, where a city charter conflicts with a state statute, the statute controls in matters that are not solely a local concern. *Bd. of Trustees of the Policemen & Firemen Retirement Sys. of Detroit v Detroit*, 143 Mich.App. 651, 655, (1985).
Detroit City Council, supra, p 453-454.

There are three statutes involved in the current organization of the City's public lighting system. These statutes are the Local Financial Stability and Choice Act, MCL 141.1541 *et seq.* (commonly referred to as the Emergency Manager Act); the Urban Cooperation Act of 1967, MCL 124.501 *et seq.*; and the MLAA, MCL123.1261 *et seq.* To the extent that any conflict exists between these statutes and the Charter, the law is clear, “the statute must prevail.” *Detroit City Council, supra*, at 454. As the state's home rule act provides, “No provision of any city charter shall conflict with or contravene the provisions of any general law of the state.” MCL 117.36

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**Memo from the Law Department: “Public Lighting Authority
And Detroit City Charter”**



CITY CHARTER PROVISIONS GOVERNING PUBLIC UTILITY FRANCHISES AND DISPOSAL OF CITY PROPERTY

Laura Goodspeed’s email requests an opinion as to the current authority of the Charter’s provisions governing the public utility franchises and the disposal of property by the City. Section 7-905 of the 2012 Detroit City Charter in its entirety, states as follows:

The City may not sell or in any way dispose of any property needed to continue the operation of any city owned public utility furnishing lighting unless approved by a majority of city voters voting on the question at a regular or special election.

The City may not grant any public utility franchise for public lighting which is not subject to revocation at the will of the City Council unless the proposition is first approved by three-fifths of city voters voting on the question at a regular or special election.

All contracts, franchises, grants, leases or other forms of transfer in violation of this section shall be void and of no effect against the city.

The conflict of law issues discussed in the previous section is not automatically applicable to this provision as portions of it reflect limitations found in the Michigan constitution. Specifically, the constitution provides as follows:

Public utilities; acquisition, franchises, sale.

No city or village shall acquire any public utility furnishing light, heat or power, or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless the proposition shall first have been approved by three-fifths of the electors voting thereon. No city or village may sell any public utility unless the proposition shall first have been approved by a majority of the electors voting thereon, or a greater number if the charter shall so provide. Const 1963, art 6, § 25.

The Charter’s provisions are slightly broader than the Constitution as the Constitution restricts only the selling of a public utility while the charter bars any disposal of “any property needed to continue the operation of any city owned public utility . . .” The restrictions regarding the granting of a public utility franchise are essentially identical.

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As such, to the extent that a statute attempted to provide authority in conflict with the limitations found in the Constitution, the statute must give way as the Constitution is a superior source of law. In *City of Ecorse v Peoples Cmty Hosp Auth*, 336 Mich 490, 501 (1953) the Court held “when the rule established and declared in the Constitution by the people conflicts with the rule of a statute enacted by the people’s public servants, the Legislature . . . the latter must give way.”

Thus, the Charter provisions cited, to the extent that they echo the Constitution are not trumped by the MLAA. This has no impact on the current management and operation of the lighting system as the agreements entered into do not violate the Charter or Constitution.

EXAMINATION OF THE AGREEMENTS GOVERNING PUBLIC LIGHTING

As noted earlier the PLA’s activities are primarily governed by two agreements entered into by the City and the PLA. Those agreements are the Construction and Finance Agreement (C & F Agreement) and the Operations, Management and Maintenance Agreement (O & M Agreement). The C & F Agreement provides that the PLA is to undertake improvements including “all of the work, investments, and activities made or conducted, in whole or in part, on the construction, improvement, enlargement, reduction or extension” of the public lighting system as contemplated by the agreement or the MLAA. See C & F Agreement, Article I, Definitions, “Improvements or Work,” § 4, and Article III, § 3.1, p 6.

The agreement obliges the City to provide full access to the City’s assets related to the operation of the public lighting system. See C& F Agreement, Art VI, § 6.2, p 10. This access however, is not to be confused with a transfer of ownership of these properties. The agreement explicitly states, “Nothing in this Agreement shall be construed as transferring the ownership of any lighting systems assets owned by the City to the Authority.” *Id.*, Art III, § 3.5, p 7. Thus, by its terms, the Construction and Finance Agreement transfers none of the City’s property to the Authority and does not violate the Charter or Constitution.

The Operations, Maintenance, and Management Agreement is more concerned with the day-to-day operation of the lighting system. The agreement provides that areas that have been improved, or otherwise modified pursuant to the plan, are then forwarded to the Authority “to manage, operate, and maintain . . .” See O & M Agreement, Art I, Definitions, Managed Systems Area, p 3 and Art III, Operation, Maintenance, and Management, §§ 3.1 and 3.2, p 5. The City retains responsibility for management and operation of areas that have not been improved under the plan. *Id.*, at § 3.2.

As areas are improved and then folded into the Authority’s control, the Authority assumes responsibility for both routine and extraordinary maintenance. O & M Agreement, Art III, § 3.5, p 6. The agreement requires the Authority to provide any damaged parts of the system in no more

APPENDIX C
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than 7 days barring exceptional circumstances. *Id.*, at §3.7, p 7. The City pays the Authority for these maintenance services. O & M Agreement, Art V, § 5.1, p 8.

The Authority does not provide or generate electrical energy. Instead, “The City shall purchase all the electricity necessary to power the System from a third-party power provider.” See Operation, Maintenance, and Management Agreement, § 3.1.

Both agreements contain the same definition of the term “System” which is defined as follows:

“System” means all of the luminaires, lamps, photocells, brackets, conductors, lights, poles and foundations, ballasts, circuits, transformers, conduits, underground equipment that are not part of the distribution system, and other equipment and appurtenances, including any easements or other interests in real property, commencing at the point of connection to the electric distribution system and continuing to the luminaire, necessary for the operation of the street lights within the City. This definition specifically excludes the Mistersky Power Plant, any distribution assets of the City or DTE Energy, and any transmission assets of the City or DTE Energy, including any and all wires, distribution poles, transmission poles, substations, and transformers used for the distribution or transmission of electricity.

See C & F Agreement, Article I, Definitions, p 4, and O & M Agreement, Article I, Definitions, p 4.

The primary purpose of both agreements is to first, undertake extensive improvement of the system’s hardware as defined above pursuant to a plan, and then forward the maintenance and management of the improved hardware to the Public Lighting Authority. By their terms neither agreement involves the sale of any property owned by the City.

PUBLIC UTILITY FRANCHISE

The Charter forbids the City to grant “any public utility franchise for public lighting” unless such grant is revocable at the will of the City or the grant has been approved by a super-majority of the electorate.” Section 7-905, 2012 Detroit City Charter. The issue at hand is whether the agreements discussed above constitute the granting of a public utility franchise. If so, the next concern is whether the agreements are revocable at will. If they are not revocable at will the Charter and the Constitution require they be submitted to the electorate. If the agreements do not constitute the grant of a public utility franchise, the questions of revocability or review by the electorate do not arise.

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In *Lansing Tp v City of Lansing*, 356 Mich 338, 346–48; 97NW2d 128, 133–34 (1959) the court defined a franchise as:

12 McQuillin, *Municipal Corporations* (3d ed.), § 34.04, discusses the distinction as follows: Speaking generally, a franchise is a special privilege of a public nature conferred by governmental authority upon individuals as such, or artificial personalities usually called corporations, and which privilege did not belong to individuals generally as a matter of common right. It is a generic term embracing all rights granted to corporations by the legislature of the State, or such rights as can only be granted by the State in the first instance . . .

“The term franchise as it is ordinarily used in the decisions and by text writers, and as used in this chapter, means the right granted by the State or a municipality to an existing corporation or to an individual to do certain things which a corporation or individual otherwise cannot do, such as the right to use a street or alley for a commercial or street railroad track, or to erect thereon poles and string wires for telegraph, telephone, or electric light purposes, or to use the street or alley underneath the surface for water pipes, gas pipes, or other conduits.

In short, a franchise is “a special privilege granted by the government.” *White v Grand Rapids*, 260 Mich 267 (1932). The privilege allows corporations or other entities the use of public property not accorded to the public at large.

By the maintenance and operation agreement, the City is simply outsourcing maintenance of certain public lighting equipment.⁴ In *Eby v Lansing Board of Water and Light*, 417 Mich 297,

⁴ At oral argument in bankruptcy court, the City’s attorney described this arrangement as follows:

The operation and maintenance agreement that we’re asking the Court to approve obligates the PLA to operate and maintain the portions of the public lighting system that have been improved, extended, and repaired by the PLA pursuant to the lighting plan. **It’s essentially an outsourcing agreement.** (Emphasis added.) See Tr, *In re: City of Detroit, Mich*, Case No 13-53846, US Bankruptcy Court, ED Mich, Hearing, Nov 27 2013, p 8.

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303 (1983), the Court held that “the purchase of power generating facilities which merely extend the capacity of existing utility facilities is not, for purpose of Const 1963 art 7 § 25, the acquisition of a public utility.” The PLA agreements govern the improvement, extension, or updating of existing facilities. The franchise and its assets remain the property and privilege of the City.

CONCLUSION

The current operation of the City’s public lighting system by the PLA is authorized by state statutes. These statutes override Charter provisions that might otherwise apply. The various agreements entered into by the City and PLA, with Council approval, do not violate the Charter’s provisions governing grants of public utility franchises or disposal of City owned property.

Notably, during the argument regarding the PLA’s financing and authority, no creditor raised any objections to the three agreements based on a contention that they transferred property or created a public utility franchise in violation of the state Constitution. (Id., pp 1 – 58.) By way of contrast, pensioners did object that Public Act 436, MCL 141.1541, *et seq.*, commonly known as the Emergency Management Act, violated the pension clause of the Michigan Constitution. This objection was rejected by the court. See *In re City of Detroit, Mich*, 504 BR 97, 161 (2013)

**THE PUBLIC LIGHTING AUTHORITY’S RESPONSE TO THE
OFFICE OF THE AUDITOR GENERAL’S
PERFORMANCE AUDIT OF THE PUBLIC LIGHTING AUTHORITY**

The Public Lighting Authority (the “PLA”) offers the following Responses to the Office of the Auditor General’s (“OAG”) findings in its Performance Audit of the Public Lighting Authority:

FINDING #1: BILLINGS TO, AND PAYMENTS FROM THE CITY WERE SIGNIFICANTLY OVER THE ANNUAL CAP AMOUNTS AND EXCEEDED ACTUAL OPERATING AND MAINTENANCE COSTS

Response: The PLA disagrees with Finding #1. For the same reasons stated in the City of Detroit Law Department’s legal opinion attached to the Performance Audit of the Public Lighting Authority, the PLA has properly billed the City to build and maintain the street light system. Moreover, any amounts exceeding actual operating and maintenance cost are retained for the future complete replacement of the lighting system.

FINDING #2 PLA DID NOT FOLLOW SOME OF ITS OWN ACCOUNTING POLICIES AND PROCEDURES RELATING TO BANKING ACTIVITIES

Response: The PLA agrees with Finding #2. As the PLA transitioned from the construction phase to the maintenance phase, its operational staff was significantly reduced. The PLA is in the process of updating its Accounting Policies and Procedures Manual to more closely align with its current operations and organizational structure. Please find a proposed draft of the same attached as Exhibit 1. **See Note Below*

FINDING #3 PLA ACCUMULATED AND RETAINS SIGNIFICANT EXCESS UTILITY USER TAX DOLLARS OVER ITS BOND DEBT RELATED OBLIGATIONS

Response: The legislation that created the PLA allocates a portion of the City of Detroit’s Utility User Tax to the PLA for the installation and/or maintenance of street light system. As such it is appropriate for the PLA to retain these funds and designate them to accomplish the PLA’s core mission in accordance with the Lighting Plan developed in conjunction with the City. This notwithstanding, the PLA has not spent any of these funds, and furthermore does not plan to expend these funds without the specific legal guidance.

****Note: For purposes of publication of this audit report and the Agency Responses, the Office of The Auditor General did not include Exhibit 1: The Public Lighting Authority Employee Handbook. Please contact PLA directly for copies of the Employee Handbook.***

FINDING #4: THE DETROIT PUBLIC LIGHTING AUTHORITY DOES NOT UTILIZE BEST PRACTICES FOR PROCUREMENT OF PROFESSIONAL SERVICES

Response: The PLA disagrees in part with Finding #1B. Although the PLA does not always bid out professional service contracts, it does bid out some professional services contracts. For example, the accounting firm performing the PLA's annual audit was selected through an RFP and competitive bid process.

Moreover, best procurement practices often recognize an exception to standard competitive bidding requirements for goods when procuring professional services, such as those rendered by engineers, attorneys, and accountants. This is due to the fact that the professional services involve specialized skills and training and may not typically be selected through an RFP process.¹ This notwithstanding, the Executive Director is conducting a review of the PLA's current professional services procurement practices.

FINDING #5: PLA'S ACCOUNTING POLICIES AND PROCEDURES MANUAL IS OUTDATED, INADEQUATE, AND HAS SOME CONFLICTING POLICIES.

Response: The PLA agrees with Finding #5. As the PLA transitioned from the construction phase to the maintenance phase, its operational staff and administrative costs were significantly reduced. The PLA is in the process of updating its Accounting Policies and Procedures Manual to more closely align with its current operations and organizational structure. Please find a proposed draft of the same attached as Exhibit 1.

FINDING #6: THERE IS A LACK OF SEGREGATION OF DUTIES AND GOOD INTERNAL CONTROLS OVER VARIOUS FINANCIAL PROCESSES AND TRANSACTIONS

Response: The PLA agrees in part with Finding #6. The PLA's Accounting Policies and Procedures Manual does not reflect the current practices regarding segregation of duties. The PLA is in the process of updating its Manual to reflect its existing practices including its current segregation of duties over financial processes and transactions.

This notwithstanding, the PLA's Executive Director will be conducting a review of the organization's current segregation of duties and internal controls to ensure that in spite of the relatively small size of the staff

¹ For example, the Metropolitan Transportation Authorities Act of 1967, MCL 124.417, requires competitive bids for procurement of supplies, equipment, repairs maintenance or "for the rendering any services to the authority other than professional services." (Emphasis added).

adequate controls of the financial processes are in place.

FINDING #7: THERE WAS A LACK OF PROPER OVERSIGHT OF PLA CONTRACTS

Response: The PLA agrees with Finding #7. It is the policy of the PLA to formally extend personal service contractors prior to their expiration when their services are still needed. As some contracts were not extended, although the contractor continued to provide service a payment in excess of their contracted amount was paid. As such, the Executive Director will be working on implementing a more effective contract management systems and procedures.

FINDING #8: IMPROPER PAYMENT OF BONUSES TO EMPLOYEES AND CONTRACTORS

Response: The PLA agrees with Finding #8. From its inception, the PLA has paid discretionary annual bonuses to its employees, personal service contractors, and individuals with employment contracts. Initially, bonuses were calculated based on a percentage of the employees' salary. On or about 2017, the current Executive Director implemented a more equitable bonus plan based on the operational and financial performance of the PLA aimed at improving employee morale and retention. The practice of providing bonuses to personal service contractors, and individuals with employment contracts, however, has been terminated since 2020 and is no longer an issue.

FINDING #9: PLA WAS NOT TIMELY IN PROVIDING CONTRACT INFORMATION.

Response: The PLA agrees with Finding #9. The PLA has been collaboratively working with the OAG on the instant audit for more than four (4) years. Due to certain operational demands as well as the challenges presented by the ongoing pandemic, the PLA had limited resources available when some requests were made. This notwithstanding, the PLA still offered to allow the OAG to, come onsite to get either locate or recover any records requested, with staff assistance. Although the OAG declined this offer and in spite of these circumstances, the PLA was still able to provide the requested documents as expeditiously as possible.

Dated: June 3, 2022

Respectfully submitted,

A handwritten signature in blue ink is written over a solid horizontal line. The signature is cursive and appears to read "Drew Taylor".

OFFICE OF THE AUDITOR GENERAL

PERFORMANCE AUDIT OF THE PUBLIC LIGHTING AUTHORITY
MAY 2022

Implementation Tracking of Departmental Responses

FINDING #	AUDIT FINDING	RECOMMENDATIONS		RESPONSIBLE DEPARTMENT	DEPARTMENT RESPONSE(S)	ESTIMATED/ PLANNED IMPLEMENTATION DATE	CONTACT PERSON	CONTACT PERSON NUMBER
		REF.	SPECIFIC RECOMMENDATION					
1.	Billings To, And Payments From The City Were Significantly Over The Annual Cap Amounts And Exceeded Actual Operating And Maintenance Costs	A.	Invoice the City according to the O&M Interlocal Agreement. Total O&M annual invoice amount should not exceed the annual cap amount.	PLA	The OCFO and Law Department confirmed that the PLA can invoice for the actual number of lights maintained and have issued a memo clarifying this matter.	NA	NA	NA
		B.	Repay the City for the O&M overpayment of \$6.8 million, or at a minimum, determine the funds needed for future maintenance and operations.	PLA	PLA has already completed a long term budget and is in the process of completing a long term operations plan. The PLA will present this plan to the OCFO's office and work with them to ensure PLA is properly funded.	4 th quarter 2022	Janet Anderson	313.234.3237
		C.	Request an O&M budget amount according to the O&M Interlocal Agreement. Inform the City Council, the Office of Budget and OCFO that there is an annual cap amount in the Interlocal Agreement.	PLA	Based on legal opinion from Law Department, PLA believes that it is in compliance with the interlocal agreement.	NA	NA	NA
		D.	Request the City to amend the O&M Interlocal Agreement to properly fund PLA streetlights repair and maintenance.	PLA	Based on legal opinion from Law Department, PLA believes that it is in compliance with the interlocal agreement.	NA	NA	NA
		E.	Request the City to amend the O&M Interlocal Agreement to properly fund PLA streetlights repair and maintenance.	PLA	Based on legal opinion from Law Department, PLA believes that it is in compliance with the interlocal agreement.	NA	NA	NA
		F.	Review and understand the O&M Interlocal Agreement and approve payments in accordance with the terms of the contract (i.e. Agreement) and in accordance with the Law Department's conclusion that "actual operations and maintenance costs were reimbursable to the Authority."	OCFO/ Office of Departmental Financial Services	PLA submits Quarterly Statements to the City, including fees for the upcoming quarter, number and type of streetlights services, broken out by categories in substantially the form provided in Exhibit B, as described per the Agreement. The City, pursuant to the Agreement, pays the Authority the amount for such quarter set forth in the Quarterly Statement.	NA	NA	NA

OFFICE OF THE AUDITOR GENERAL

PERFORMANCE AUDIT OF THE PUBLIC LIGHTING AUTHORITY
MAY 2022

Implementation Tracking of Departmental Responses

FINDING #	AUDIT FINDING	RECOMMENDATIONS		RESPONSIBLE DEPARTMENT	DEPARTMENT RESPONSE(S)	ESTIMATED/ PLANNED IMPLEMENTATION DATE	CONTACT PERSON	CONTACT PERSON NUMBER
		REF.	SPECIFIC RECOMMENDATION					
		G.	Disallow the payment if the amount is above the annual cap amount or in excess of the actual O&M costs.	OCFO/ Office of Departmental Financial Services	Pursuant to both legal memos from 3/17/22 and 6/21/22, the Agreement permits actual operations and maintenance to be reimbursable to the PLA.	NA	NA	NA
		H.	Review and understand the O&M Interlocal Agreement and ensure that PLA's budget requests are in accordance with the terms of the contract (i.e. Agreement) and in accordance with the Law Department's conclusion that "actual" operations and maintenance costs were reimbursable to the Authority."	OCFO/Office of Budget	The PLAs mission is to maintain the streetlights in Detroit, respond to resident needs and ensure the City's new LED streetlight system will continue to shine for years to come. The PLAs budget, adopted each year by the PLA Board reflects amounts need to achieve that mission, which is then reflected in the request for City Council approval.	NA	NA	NA
2.	PLA Did Not Follow Some Of Its Own Accounting Policies And Procedures Relating To Banking Activities	A.	Follow its own "Accounting Policies and Procedures Manual" and investigate any checks that are outstanding for over six months. Appropriate action should be taken to resolve or clear aged outstanding checks by stopping payment of the check if PLA does not have physical possession of the check. Also, appropriate corresponding entries should be made in the General Ledger to void the check, clear it from the list of outstanding checks, and restore the funds to the cash book balance	PLA	Update accounting and procedures to reflect a smaller and more scaled back operation compared to when the original document was drafted. Ensure that each of the mentioned findings is specifically addressed.	4 th quarter 2022	Beau Taylor	517.315.6522
		B.	Provide adequate and sufficient supporting document for all journal entries.	PLA	Update accounting policies and procedures to reflect a smaller and more scaled back operation compared to when the original document was drafted. Ensure that each of the mentioned findings is specifically addressed.	4 th quarter 2022	Beau Taylor	517.315.6522
		C.	Monitor bank accounts and when appropriate close inactive accounts.	PLA	Update accounting policies and procedures to reflect alignment with the current scaled back operation compared to when the original document was drafted. Ensure that each of the mentioned findings is specifically addressed.	4 th quarter 2022	Beau Taylor	517.315.6522

OFFICE OF THE AUDITOR GENERAL

PERFORMANCE AUDIT OF THE PUBLIC LIGHTING AUTHORITY
MAY 2022

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				SPECIFIC RECOMMENDATION					
3.	PLA Accumulated And Retains Significant Excess Utility User Tax Dollars Over Its Bond Debt Related Obligations			We recommend that PLA work with the City's Executive Offices, and the appropriate divisions within the Office of the Chief Financial Officer (Office of Treasury, Office of Departmental Financial Services) to determine the best use of the excess funding. This should be based on a well-developed strategic plan for the future and administration of the City's street lights, PLA, and the retirement of the bond debt.	PLA	PLA has already completed a long term budget and is in the process of completing a long term operating plan. The PLA will present this plan to the OCFO/Executive office and work with them to ensure PLA is properly funded.	4 th quarter 2022	Janet Anderson	313.234.3237
4	PLA Does Not Utilize Best Practices For The Procurement Of Professional Services	A.		Update its standard policies and procedures manuals (specifically "PLA Standard Policies and Procedures Manual - Policy #2020", titled "Competitive Purchasing and Bids") to include requiring competitive bids for the procurement of all goods and services within an agreed upon and Board approved threshold.	PLA	PLA will update its procurement processes though it does not believe it is a best practice to obtain bids for certain professionals. The updated manual will include clarification as to what must be bid and at what threshold.	4 th quarter 2022	Marie Brown/George Pitchford esq.	313.399.6680
		B.		Establish a threshold for competitive bidding of professional services contracts. The minimum threshold should be low enough to ensure that all goods and services are procured at the best value.	PLA	PLA will update its procurement processes though it does not believe it is a best practice to obtain bids for certain professionals. The updated manual will include clarification as to what must be bid and at what threshold.	4 th quarter 2022	Marie Brown/George Pitchford esq.	313.399.6680
		C.		Solicit bids for all professional service contracts above the threshold.	PLA	PLA will update its procurement processes though it does not believe it is a best practice to obtain bids for certain professionals. The updated manual will include clarification as to what must be bid and at what threshold.	4 th quarter 2022	Marie Brown/George Pitchford esq.	313.399.6680
		D.		Consider hiring a full-time CFO that is directly accountable to the Executive Director and the Board of Directors. They would be a full-time employee dedicated to the accounting and finances of PLA.	PLA	The PLA will take this recommendation into consideration in concurrence with updating policies and procedures.	3 rd quarter 2022	Beau Taylor	517.315.6522

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5	PLA's Accounting Policies And Procedures Manual Is Outdated, Inadequate, And Has Some Conflicting Policies	A.	Review the Policies and Procedures Manual annually and update it to align policies and procedures with the current needs and organizational structure of the Authority.	PLA	Update accounting policies and procedures to reflect a smaller and more scaled back operation compared to when the original document was drafted. Ensure that each of the mentioned findings is specifically addressed.	4 th quarter 2022	Marie Brown	313.399.6680
		B.	Ensure that the Accounting Policies and Procedures Manual reflect an appropriate division of responsibility and adequate segregation of duties based on the organizational structure of the Authority.	PLA	Update accounting policies and procedures to reflect a smaller and more scaled back operation compared to when the original document was drafted. Ensure that each of the mentioned findings is specifically addressed.	4 th quarter 2022	Marie Brown	313.399.6680
		C.	Fill all positions in the Manual if necessary or change the Manual to reflect current needs and organizational structure of the Authority.	PLA	PLA will update the manual to reflect current operating environment. With only 14 direct employees, PLA needs to remain flexible as HR needs occur so it may not be realistic to edit the employee manual each time a new position arises. Nevertheless, PLA will ensure that the updated employee manual will reflect a process that PLA will follow if new positions are created (as well as annual update the manual to integrate new positions).	4 th quarter 2022	Marie Brown	313.399.6680
6	There Is A Lack Of Segregation Of Duties And Good Internal Controls Over Various Financial Processes And Transactions	A.	Ensure that financial responsibilities are segregated among various staff and management.	PLA	Update accounting and procedures with a clear focus on segregation of duties.	4 th quarter 2022	Marie Brown/Beau Taylor	313.399.6680
		B.	Review and update the Accounting Policies and Procedures Manual to assign the incompatible duties to different individuals.	PLA	Update accounting policies and procedures with a clear focus on segregation of duties.	4 th quarter 2022	Marie Brown/Beau Taylor	313.399.6680
		C.	Provide appropriate management oversight. Ensure that when segregation of duties is not possible mitigating steps are in place, including but not limited to the Executive Director having access to Quickbooks and periodically reviewing financial transactions.	PLA	Executive Director will gain access to quickbooks and conduct a monthly review of accounts.	3 rd quarter 2022	Beau Taylor	517.315.6522

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		D.	If possible, hire additional accounting staff to assume some of the financial responsibilities.	PLA	PLA will take this recommendation into account as it restructures its accounting/finance function.	3 rd quarter 2022	Beau Taylor	517.315.6522
		E.	Document roles and responsibilities for all key processes. Periodically rotate the key duties among appropriate level of employees.	PLA	PLA will clearly document roles and responsibilities for all positions. Where feasible, will cross-train employees.	4 th quarter 2022	Beau Taylor	517.315.6522
		F.	Require the Executive Director to approve all reimbursements and check requests as outlined in PLA policies and procedures.	PLA	PLA will ensure that this takes place moving forward.	3 rd quarter	Beau Taylor	517.315.6522
7	There Is A Lack Of Proper Oversight Of PLA Contracts	A.	Review the contract terms and payroll registers to ensure employees are paid according to their contract terms.	PLA	PLA will ensure that this takes place moving forward.	3 rd quarter	Marie Brown	313.399.6680
		B.	Assign the task of contract monitoring to a high-level employee that reports the spending against contracts monthly. Require written approval of the Executive Director for payments above contract limits.	PLA	PLA will ensure that this takes place moving forward.	4 th quarter 2022	Beau Taylor	517.315.6522
		C.	Implement financial policies and controls that require sufficient justification and proper approvals prior to paying amounts over and above contract limits.	PLA	PLA include this provision into its updated accounting/finance procedures and will ensure that this takes place moving forward.	4 th quarter	Beau Taylor	517.315.6522
		D.	Prepare contracts that are realistic in the amount of time required to complete tasks and the amount of funds that should be included for each contract to accomplish the job.	PLA	PLA will ensure that this takes place moving forward.	4 th quarter	Beau Taylor	517.315.6522
		E.	Submit annual budget requests to the Detroit City Council that include details of any bonuses that are planned to be awarded. City Council should be fully aware of City funds that are used to pay bonuses to contractors and PLA employees.	PLA	PLA will ensure that this takes place moving forward.	1 st quarter 2023	Beau Taylor	517.315.6522
8	PLA Made Improper Payment Of Bonuses To Employees And Contractors	A.	Implement human resources policies and procedures that detail how bonus amounts are determined, when they are paid, and who receives them. The policies and procedures should include both contractual and non-contractual bonuses.	PLA	PLA will ensure that this takes place moving forward.	4 th quarter 2022	Marie Brown	313.399.6680
		B.	Ensure that all bonuses are approved by PLA's Board of Directors prior to payment.	PLA	PLA will ensure that this takes place moving forward.	4 th quarter 2022	Beau Taylor	517.315.6522

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		C.	Include details of planned or projected bonuses in their annual budget requests to the City's OCFO Office of Budget and Detroit City Council to ensure full transparency and accountability of the usages of public funds.	PLA	PLA will ensure that this takes place moving forward.	4 th quarter 2022	Beau Taylor	517.315.6522
		D.	Implement measures to prevent double bonuses being paid to a single person in a single year. This would eliminate a person being paid both a contractual and a non-contractual bonus in the same year.	PLA	PLA phased out non-contractual bonuses for contractual employees after 2018 and will not reinstate them.	NA	NA	NA
9	PLA Was Not Timely In Providing Contract Information		We recommend that PLA respond to and provide all requested documentation in a timely manner.	PLA	PLA has been under audit for 4.5 years and has committed countless hours to both document retrieval and answering questions. Though it is true that on occasion PLA was not able to immediately respond, PLA did communicate that it didn't have the resources at the moment and that the AG's Office had full access to our files and computers and can access any documents in our possession.	NA	NA	NA