

City of Cincinnati
Special Investigation
of the
Metropolitan Sewer District of Greater Cincinnati

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Executive Summary

Allegations of mismanagement and irregular contracting practices by past Metropolitan Sewer District of Greater Cincinnati (MSD) management were brought to the attention of the City of Cincinnati administration. City Manager Harry Black initiated an investigation by the City Solicitor of those allegations which had been brought forward by City employees and also reported by the media. Consistent with the recommendations of the City Solicitor, the City Manager established this independent investigation team to conduct an inquiry and risk assessment of the allegations. Our investigation is focused on three general areas at MSD, including:

1. Mismanagement, lack of accountability, and lack of oversight with respect to the budget and contracting;
2. Widespread use of consultants to fill roles more appropriately filled by City employees; and
3. Potential misuse of ratepayer or City funds for the purchase and delivery of professional services.

In the course of our 13 week investigation, we have collected and reviewed numerous reports, files, and emails, and sought and received information from sources outside of the City. Our interviews have included both current and former employees and contractors, and we agreed to requested confidentiality to the extent permitted by Ohio law. We have endeavored to utilize the documents available and information provided during interviews to conduct a thorough review of the alleged mismanagement at MSD, and the resulting administrative and legal issues. It is important to note that we were dependent upon information being provided voluntarily to us and that the absence of key records or documents in some areas, such as the Student Internship Academy and the Project Rebuild Workforce Collaborative Foundation, Inc. also presented challenges that are noted in our findings. Our work should, therefore, be viewed in the context of an administrative investigation and not a forensic financial audit.

Our report catalogues past practices, identifies issues of concerns, and makes recommendations for corrective actions or continued investigation or referral to the appropriate agency. Our intent is to identify areas in which the MSD organization can be improved, and effective controls enforced, and appropriate action taken by the City Administration, whether by City Manager directive, legislation, or legal action. We have also noted actions already taken by the current administration which are identified in this report. We were assured independence in our investigatory work and our independence has not been compromised in any manner.

Best practices for organizations of any size should include internal controls to protect against foreseeable risks and mitigate potential liabilities. Oversight through established checks and balances are a key method for such controls. Our investigation found that a breakdown of checks and balances in MSD's procurement practices led to significant issues in each of the three general areas of focus referenced above. The City Manager's delegation of contract signing authority to the MSD Director in 2007 significantly weakened oversight of and visibility into operating practices at MSD from 2007 until the current City Manager revoked the delegation in 2015.

City and MSD procurement policies are based on competitive bidding processes to ensure the selection of qualified contractors to provide goods and services at costs deemed most favorable to MSD. We found that MSD regularly deviated from these policies through the extensive use of existing Master Services Agreements (MSA) and Professional Services Agreements (PSA) to contract for often unrelated additional services rather than conducting a new bidding process. The MSD Director was delegated final authority to amend existing contract terms and to award additional Tasks Orders under those contracts that delineate the scope of services, budget and approved subcontractors. These procurement practices weakened the controls necessary to ensure budgetary discipline. New procurement controls have been implemented by the current City Manager.

When the Federally-mandated Consent Decree was issued, MSD management adopted a practice of extensive use of consultants and other contractors to implement its plan to comply with the workload and timelines imposed by the Decree. This approach was chosen over the option to add new employees with the required skills and in the required number. Though often an effective means of sourcing specific expertise or short term staff supplementation, we found MSD's use of consultants to be extraordinary.

Our investigation brought to light several areas of concern and control weaknesses regarding professional services, vendor authorization, selection, compensation, and scope of services. Based on our review, giving consultants day-to-day management and supervisory authority over City functions and staff is not appropriate. A potential built-in conflict exists in that interests of the contractor are not necessarily the same as those of the City. This is of particular concern given the degree of budgetary discretionary authority at MSD. We did not find a true cost analysis of contracting out for services versus hiring City employees. Current MSD Director Gerald Checco, with the support of City Manager Black, has implemented a program that will reduce staff supplement contractors/consultants by more than 60% by June 30, 2016.

We thoroughly investigated issues raised about MSD's Student Intern Academy and the related 501(c)3 Project Rebuild Workforce Collaboration Foundation. The goals and objectives of the internship program are commendable. The rapid expansion of the program, however, justifies the questions raised as to the appropriateness of the significant investment of ratepayer funds into the program. Our investigation found that nearly all costs of the program since its inception in 2007 were funded by MSD. Perhaps more significant are the potential Ohio Ethics Law violations that may arise in relation to the Foundation. MSD funds were used to establish, market, fundraise for, and manage the operations of the Foundation, including the solicitation of MSD contractors for contributions. MSD employees, including the MSD Director, MSD Deputy Director and MSD Superintendent, were the only trustees and officers of the Foundation. Few records or reports of the Foundation were available at MSD which required us to request certain documents from the Foundation's Secretary/Treasurer, some of which we received.

Other issues related to potential misuse of ratepayer or City funds were identified in our investigation and are discussed in our report. Practices pertaining to MSD property acquisitions may be the most significant of note from a risk perspective.

Several factors were identified in our investigation that contribute to the unique management challenges faced by MSD during the past several years. These factors include: 1) the magnitude of work and associated timelines established by the Consent Decree; 2)

the decision to merge MSD and Water Works into a joint utility and the subsequent effort to decouple; and 3) the dynamics of the relationship between the City and County. Our findings indicate that more oversight and internal controls are warranted regardless of who ultimately controls the City's assets and the sewer district.

It is important to note that the current City leadership has evidenced a commitment to operational efficiency. Mayor Cranley and City Manager Black initiated this investigation with the support of Councilmembers. Our investigation has found that recently implemented changes have updated policies established by the City Manager related to procurement and have significantly improved internal controls and increased transparency into the operating practices of MSD. Internal reviews conducted by the new MSD Executive Director Gerald Checco and new directives established by his office have already begun to address issues we identify in our investigation. Our recommendations are provided to further assist in the efforts already underway to improve MSD and City operating practices.

In this report we make recommendations for referrals to various enforcement agencies. To the extent this report raises other issues for additional investigation, we recommend this report be provided to any interested enforcement agency for their use.

We appreciate the opportunity to serve the City of Cincinnati.

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A. Extensive Use of Contractors

1. Overview

When the Federally-mandated Consent Decree was issued, MSD had an estimated 60 – 100 approved but unfilled positions. Instead of filling available positions, or expanding the MSD workforce, MSD management adopted a practice of extensive use of consultants and other contractors to implement the Wet Weather Program, its plan to comply with the Consent Decree. Documents show that management's justification was based on several points including the following:

- The City of Cincinnati had a hiring freeze in place at the time;
- The need for additional personnel was short-term (the period necessary to implement the Consent Decree requirements);
- Civil service regulations would have made it difficult and costly to terminate added MSD staff following the completion of projects;
- Consultants and contract labor could be added more quickly than the lead time required to hire;
- City pay ranges were not sufficient to attract and hire experienced people with the necessary skills based on the unique set of projects mandated by the Consent Decree.

The practice can be justified to some extent; however, our review brought to light several areas of concern as well as control weaknesses regarding professional service vendor authorization, selection, compensation, and scope of services. Some of the key findings include the following:

- Existing Master Service Agreements (MSA) were repeatedly used to acquire services of subcontractors whose services were significantly different from the scope described in the MSA, rather than going through a new competitive bidding process;
- Existing MSA were repeatedly used to expand the scope of services beyond those of the original MSA;
- MSA contained labor rate multipliers for many services beyond the typical engineering and architectural services for which multipliers are applied;
- Consultants were managing City employees and completing their performance reviews;
- Consultants contracted directly with MSD at times and at other times worked as a subcontractor to other consultants with multipliers applied;
- Consultants recommended the hiring of other contractors and approved their invoices;
- Several staff members stated that existing employees had capacity to absorb more of the MSD workload at the time and questioned the level of staff supplementation and department support services contracted through consultants;
- Institutional knowledge of work performed may not be left at MSD when consultants hired to provide services depart at the completion of projects.

Current MSD Director Gerald Checco conducted a review of consultants and contractors working at MSD. A program was implemented to reduce the District's dependence on non-employee workers, and the number of staff supplement contractors/consultants will be reduced by 60% by June 30, 2016.

The following sections describe the weaknesses, offer recommendations, or identify opportunities for further investigation pertaining to the use of contractors.

2. Contractor Responsibilities

• Contractors Recommending and Approving Other Contractors

Finding: We have discovered many instances in which contractors recommended and/or approved the work of other contractors. There are examples in which a contractor made a recommendation to procure services via a Task Order (TO) and approved payments to other contractors. Some examples include the following:

- Master Services Agreement 95X10682, Modification No. 3 of TO, 049900042. A consultant employee working as the MSD Enterprise Manager recommended a TO for another consultant, S. Young Consulting, LLC.
- Contract 95X10666, TO 109900066. A consultant employee, working as the MSD Enterprise Manager also recommended the TO for Ribway Engineering Group, Inc.
- Contract 95X10635, Claim Voucher 10180900-INV-1347 dated 2/11/13, for RA Consultants, in which a consultant employee, working as the MSD Enterprise Manager, approved payment.
- Contract 95X10557, Claim Voucher 10180900-INV-1478 dated 9/12/13, for CH2M Hill Engineers, Inc., in which a consultant employee, working as the MSD Enterprise Manager, approved the services rendered and payment.

• Contractors Evaluating Performance of Employees

Finding: We have found several instances in which contractor staff either rated or reviewed City employees on Annual Performance Evaluations. For example, MSD documents show that the consultant Enterprise Manager (an employee of Jacobs Engineering) was either the rater or reviewer on five Annual Performance Evaluations of MSD employees. (Note: We have not audited all Performance Evaluations so the number is subject to change.)

This situation has occurred frequently because MSD uses “staff supplement” and “departmental support” contractors to fill management level positions instead of hiring employees. The consultant Enterprise Manager functioned as the MSD Enterprise Manager and signed claim vouchers and evaluated City employees.

As noted, the concept of using outside consultants has some advantages, particularly for short-term projects. In addition, outside consultants may bring state-of-the art technical knowledge and skill to problem solving. Nonetheless, integrating them into the MSD organization by giving them ongoing, day-to-day management and supervisory authority over City functions and staff is not appropriate. A potential for built-in conflict exists in that the interests of the contractor may not necessarily be the same as those of MSD and the City.

Recommendation A. 2. a: We recommend that any formal approval or recommendation of contracts or approval of contractor work for payment, typically as evidenced by signed documents, be done only by City employees. Contractors should not have the authority to do so.

Recommendation A. 2. b: We recommend that contractor staff be prohibited from rating or reviewing City employee performance through the Annual Performance Evaluation. Contractors should not have the authority to do so. If appropriate, MSD staff can consult with contractors about performance of City employees.

3. Procurement

MSD had its own procurement staff, policies, procedures and practices that often differed from standard City practice. For the period of 2007 - 2015, MSD had wide authority to procure goods and services with limited outside oversight by the City's Purchasing Division. Former City Manager Milton Dohoney delegated the City Manager's contracting authority to the MSD Executive Director, Tony Parrott. It is important to note that new controls have been established by current City Manager Harry Black in late 2015 and 2016 to improve procurement oversight. Our investigation identified several concerns pertaining to the MSD procurement category of "professional services" and also reviewed the remedial action that has been taken.

Professional Services Procurement Procedures: Prior to 2016

- The City's **Administrative Regulation 23, Policy Guidelines and Minimum Requirements for Professional and Nonstandard Services** (2/3/97, revised 1/4/00), states that contracts for professional services should be awarded through an open and fair competitive process. Limited exceptions include only unique personal services such as contracts for expert witness legal services or special/outside counsel as directed by the City Solicitor, or contracts for unique services directed by the City Manager or City Council.
- MSD had a Procurement Procedures Manual dated March, 2009 and revised in July, 2010 and January, 2011. There were two methods described in the document regarding professional services – Master Services Agreements (MSA) and Professional Service Agreements (PSA).
 - PSA is a method of obtaining professional services of a significant and well-defined, discrete scope. The procurement process is either a direct Request for Proposal (RFP) process or a Request for Qualifications (RFQ) process. The RFQ may be used to identify the firm determined most qualified with which to begin contract negotiations or it may be used in conjunction with a RFP process. If used in conjunction with a RFP, the RFQ is issued first and serves as a way to short list qualified firms to participate in the subsequent RFP process. Based on an evaluation of proposals based on technical expertise and experience, a preferred firm is selected, contract negotiations occur, and a contract is executed.
 - MSA is a method of obtaining professional services on an "as needed" basis for service categories. They are valid for two years, have a maximum overall dollar limit in a twelve month period and a maximum task order limit as well. MSA are particularly effective for discrete projects with a relatively nominal value. The RFQ process is used to short list qualified firms based on technical expertise and experience. Contracts with general terms and conditions are negotiated and executed with the selected qualified firms. As

professional services are needed, TO's are requested and approved. For TO less than \$300,000, the firm next on the short list for a work category is chosen, unless "sufficient justification" is provided to select a particular firm. For a TO of \$300,000 or more, at least the next three firms on the list for a particular service category are asked to respond to a RFP. A selection is then made and negotiations regarding scope of work are completed. (Note: The term "sufficient justification" is not specifically defined and appears to be open to interpretation.)

- During this time frame (2009 – 2013) City Manager Dohoney delegated contract signing authority for the Wet Weather Program to Tony Parrott, MSD Executive Director. Although MSA, PSA, and related amendments did have City Manager approval, individual Task Orders were not approved by the City Manager even though they are the documents that delineate the scope, schedule, and budget. Task Orders were also used to change or expand the scope of master contracts, including added services, increased budget, and extended termination dates. This arrangement significantly expanded The MSD Director's discretion to make contract decisions in MSD and effectively removed many checks and balances otherwise provided by the City's central Purchasing Division as directed by the City Manager or his office. In addition, it was reported to us that, over time, the purchasing staff internal to MSD had diminished decision-making authority as more purchasing decisions were made by the Director's office pursuant to the authority delegated to him by City Manager Dohoney.
- In 2009, MSD began preparing for the next two year cycle of MSA development. Some changes were made to the existing process to make the procurement of professional services more flexible to justify additional contracts of a similar scope. In practice, a contractor awarded an initial MSA contract in a certain discipline could be approved later to provide service in another discipline even though the contractor was not selected for that service in the initial RFQ process.
- In 2013, MSD began the next two year cycle of MSA development. This process included more defined service categories. Also, in the 2013 cycle there are several examples of the Director accepting the selection committee recommendations but adding other non-recommended applicant firms for the next step of negotiating MSA's. Many of the added firms were Small Business Enterprises (SBE).
- MSD's SBE goals were at least 30% for construction, 15% for supplies and services, and 10% for professional services of the annual aggregate dollars spent. MSD encouraged contractors to use small businesses in the performance of MSD contracts awarded. The SBE goals have been approved by both the City and County. The MSA process with increased discretion and flexibility noted herein likely enhanced the ability of MSD to meet established SBE goals for professional services.
- There are examples of contracts in which the PSA and MSA amendments and work orders expand the scope beyond the original purpose, category, and discipline of the original contract for which a competitive process should have taken place.

Examples of “Scope Creep”

Please note that the examples do not speak to the quality or quantity of the work performed but to the procurement process itself. The review of quality and quantity of services is beyond the scope of our work.

PricewaterhouseCoopers, LLP Agreement for Professional Services 15X11228, contract awarded 12/28/11 for \$276,000. Contractor was expected to work with MSD to implement a Capital Expenditure Management (CAPEX) system.

The contract was amended on 5/8/12 to include support for the Enterprise Manager (another consultant with management responsibility) in achieving the integration goals of MSD and GCWW in the area of engineering for an additional \$120,000. The contract was amended again on 8/24/12 to develop new position descriptions for the Joint Utility Engineering Organization Chart for an additional \$66,000.

Finding: Professional Service Agreements according to the MSD procurement policy are for a discrete scope. Amendments to a PSA for additional services without a competitive process or approved waiver of competition are inappropriate. An MSA would have been the more appropriate contract type.

Finding: The services added in the amendment appear to be of a substantially different scope than that of the original contract and should have had a separate competitive selection process.

Finding: The original contract and both amendments are stamped by the Finance Department as “Certification of Funds Not Required”. Fund certification (noting that funds are appropriated and available) is required by City policy prior to services being approved, expenditures being approved, and payment made. “Certification of Funds Not Required” is appropriate for an MSA which anticipates that work will commence upon execution of a task order or work order. Subsequent approval of individual Task Orders and Work Orders should require that funds be certified. PSA are different in that they have well-defined and discrete scopes with recognized costs. Funds should have been certified for the original contract and amendments. (See Recommendation A 5 b.)

Jordan, Jones, and Goulding, Inc. Master Services Agreement 95X10643, contract awarded 9/23/09. The contractor was selected under a 2009 RFQ process for Facility Design, Communications and Community Engagement, Collection Systems Design (Three of 14 service categories covered under the 2009 RFQ process for MSA.)

Finding: The First Amendment to the contract was approved on 11/9/11 to include Departmental Support and Staff Supplementation. These services were not among those for which the original contract was awarded through the 2009 RFQ process. The amendment was requested by the Supervising Management Analyst for Procurement and approved by the MSD Director and was based on the “flexibility” adopted in the 2009 RFQ process. Either the services should have been procured from another contractor who was selected for Departmental Support and Staff Supplementation or a competitive selection process should have occurred.

Bricker & Eckler, Professional Service Agreement 35X11625, contract awarded 10/21/13 for \$250,000. The law firm agreed to perform and carry out in a manner

satisfactory to the City Solicitor the services described in the letter of engagement. In that letter Bricker & Eckler stated that they would serve as counsel to assist MSD by advising on the administration of and monitoring of compliance with SBE Program. The letter of engagement further stated that MSD requested Bricker & Eckler to engage Urban Strategies and Solutions Group, LLC, (former councilmember Sam Malone) as a subcontracted consultant.

Finding: Administrative Regulation 23 states contracts for professional services should be awarded through an open and fair competition process. Exceptions include only unique personal services such as contracts for expert witness legal services or special/outside counsel as directed by the City Solicitor. The Urban Strategies services do not appear to be “legal” in nature such as an expert witness or special/outside counsel for the Solicitor. Non-legal consultant services should have been subject to a competitive process for a separate professional services agreement. In fact, regarding the subsequent amendment to the contract that increased the dollar amount by \$55,000 to \$305,000, the Bricker & Eckler attorney expressed his misgivings about the arrangement in that his firm did not control or review the work of the subcontractor under the amendment (see also the Potential Moral Obligation section of this report).

CH2M Hill, Inc., Master Service Agreement 95X10557, contract awarded 5/7/09. The schedule of services included Staff Supplementation for System Development, Infrastructure System/Security Management, Expert Services (emerging technologies, best practices, security management, and enterprise services), and System Implementation.

Finding: On 2/14/13 TO 6810000494 was approved which included Dunrobin Associates, LLC for the following services: right-of-way and real property acquisition, developing and implementing land acquisition procedures, documents for eminent domain proceedings, management of survey and environmental studies, etc. The services provided by the subcontractor have no relationship to the schedule for services for the MSA. Either the subcontractor services should have been procured from another qualified contractor who was selected for the Staff Supplementation category or a competitive selection process should have occurred.

Finding: On 7/11/13 TO 748012419A was approved to retain Booky Oren Global Water Technologies on a monthly basis to “capitalize on national and international expertise to identify CSO treatment technologies that can produce life cycle cost savings in the utility’s operational and capital expenditure budgets.” Mr. Oren is a water expert based in Tel Aviv and was paid \$10,000 per month for 12 months under this contract. CH2M Hill added a markup of 5% plus a \$2,000 fee and billed MSD \$12,500 monthly. TO 8610000593 dated July 15, 2014 continued this monthly retainer and fees for an additional 6 months.

Finding: On 2/20/13 TO 678075015 was approved for work on an internet application and website “to help recreational users such as boaters, paddlers, swimmers and jet skiers make informed decisions about where and when to recreate on the Ohio River.” The tool, including mobile apps, was to “assist the users in planning their recreational time on the Ohio River whether it is the water condition, boat ramps, fuel stations, fish advisories and other amenities on the River.” Subcontractors Global Quality Corp, iTBiz LLC and Implesay LLC were identified in the TO. A 2.78 multiplier was applied to CH2M Hill time billed and a 5% markup was added to subcontractor billings. A total of \$186,421 was paid under this TO. Per the contract, CH2M Hill retained all intellectual property rights to the

applications and was specifically given rights to redesign and sell the application to any party without providing compensation to MSD.

Ribway Engineering Group, Inc., 95X10666, Master Services Agreement, contract awarded 10/14/09. The schedule of services included Departmental Support and Staff Supplementation (2 of 14 service categories covered under the 2009 RFQ process for MSA.) The First Amendment dated 5/24/10 extended the schedule of services to include Collection System Design and Facility Design. The vendor subsequently provided these services on a number of projects. These services were not among those for which the original contract was awarded through the 2009 RFQ process. The “flexibility” built into the 2009 MSD RFQ process appears to have been the basis for permitting the expansion of services.

Finding: Either the services should have been procured from another contractor who was selected for Collection System Design and Facility Design or a competitive selection process should have occurred.

Under contract 95X10666, Task Order 0410000341 was approved on 12/13/12 to increase the budget by \$175,000 from \$225,000 to \$400,000 (including a 2.6 multiplier) for Project Rebuild. Project Rebuild related tasks include: 1) providing assistance with marketing, branding, and ensuring that key stakeholders are well informed, and aligned with the goals, objectives, and best practices of the program, and 2) establishing a foundation for internships and co-op assignments to engage/partner with apprenticeship programs, vocational, trades, and various labor work force programs. The Task Order was extended twice from 12/31/13 to 12/31/14 and from 12/31/14 to 6/30/15 via MSD memo.

Under contract 95X10666, Task Order 109900066 was approved on 3/29/13 for Grant Process and Writing, Invoice Audit, and Research and Analysis related to MSA, overhead/multiplier rates, best practices for MSA procurement procedures and contract terms. Richardson and Associates, LLC, a CPA firm, was a subcontractor that had also previously contracted directly with MSD. The Task Order amount was \$335,720.15.

Under contract 95X10666, Task Order 1310000499 was approved on 4/15/13 for Human Resources (HR) work including Recruitment and Hiring, Training & Development, Classification and Compensation, Payroll Systems, Technology Solutions, Talent Management, Labor Relations, Communications, Workforce Safety & Health, Cost/Benefit Analysis. The Task Order amount was \$200,000. One individual, who later became the City’s Assistant Human Resources Director, was one of three Ribway staff assigned to the Task Order. There is an email dated 4/19/13 at 5:15 PM (after the effective date of the Task Order), from the City’s HR Director to the individual that forwarded an email dated 4/19/13 at 1:21 PM from the MSD Superintendent to the HR Director. It states that the MSD Superintendent gave permission to the Ribway President to speak with the individual and to introduce himself and the firm.

Finding: Although the original contract was awarded for Staff Supplementation and Departmental Support, the services under the three noted Task Orders are not typically provided by an engineering firm. It appears that the “flexibility” built into the 2009 MSD RFQ process permitted the expansion of services. A competitive process for these services would have been appropriate in that the services under the three Task Orders are so different from the expertise required under the initial contract. In addition, the budget was increased and Task Order expiration date extended by MSD as the result of the City

Manager Dohoney delegation of contract authority and the resulting absence of centralized contracting oversight in the City Manager’s office for MSD.

City Procurement Policies and Process Improvements Promulgated in 2016

Several policy and process changes became effective in 2016 that resulted in improved “checks and balances” for procuring professional services. Effective use of the improved policies and procedures has the potential to mitigate the “scope creep” that occurred prior to 2016. The City Manager and Chief Procurement Officer released a **Request for Proposal (RFP) Manual for the Metropolitan Sewer District** on January 28, 2016, a **Procurement Manual for the Metropolitan Sewer District** on 2/16/16, a **City-wide Multiple-Award Contracting Policy** on 1/28/16, and a revised **City-wide Administrative Regulation 62 for City Manager Review and Approval of Bids, RFP/RFQ, and Contracts** (revised) on 2/2/16. The following is a summary of significant changes:

- Only the City Manager or the Chief Procurement Officer/City Purchasing Agent may approve contracts that bind the City, including MSD. This includes single vendor contracts, multi-award contracts, changes of scope, schedules, amendments, change orders, purchase orders, task orders, work orders, and any other items that modify scope, schedule, and budget terms of contracts. (Procurement Manual for MSD); This is consistent with the general contracting authority granted to the City Manager by the City Charter;
- Professional design services (architect, professional engineer, and surveyor) follow the state law requiring qualifications based selection. (RFQ Manual for MSD)
 - For service projects no greater than \$50,000, selection is from among those vendors with a current statement of qualifications on file with the City. Opportunities must go to an SBE unless deemed impractical or not in the City’s best interest.
 - For service projects in excess of \$50,000 a RFQ process is followed to identify the most qualified firm;
- Construction manager services (exclusive of design or construction work) are procured through a RFQ process that identifies the most qualified firm for contract negotiations. (RFQ Manual for MSD);
- The City’s Chief Procurement Officer is assigned to oversee the MSD procurement activities, and the Director of Economic Inclusion is assigned to oversee MSD’s contract compliance and SBE program. Oversight is subject to all orders issued by the Federal Court related to the Consent Decree. (Administrative Regulation 62);
- When more than one contractor has been awarded contracts to provide the same service on an as-needed basis through an RFQ process, work is to be assigned on a rotational basis and/or an abbreviated RFP process. Any request to waive this process must be submitted to the City’s Chief Procurement Officer for recommendation to the City Manager for approval. (Administrative Regulation 62);
- Multi-award contracts (MAC), similar to MSA, are awarded via the RFQ process to more than one vendor for the same service from a single solicitation. The contracts

are awarded for specific disciplines or types of service (engineering, architectural). (Multi-Award Contract Policy)

- For work orders \$5,000 or less, assigned to MAC contractors on an equitable rotation basis.
 - For work orders more than \$5,000 and no more than \$50,000, proposals must be requested (RFP process) from three MAC contractors on a rotation basis.
 - For work orders more than \$50,000, proposals must be requested (RFP process) from all contractors under the MAC;
- Small Business Enterprise (SBE) goals remained unchanged: at least 30% for construction, 15% for supplies and services, and 10% for professional services of the aggregate dollars spent annually by MSD.

Recommendation A. 3. a: The significant improvements initiated in 2016 provide the opportunity to open the MSD procurement process for more competition, better alignment with vendor strengths, more inclusion, and better proposals to evaluate. This will help to ensure that the best choice for MSD is made. The challenge will be to award contracts in a timely manner and to meet the SBE goals of the organization. We recommend that the City create reportable metrics for the new RFQ and RFP processes to assure timeliness of available services.

4. Master Service Agreement Multipliers

A multiplier is a factor applied in addition to a direct labor rate to achieve a revenue amount needed by a firm to cover the cost of direct labor, overhead, indirect costs, and profit. For example, an hourly rate of \$50.00 may be increased by 2.0 for a total of \$100.00 to cover a firm's full cost and profit. Multipliers are typically used for engineering and architectural professional services acquired through Request for Qualifications (RFQ) and/or Request for Proposal (RFP) processes.

Multipliers can have varying degrees of complexity and could include such items as employee benefits (health care, pension, workers compensation, unemployment compensation, etc.), FICA, overhead (business taxes, insurance, rent, equipment, facilities, depreciation, etc.), and net profit.

“As needed” contracts such as Master Service Agreements (MSA) can be an efficient method to pre-qualify vendors so that projects can be completed in a timely manner. They have their place within certain limits for specific vendor-provided services, for relatively smaller scale projects, and for limited contract duration. Otherwise, a competitive process on a project-by project basis is more appropriate.

Finding: For many years, MSD has used multipliers for Master Service Agreements in many areas beyond the typical engineering and architectural services. The following are examples of service areas and assigned multipliers*.

- Communications and Community Engagement – 2.95
- Departmental Support – 2.95
- Collection System Design – 2.97

- Facility Design and Support– 2.97
- Staff Supplementation – 2.6 if 12 months or less duration, 2.1 if greater than 12 months duration
- Facilities and Process Controls Integration – 2.97
- System Development – 2.78
- Expert Services – 2.78
- System Implementation – 2.95
- Computer Support Services Staff Supplementation – 2.78
- Infrastructure System and Security Management – 2.78
- Green Infrastructure Engineering and Support Services – 2.97
- Value Engineering – 2.6
- Flow Monitoring – 2.95
- Modeling – 2.95
- Safety and Health – 2.95
- Reliability Services – 2.97

*Multiplier Guide; Richardson & Associates, LLC; May 26, 2013.

In the RFQ process that resulted in Master Service Agreements, MSD assumed predetermined hourly rates and multipliers developed over years of experience. However, the selection of MSA contractors was based on qualifications only and not on cost. Subsequently, scope of work and hours were negotiated to determine project budgets via Task Orders.

In 2013, MSD engaged the accounting firm of Richardson & Associates, LLC to review and analyze MSD multipliers and to compare them to those of similar entities. The study concluded that the MSD multipliers were not excessive but had several observations and recommendations, some of which are as follows:

- MSD has not adjusted its multipliers in several years because of the length of term of contracts;
- MSD should not assign a multiplier for each category but instead have a multiplier in mind and negotiate within a set range;
- MSD should allow for increases in the multiplier rates in order to stay within industry averages;
- MSD should consistently apply multipliers based on actual overhead, profit margin, and budget:
 - Require all contractors to disclose their overhead rate, profit margin, and resulting multiplier.
 - If the contract is greater than \$500,000, require audited overhead rate.
 - If the contract is less than \$500,000, require an audit of 10% of those contracts yearly;
- The multiplier of staff supplementation should be 2.10 across the board with no qualifiers such as length of contract or overhead. Staffing does not have the same overhead concerns as other services.

Recommendation A. 4. a: We agree with the Richardson recommendations noted herein and encourage their implementation. The observations and recommendations would result in increased control of costs and competition. For example, using a multiplier range as a guide but requiring vendors to calculate overhead, indirect costs, etc. to justify multipliers are likely to result in a negotiated rate beneficial to MSD.

We have three specific concerns about MSD use of multipliers in the context of MSA. These are as follows:

- Staff Supplementation – hiring staff versus contracting out for services. In this regard, the decision to contract out for services should be based on what is best to meet the needs of the organization contingent upon criteria such as duration, availability, expertise, and cost. Based on our discussion with MSD staff, all of these have been cited as reasons services were contracted. Typical justifications repeatedly noted are that the need is immediate, the time necessary to fill a position is too long, and the duration of the project is relatively short. Another reported justification was that the total cost would have been less because the contract will expire or can be cancelled when the project is completed; however, an employee must either be terminated when the project is completed or reassigned to another body of work if available.

What we did not find at MSD was a true cost analysis for contracting out for services versus hiring City staff. Such an analysis would be as follows: once the contractor hourly rate, plus multiplier, is determined, the comparable City position classification (if applicable) and hourly rate should be identified as the basis for comparison. Then the employee benefits cost should be added to the hourly rate. According to City Department of Finance Bulletin No. 4-2015, the all-in rate is 66.15%. The FICA rate of 7.65% must also then be applied. In many cases, MSD provides the contractor with office space and equipment so little if any “overhead” needs to be added to the City staff cost for comparative purposes. Based on this simple analysis, the “internal” multiplier would be 1.74. Depending on the length of engagement, the “external” multiplier is either 2.1 or 2.6 according to MSD. Assuming comparable hourly rates and other variables being equal, the contractor cost would be 21% to 49% higher than the MSD internal cost.

An actual example is as follows: through a contractor, a Senior Administrative Assistant was assigned to MSD as supplemental staff in 2014. The hourly rate was \$30.12. A comparable City Administrative Specialist position mid-range was approximately \$27.95 per hour. The contractor staff annual cost including a 2.6 multiplier** was \$162,889. The comparable City staff annual cost was \$101,657. The supplemental staff cost \$61,232 more than the City staff, all other variables being equal. The executive decision should have been whether or not the additional cost is justified by level of expertise, availability, timeliness of filling a City position, and project duration. Perhaps the additional cost could be justified, perhaps not. (Note: The contractor supplemental staff was later hired as a permanent employee by MSD.)

Recommendation A. 4. b: Decisions to contract for Staff Supplementation (and by extension Departmental Support) should be viewed on a case-by-case basis with a documented cost calculation and benefit analysis.

**Richardson & Associates recommends no more than a 2.1 multiplier for Staff Supplementation services. The recommendation was rejected by former MSD Director Parrott.

- “Scope Creep” – multipliers applied to vendor services that were not included in the original MSA. As noted in the Procurement section of this report, services were added via Task Orders to contracts that did not initially include such services. Frequently this occurred through the addition of subcontractors. Standard multipliers were applied to the subcontractors for services without regard to actual subcontractor cost and profit. Furthermore, in many cases the contractor was paid for “administering” the subcontractor at the same multiplier for the services originally anticipated from the contractor without regard for the actual cost of “administering.”

Recommendation A. 4. c: Per discussion in Section 3 on Procurement, we recommend eliminating or limiting Task Order scope add-ons, which should serve to control multipliers as well.

- MSA Extensions – Several MSA were extended for multiple years. Because there is no periodic review, the predetermined multiplier continued to apply throughout the length of the extensions.

Recommendation A. 4. d: As noted by Richardson & Associates, periodic multiplier recalibration should provide assurance that costs are controlled.

5. Delegation of Contract Authority and Certification of Funds

Finding: We have determined that there are two procurement issues that need corrective action going forward to tighten contracting authority and to assure the availability of funds for contracts.

1. The ability for the City Manager to delegate to department heads and others signing authority on behalf of the City of any documents, including contracts (reference 11/15/07 memo by City Manager Dohoney to the Executive Director Parrott).
2. Under ORC 5705.44 a public utility (MSD and GCWW) is not required to have a fiscal officer (City Finance Director) certify the amount needed to meet a contract obligation as long as payment is made from public utility earnings.

Recommendation A. 5. a: Regarding the delegation of contract authority, we asked the Law Department for an opinion to determine if such delegation is lawful. The opinion is that the City Charter and the Administrative Code authorize such delegation by the City Manager as the chief executive of the City. As we noted in the Procurement section of this report, the result at MSD was the expansion of contract scope far beyond the intent of the original contracts via department authorized task orders, outside of City Manager approval. Although the delegation of contracting authority to department heads and others is lawful, it is not a good business practice. In particular, when any department head is given the

ability to order goods and services under task orders in a Master Services Agreement, the City Manager loses significant control and oversight of departmental contracting.

In addition to the corrective procurement measures already taken by the current City Manager, we recommend that the City Manager revise Administrative Regulation No. 62 to specifically require that only the City Manager or Assistant City Managers may sign as approving City contracts, except for 1) contracts of limited dollar value which can be signed as approved by the City Purchasing Agent at the discretion of the City Manager, and 2) contracts which under state or local law are required to be authorized by independent boards and commissions, or other City officials. Even if independent boards and commissions are required to authorize contracts, we recommend that the City Manager's Administration Regulation No. 62 require that City purchasing rules, regulations, and processes be followed whenever City funds are spent or whenever funds are expended on City property or City facilities.

Recommendation A. 5. b: The long standing practice of the City is to certify contract amounts for the fiscal year in which the contract is made. Certification is a significant financial check on departmental spending. In fact, the City's financial system is set up to require pre-certification of all spending. Nonetheless, we have found instances at MSD in which funds were certified after work was ordered, completed, and invoices were received. It is an appropriate and generally accepted government practice to determine, prior to approval of a contract or Task Order requiring expenditures, that funds are appropriated and available for that purpose. Beyond the general acceptance of this financial practice, even when not required, a financial check on departmental spending creates an important counterbalance to department discretion. We recommend that the City Manager require that, for all utility contracts, including task orders under master service agreements, funds be certified for each current fiscal year. Even though state law does not require certification of funds for utility purposes, we recommend that the City follow a certification process for each utility contract over a dollar limit set by the City Manager as supervised by the City's procurement officer.

6. Moral Obligation Ordinance Issue

The Bricker & Eckler (contractor) Professional Services Agreement (PSA) 35X11625, dated 10/21/13, has a scope of services as defined in an October 28, 2011 engagement letter. The engagement letter states that MSD has asked that Urban Strategies and Solutions Group, LLC (sub-contractor) be engaged by the contractor to assist and advise MSD on the administration and monitoring of the SBE program. The contract amount was \$250,000. As of 2/18/15 all but \$19.00 had been spent.

Finding: MSD apparently approved work to be done by the subcontractor later in 2015 in excess of the contract limit and after the contract limit had been reached. The sub-contractor submitted invoices to the contractor dated March 12, April 1, and May 28 totaling \$55,000. The sub-contractor invoices noted work performed in February, March, April, and May, 2015. There is no documentation available that the work was approved prior to these dates by the former MSD Director Tony Parrott. Bricker & Eckler bills dated March 17, March 31, and May 29, 2015 were initialed by the MSD Director on 6/3/15 signifying payment approval.

The Bricker and Eckler attorney who was assigned to MSD was uncomfortable paying the sub-contractor under the contract because they did not direct the work, supervise the work, or know anything about the work reflected on the sub-contractor final 2015 invoices. The attorney reports that he received considerable pressure from the City, confirmed by City staff, to pay the sub-contractor immediately. After the sub-contractor work was completed and after the sub-contractor bills were received, a First Amendment to the PSA was executed to raise the contract amount to \$305,000 to accommodate the additional \$55,000 in sub-contractor bills. The Amendment also extended the PSA expiration date to 5/31/15. Funds were certified on 6/11/15. The contractor was paid by the City and the sub-contractor was paid by the contractor on 6/11/15 via a contractor check.

Recommendation A. 6. a: Because the Urban Strategies sub-contractor work was completed after the Bricker & Eckler contract “not-to-exceed” amount was effectively met, we were initially concerned that a moral obligation ordinance approved by the Mayor and City Council may be necessary to make the payment to the contractor. Of additional concern is that under ORC 5705.45, “Any officer or employee...who expends or authorizes the expenditure of public funds on any such void contract...shall be liable...for the full amount...” We requested that the Law Department review this matter and determine if a moral obligation ordinance was needed. The Law Department has opined that a moral obligation ordinance is not needed based on ORC 5705.44 (see section A.5) and the City Manager’s authority to contract on behalf of the City, as delegated to the MSD director. Nonetheless, the implementation of Recommendation A.5.b regarding certification of funds and the recent City Administration procurement reforms described in section A. 3. should serve to eliminate contracting irregularities such as this in the future.

7. Grit Removal System Flowmeters

Finding: MSD initiated a \$35 million capital project to install a new grit removal process at the Mill Creek Wastewater Treatment Plant. As part of the project, flowmeters were installed to measure the velocity of volume flow through the system and to provide data which is required to be reported regularly to the EPA. When the new process was brought online, MSD identified a discrepancy between the expected flow volumes and the flow measurement data recorded by the primary influent flowmeters. Two of the problems identified related to the flowmeters were as follows:

- 1) The flowmeters as fabricated and installed were 5% larger than the inside diameter of the pipes in which they were inserted, which led to the development of air pockets at the top of the flowmeters and buildup of solids at the bottom of the flowmeters;
- 2) The piping and channel design included a series of 90 degree turns upstream and downstream of the flowmeter location, which resulted in some turbulence, eddies and waves being created immediately upstream of the flowmeter and an insufficient downstream straight run leading from the flowmeter location.

Ribway Engineering was the designer of the system, including the layout for the volume flow and specifications for the flowmeters to be used. Kokosing Construction Co. procured and installed the flowmeters.

MSD, Ribway and Kokosing did not reach an agreement on responsibility for the errant readings of the flowmeters. MSD asked its outside counsel, Bricker & Eckler, to review the matter and provide an opinion as to MSD's recourse against Ribway and or Kokosing for damages resulting from the system design or construction. A tolling agreement was entered into between MSD and Ribway under which the parties agreed not to pursue legal options while a third party expert investigated the issue. MSD also made a claim against Kokosing and Kokosing's surety bond pending final resolution of the issue. Kokosing stated to us that it received final payment for the project in February, 2015, but has not received formal notification that the issue is closed. Documents pertaining to this issue were requested from Brick & Eckler but have not been received. Further, a meeting was requested with Ribway but has not been accepted.

Bricker & Eckler engaged the services of Spitzer and Boyes, LLC (Spitzer), subject matter experts regarding the potential design or installation defects of the meters. Spitzer issued to Bricker & Eckler a 58 page draft report in January, 2015. The experts found that the design was a factor in the inaccurate readings of the flowmeters but also recommended additional testing be conducted (including the insertion of additional temporary meters) to determine if and to what extent several other identified potential factors could have contributed to the inaccurate readings. Bricker & Eckler directed these findings to MSD with their recommendations. A plan design for inserting plates to "fix" problems caused by the oversized meters was also developed. MSD did not install temporary flowmeters to perform additional testing and did not insert the additional plates. Modifications to computer settings were, however, made to adjust readings recorded by the flowmeter to compensate for the estimated impact caused by the design and installation issues. Legal fees pertaining to this issue, including expert consulting costs, were incurred and billed monthly for the period of April, 2014 through June, 2015. No further recourse was pursued against Ribway or Kokosing to recover any of the incurred costs.

Finding: MSD has not pursued claims against any vendor for the possible flowmeter deficiencies. A MSD Principal Engineer familiar with the project indicated that recourse was not taken against Ribway based on attorney advice that there was no basis to do so. A former MSD employee involved with the project claimed the MSD Director stated that MSD would not go back to Ribway or Kokosing for compensation related to this issue. Mr. Parrott indicated to us that he was unaware of the final resolution of this matter. We have been advised that, at minimum, Bricker & Eckler should have issued opinions as to whether or not Ribway and Kokosing each exhibited appropriate "Standard of Care" in providing their services based on the extensive review performed.

Recommendation A. 7. a: Significant legal and consulting costs were incurred due to the flowmeter issue. There are conflicting reports as to why no legal recourse was pursued, and we could not identify any formal written rationale for any resolution of the issue. We recommend that MSD evaluate the cost versus potential financial reward to further investigate legal recourse against contractors regarding the flowmeter problems.

Recommendation A. 7. b: We recommend that a final summary memo or similar closing document from an appropriate expert be obtained from the Solicitor's office or outside legal counsel when significant legal matters are determined. For example, in this case regarding the flowmeters, either a legal memorandum or an expert opinion regarding whether the engineering and or construction professional Standard of Care was met should document the termination of the project issues.

Recommendation A. 7. c: We recommend that the City Law Department review legal summary memos (noted above) and provide an opinion to management regarding legal recourse when the performance of projects completed by MSD vendors does not meet specifications, especially in those circumstances when outside professionals have been retained to provide a third party professional opinion.

B. Student Intern Academy and Project Rebuild Workforce Collaborative Foundation, Inc.

1. Background

In early 2007, MSD Director Parrott received approval from Mayor Mallory and City Manager Dohoney to establish an MSD summer youth employment program. That summer, MSD initiated the **Student Intern Academy (SIA)** with the following program goals:

- Provide summer employment for youth;
- Encourage interest in public service jobs (especially in watershed management);
- Give students experience working side-by-side with government professionals;
- Involve students in current projects to learn technical and life skills.

SIA was designed as a 6-week program during which the students were matched with MSD mentors with whom they worked 4 days per week and a group session called Professional Friday was held each Friday at MSD headquarters. Interns were paid \$9 per hour for 30 hours per week during the program.

2. SIA

Sixteen students from Cincinnati Public Schools (CPS) participated in the first SIA program. In 2008, the SIA term was extended to 8 weeks and grew to 25 students from 8 CPS schools. In the summer of 2011, SIA expanded to public and private schools throughout Hamilton County and participation grew to 50 students in both 2011 and 2012. The program continued to grow to 75 students in 2013, 94 in 2014, and then dipped to 64 in 2015.

SIA was managed by MSD employees and several consultants were engaged to assist with and participate in the program. The SIA Annual Report from 2012 states that since the program's initiation in 2007, MSD had "supplied all support for necessary expenses" and that "there has been no outside financial support for SIA except for MSD."

Actual MSD cost detail for the SIA program from 2007 – 2009 could not be located. Final cost summaries for 2010 through 2015 also could not be located. However, documents collected for that period including budgets and budget narratives, the Student Intern Academy Annual Report dated December 31, 2012, and various other invoices, contracts, and reports estimated annual SIA costs are as follows. These costs are in addition to consulting fees paid to Ribway, Focus Solutions and their subcontractors for SIA work.

2010	\$	112,125	(1)
2011	\$	471,839	(2)
2012	\$	645,706	(2)
2013	\$	705,502	(2) (3)
2014	\$	950,216	(2) (3)
2015	\$	1,130,909	(2) (3)

(1) excludes the direct salaries and costs for MSD employee time spent on SIA.

(2) includes the direct salaries and costs for MSD employee time spent on SIA.

(3) the Project Rebuild Workforce Collaborative Foundation reimbursed MSD a total of \$36,475 for SIA expenses over the course of 2013 – 2015.

The 2015 SIA budget reflected above included \$356,000 for salaries and benefits for 150 interns, \$256,250 for consultants contracted for the Friday life skills program and counselors, and approximately \$500,000 for time spent by MSD employees on the program. Considering that only 64 students actually participated, actual salary and benefit costs should have been approximately \$200,000 less than the budgeted amount noted above.

In 2010, the Student Intern Academy was wrapped into a broader MSD program marketed as **Project Rebuild**. The Cincinnati Metropolitan Sewer District Project Rebuild Business Plan developed by Zola Stewart, Focus Solutions, Inc., dated October 6, 2011, documented the following goals and objectives of Project Rebuild:

1. Expand the Student Intern Academy;
2. Establish a Workforce Development Program to increase training and apprenticeship opportunities for the disadvantaged (unemployed, underemployed and hard to employ) community;
3. Foster Collaborative Partnerships;
4. Increase outreach and support to small, minority, disadvantaged and women-owned businesses to help develop their capacity and capability to compete for public contracts.

MSD issued Task Order 029900046 under MSA 15X11095 to Focus Solutions, Inc. to assist in implementing the Project Rebuild program with a budget amount of \$637,000.

In 2010, Mayor Mallory, City Manager Dohoney, and MSD Director Parrott were identified as the “Founders” of Project Rebuild. A Project Rebuild Advisory Board was established and consisted of the MSD Director, an MSD Superintendent, and the President of Ribway Engineering.

A Student Intern Academy Committee, comprised of 13 MSD employees, was established. Current and former MSD employees related that time devoted to the SIA, particularly by Human Resource (HR) staff, negatively impacted responsiveness to the needs of MSD operations at a time when MSD was under deadlines to complete work dictated by the Consent Decree. HR staff conducted high school recruitment over a three-month period which led to review of applications, personal interviews, background checks, drug testing, and establishment of employee files and collection of tax forms and payroll system set-up for each intern. MSD employees were recruited to be mentors, went through training and an orientation program and were required to develop 8-week projects for the interns. Detailed budget documents for the 2012 SIA program indicated that the Program Coordinator and Assistant Coordinator (both MSD employees) allocated 1,040 hours to the SIA program (half of the annual 2,080 hours of a full-time employee) and several other MSD employees each allocated 520 hours (25% of their annual total) to SIA.

During 2011, the MSD Superintendent and the Ribway President met with the Greater Cincinnati Foundation (GCF) and established a Project Rebuild Fund to be housed and managed by GCF. The objective was to establish a vehicle through which tax deductible donations could be made to support the work of MSD’s Project Rebuild Student Intern Academy. Contributions to this GCF fund began in 2011. In 2012, a non-profit 501(c)(3), **Project Rebuild Workforce Collaboration Foundation, Inc.**, was established in the State of Ohio with the MSD Director, the MSD Assistant Director, and an MSD Superintendent as the original Directors. The Foundation was set up using MSD rate payer funds, and was incorporated by an outside law firm, Crabbe, Brown & James (Crabbe

Brown), retained by the City and paid with ratepayer funds. The stated purpose of the foundation was to partner with local schools for workforce development and community revitalization. As noted above, only \$36,475 was transferred from the Foundation to MSD as reimbursement for costs incurred for the SIA. Further discussion of the Foundation will follow.

The goals and objectives of the MSD Student Intern Academy are commendable. We have read feedback from SIA participants, have heard directly from parents of graduates and noted that many students had a very positive SIA experience and others reported negative experiences. The rapid expansion of the program appears to have presented some significant issues including the following:

1. Time committed to the SIA program by MSD employees continued to grow and may have diverted resources critically needed by MSD operations;
2. The cost of the program grew substantially and was funded almost exclusively by MSD ratepayers. Contract signature authority given to the MSD Director and the use of MSA to hire consultants diminished visibility into the program cost;
3. Much of the MSD workforce appears to have looked unfavorably on the program given the requirement to manage high school students in the workplace for 8 weeks while under the stresses of Consent Decree deadlines and the merging of MSD and Water Works;
4. Questions have been raised as to the appropriateness of spending ratepayer funds on a high school student internship program;
5. No tracking methodology was found to follow graduates of the SIA to determine if the program has been successful in attracting graduates to the MSD workplace.

Recommendation B. 2. a: Current MSD management has indicated that the Student Intern Academy program will not be held in the summer of 2016. We recommend that MSD management thoroughly evaluate any future SIA program, including the performance of a long-term cost vs. benefit analysis prior to any reintroduction of the program. Further, to the extent this program is not in core services of the MSD, we recommend that both the City and the County legislative policy makers determine if this or similar internships should continue to be funded.

3. Workforce Collaboration

As noted above, one of the stated goals reflected in the Project Rebuild Business Plan was to establish a Workforce Development Program to increase training and apprenticeship opportunities for the disadvantaged (unemployed, underemployed and hard to employ) community. Though referred to as part of Project Rebuild it was unrelated to the Student Intern Academy. MSD added a TO 029900046 under the Focus Solutions MSA contract 15x11095 for support of the MSD apprenticeship program and for assistance with workforce placement opportunities. According to Project Rebuild committee minutes and detailed reports attached to invoices, Focus Solutions worked on MSD's Workforce Pilot which was developed in conjunction with Kokosing Construction Company, an MSD contractor.

Focus Solutions, under the MSD contract, created an application for hiring, did prescreening over a 45 day period of 1,100 applicants and selected 200 of the applicants for further review based on a job description provided by Kokosing. The 200 candidates were then screened to determine their eligibility for state On The Job Training support. Sixty

applicants were then given the National Career Readiness Certification (NCRC) exam and 22 passed. Those 22 candidates were interviewed by Focus Solutions and Kokosing. Kokosing confirmed to us that it hired 1 or 2 of those interviewed. Project Rebuild committee meeting notes indicate that others of the 22 candidates interviewed were temporarily placed by Focus Solutions pending hire by Kokosing or other MSD contractors. Further, Focus Solutions invoices and reports indicate that they subsequently “continued to move potential Project Rebuild talent pool candidates through the pre-screening process.” Minutes from Project Rebuild committee meetings also noted that “Focus Solutions is a staffing agency and is trying to employ all 22 candidates. Focus Solutions manage long-term projects and provides staff for Duke Energy Center and other downtown hotels.”

The limited documentation available makes it difficult to determine the total cost to MSD for the services performed by Focus Solutions specifically related to workforce placement. Payments made against this TO totaled \$600,000, which included charges for these services. It is also unclear the extent to which MSD benefitted from this workforce initiative. Ms. Stewart, of Focus Solutions, Inc., declined our request to meet.

4. Foundation

MSD launched its Project Rebuild program in 2010, as noted above. As the program expanded, MSD management sought a means to establish outside funding for the program’s cost rather than continuing its dependence on ratepayer funds. The decision was made to pursue establishment of a non-profit foundation. In April, 2011, Mayor Mallory wrote the Greater Cincinnati Foundation (GCF) to ask for their assistance in this effort. In June, 2011, the MSD Superintendent and the President of Ribway Engineering (both Project Rebuild Advisory Committee members) met with GCF to sign documents and to make an initial contribution of \$2,500 to establish the Project Rebuild Fund of the Greater Cincinnati Foundation. Individuals, foundations and MSD contractors were solicited and made contributions to this GCF fund beginning in 2011. Records indicate that in 2011 donations totaling \$9,250 were made to the Fund.

In February, 2012, **Project Rebuild Workforce Collaboration Foundation, Inc.** was established in the State of Ohio and the IRS approved the foundation’s tax exempt status in August, 2012. Incorporation documents show that MSD Director Parrott, MSD Assistant Director Biju George, and MSD Superintendent Margie Anderson were the Directors of the foundation and were elected President, Vice President and Secretary-Treasurer respectively. The incorporation and legal work for the founding of the entity was done by Crabbe Brown and paid for by ratepayer funds.

On 10/11/10, MSD initiated TO 0410000341 under an existing Ribway Engineering Master Services Agreement 95X10666. The scope of the TO was to provide support for Project Rebuild, including the establishment of a foundation. The TO had a budget amount of \$225,000 including a 2.6 multiplier. Records indicate that Ribway made the first contribution of \$2,500 to the Project Rebuild Fund at GCF. The same Ribway TO was modified on 12/13/12, increasing the contract amount to \$400,000 and adding the following to the scope of work:

“Project Rebuild was established as a 501(c) 3 non-profit entity in February 2012. The Consultant’s scope is to provide assistance with marketing, branding, and

ensuring key stakeholders are well informed and aligned with the goals, objectives, and best practices of the program”

On November 22, 2011, MSD initiated TO 029900046 to Focus Solutions, Inc. also under an existing Master Services Agreement (15X11095). The TO initially had a budget of \$367,500. The MSA was subsequently modified 5 times extending the term through December, 2014 and increasing the approved amount to \$637,000. Included in the scope of work under the TO was to:

“provide support to the Project Rebuild 501(c)3 Advisory Board” including “assist the board with structural guidance as needed, such as chartering, by-laws development or program administration, make recommendations to the board for the program that would optimize its ability to raise funds, provide training for the board on roles, responsibilities and oversight, and assist with developing articles of incorporation for Project Rebuild.”

The scope also included providing research and grant writing, developing campaign and fundraising strategies, and assisting with marketing and research on sponsorships for Project Rebuild.

MSD, with Law Department approval, had previously entered into a Professional Services Agreement 95X10502 on 1/25/10 with Crabbe Brown for legal assistance in the development and implementation of MSD’s SBE program. Meeting agendas, meeting minutes, reports and invoices reflect that the firm’s services expanded beyond the SBE program beginning in 2011 through 2015 to include providing direct legal services for the Project Rebuild Foundation. MSD was invoiced and paid for the services rendered by Crabbe Brown attorneys for Foundation services. Records show that Crabbe Brown was the second contributor (\$2,500) to the Project Rebuild Fund at GCF.

The Foundation filed IRS form 990-N in both 2012 and 2013 indicating annual gross receipts were less than \$50,000. IRS Form 990-EZ was filed for 2014 and reflected historical revenue as follows:

2012	\$37,544
2013	35,600
2014	<u>55,609</u>
Total	\$128,753

IRS Form 990 for 2015 was not available at the time of this report. Reports provided by the Foundation’s Secretary/Treasurer Margie Anderson show receipts for 2015 of \$15,160 and an ending bank account balance at 4/30/2016 of \$31,271.95. She noted that the remaining Foundation funds had not yet been distributed but that the plan was to distribute to one or more 501(c)3 organizations with a like mission and purpose to serve youth. She expects this step to be accomplished in the near future.

The documentation we received details donors and amounts contributed to the Foundation totaling \$89,810 from 2011 through 2015. The amount of \$128,753 was reported to the IRS through 2014. Donors included one independent Foundation and several MSD contractors or related persons and entities. For example, we have documentation that Kokosing was a (\$7,500) contributor.

The Project Rebuild Foundation's IRS classification as a "Public Charity" requires the completion of Schedule A of Form 990, which was included in the Foundation's 2014 filing. Part II, Section A, Line 3 of Schedule A requires reporting of "The value of services or facilities furnished by a governmental unit to the organization without charge". This line was left blank by for 2012, 2013 and 2014 despite the fact that MSD had spent significant funds for the Foundation in the form of salaries, consultant costs and legal fees.

After the Foundation was formally established with the State, a local bank checking account was opened. Periodic distributions from the Project Rebuild Fund at GCF were requested by the MSD Director and deposited into the checking account. Payments to MSD from the Foundation for reimbursement of costs associated with the SIA program from 2011 through 2015 totaled \$36,475 according to MSD financial records. We have copies of two of the four Foundation checks received. On August 11, 2014, the MSD Director sent a letter to the GCF requesting that the Project Rebuild Fund be closed and that a final statement and check be sent to his attention at MSD.

We spoke to former Deputy Director Biju George who indicated that a conference call between him and the other two Foundation Directors, Tony Parrot and Margie Anderson, had taken place in February of this year. He informed us that they agreed to legally dissolve the Foundation at that time. He stated that Ms. Anderson, as Secretary/Treasurer, had all the records of the Foundation. We made a direct request to Ms. Anderson to receive copies of certain Foundation documents, which she provided. Included in the documents received was a State of Ohio Certificate of Dissolution for Project Rebuild Workforce Collaboration Foundation, Inc. with an effective date of May 2, 2016.

Recommendation B. 4. a: We recommend that the City establish clear rules and guidelines for how the City and its employees will interact with or participate in the activities of public charities and foundations whose purpose is primarily for the benefit of a City department, City division or City-owned asset. This would include any financial or in-kind support to be provided to a public charity or foundation, and specifically limit how entities doing business with the City contribute to foundations that primarily benefit a City function or department.

Recommendation B. 4. b: We recommend that no City employee sit on the board of or have fiduciary responsibility for a public charity or foundation whose purpose is primarily for the benefit of a City department, City division or City-owned asset.

5. Foundation Fundraising and Interns – Ohio Ethics Law

As noted the intent of Project Rebuild and the internship program is laudable; however, there were certain practices that require review follow-up in the context of Ohio Ethics Law.

Solicitation of Funds

Finding: From March 6 through March 28, 2012 there was a series of emails by an MSD employee and an MSD consultant concerning solicitation of a City contractor/potential City contractor to contribute sponsorship funds for a training event. A Law Department attorney noted that the Ohio Ethics Law prohibits a public employee from soliciting or accepting

anything of value that would demonstrate a substantial and improper influence upon his duties as an employee. The attorney also stated a concern about City contractors soliciting funds on behalf of the City. The attorney further instructed that anyone who does business with the City or is interested in doing business with the City and had previously been solicited be notified that the requests for funds were withdrawn.

Several documents show that MSD engaged vendors to conduct fundraising activities. There are five Claim Vouchers (dated from 5/9/12 through 7/15/14) from Ribway Engineering Group, Inc. that shows Ribway and its subcontractors, DeVaughn Business Solutions, LLC and LAPS Sales Training, Inc., engaged in fundraising activities for the Project Rebuild Workforce Collaboration Foundation, Inc. The vendor contract is 95X10666 and the Task Order 0410000341. The services provided as noted on the invoices included creating sponsorship letters, fundraising visits, researching donor prospects, research of donor giving habits, phone calls to prospects, adding donors to the project list, meeting donors, and creating a donor spreadsheet. The MSD Superintendent approved the vouchers for payment by MSD. The MSD Superintendent is also a trustee of the Foundation for which the funds were being solicited. TO 0410000341, Exhibit A – Scope of Work states “MSD is initiating a variety of efforts in the area of workforce research and development. Ribway will assist in providing support for research and development to launch Project Rebuild”.

There is also documentation that at least a dozen past, current, and potential MSD vendors, and MSD vendor employees, contributed to the Project Rebuild Workforce Collaboration Foundation. These contributions were made by vendors to the Foundation whose directors were also the primary contracting authorities for MSD. There were also several emails between MSD employees and vendor representatives about vendors providing direct financial contributions to and internship positions for Project Rebuild. There was a standard Memorandum of Understanding (MOU) in which companies agreed to participate, support, and sponsor Project Rebuild’s Student Intern Academy. This was in the form of a minimum lump sum contribution of \$1,000 to the Foundation and the donation of supervisory, management, administration, and mentor/staff time devoted to the Student Internship Academy. We were able to locate four of the MOU’s signed by past, current, and potential MSD vendors, or MSD vendor representatives. The MOU’s were also signed by an MSD Superintendent. There is documentation of an invoice to a MSD vendor from the Project Rebuild Foundation for a contribution of \$1,000 to the foundation and \$2,160 for student sponsorship. The address listed on the invoice is that of MSD and the MSD email address of the MSD Superintendent is also included. There is documentation of draft letters of thanks to vendor contributors sent on behalf of the Executive Director of the Metropolitan Sewer District (MSD). Copies of final signed letters could not be located.

Draft documentation exists of a specific MOU between Kokosing and the Project Rebuild Foundation in 2013. The MOU reflects a contribution to the Foundation and terms related to Kokosing’s participation in the Student Internship Academy. Kokosing also agreed by email to sponsor a Project Rebuild “Partnership Appreciation Hour”. Kokosing representatives confirmed that the event, at Moerlein Lager House in June, 2014, was sponsored and paid for by Kokosing. They also stated that MSD staff were in attendance.

One solicitation email to a contractor from the MSD Superintendent elicited an email reply which appears to link the SIA and an internship position to work provided by MSD to the contractor – “Unfortunately, we do not have an MSD project slated for the summer so I am

not sure if we can have a student worker. Hopefully, we will receive another MSD opportunity in the coming weeks/months but at this time, I would not have work for the student.” The MSD reply to this email encouraged the vendor to submit the signed MOU. Two weeks after this email exchange the vendor sent the MSD Director and email stating “Per our conversation, please find the attached proposal to assist SIA with community outreach”. Attached was a proposal for a project which would include “2-3 SIA interns [being] assigned to the vendor to work at the vendor’s site to complete the work of the project.” The proposed contract budget was \$45,000.

Recommendation B. 5. a: Given the Law Department’s direction in March, 2012 regarding Ohio Ethics Law and our own consultation with the Law Department, we recommend that the Law Department refer issues regarding the Foundation to the Ohio Ethics Commission for investigation. Specifically, the City should refer this issue for an investigation to determine if it is lawful for a City employee, who is also a Foundation trustee, to engage in and/or direct and approve contractors to engage in, direct and indirect fund solicitation activities on behalf of and for the benefit of the Foundation and MSD. If appropriate, the City should refer this issue to the Ohio Attorney General to investigate the activities of the Foundation. The Ohio Attorney General has jurisdiction to investigate charitable foundations in Ohio.

Recommendation B. 5. b: Given the Law Department’s direction in March, 2012 regarding Ohio Ethics Law and recent consultation with the Law Department, we recommend that the Law Department seek an Ohio Ethics Commission investigation to determine if it is lawful for an MSD contractor to engage in direct and indirect solicitation activities on behalf of and for the benefit of the Foundation and MSD.

Recommendation B. 5. c: To the extent that such activities noted benefit the Foundation, we recommend that the Law Department determine if it is lawful to spend MSD funds and other resources for the benefit of the Foundation.

Recommendation B. 5. d: We recommend that MSD prohibit contractor sponsorship of or payment for MSD related events or meetings.

Nepotism

Finding: MSD staff raised a concern about children of City public officials* hired as interns by the City through the Project Rebuild-Student Internship Program. Our inquiries resulted in a list of seven children/grandchildren of public officials hired as part of the program. According to MSD, the minimum eligible age for interns was sixteen and students must have been in grades 10, 11, and 12 (Note: We have not audited all intern employment records to determine the total number of public officials’ children hired, their ages, or their grade levels).

Generally, Ohio Ethics Law prohibits public officials from hiring family members for public jobs and from using their public positions to get public jobs for family members. In addition, an Ohio Ethics Commission Bulletin entitled Reminder about Summer Jobs and Restrictions on Nepotism, dated 5/2/12, describes the restrictions associated with minor children of public officials who work for the public official’s agency. These are described as follows:

- An official's minor child cannot work for the same agency unless the official can show four things:
 1. The agency's hiring process will be fair and open and will not favor the children of the agency's officials and employees;
 2. The agency will provide a broad opportunity to qualified and interested applicants to submit applications;
 3. All qualified and interested applicants who are not related to agency officials or employees have already been hired; and
 4. Vacancies still exists.

*A public official is defined as any person elected, appointed, or employed by a public agency.

The City application for the internship program asked if the applicant had a relative that worked for the City. We have been told by MSD staff members that there was an effort to comply with the Ohio Ethics Law requirements regarding minor children in 2014 and 2015 but not in prior years; that is, for 2014 and 2015 intern slots were filled with all other qualified and interested applicants before minor children of public officials were considered and hired. Based on our inquiries the public officials with minor children student interns prior to 2014 were not notified of this issue.

Recommendation B. 5. e: We recommend that the City refer this matter to the Ohio Ethics Commission to determine if it is lawful for City employees and City vendors to engage in fund solicitation activities for the Foundation, the funds from which are used to pay salaries of interns who are children of City employees.

Recommendation B. 5. f: We recommend that the City refer this matter to the Ohio Ethics Commission to investigate the intern selection and hiring process with regard to hiring family members of public officials to make sure that the four criteria for hiring any minor children were met. If further investigation warrants, we recommend that the Law Department seek an Ohio Ethics Commission opinion concerning the hiring of family members of public officials.

C. Property Acquisition

1. Background

MSD was required to reduce combined sewer overflows as part of Phase I of the Consent Decree. The Lick Run Valley Conveyance System (Lick Run) project was designed in response to this requirement. To fully implement the Lick Run project, MSD determined that multiple parcels of private property in the project zone would need to be acquired. This determination was made based on a requirement by the EPA that sufficient acreage in the project area be under the control of MSD. Approximately 75-90 parcels were initially identified for potential acquisition. MSD eventually acquired approximately 40 parcels for the project because the scope of the transportation component was significantly reduced. MSD routinely acquires real property and real property rights throughout its service area as sewer projects are implemented.

MSD's desire to acquire the properties for the Lick Run project coincided with a downsizing at the City Law Department's, Real Estate Division after City budget reductions in 2009. MSD determined that City real estate resources would not be available to the degree necessary to acquire the large number of properties in a relatively short period of time. As a result, the MSD instead decided to contract for various real estate acquisition and relocation services. MSD approved TO 0818888273, dated 3/2/10, to an existing MSA 95X10635, dated 9/1/09, with RA Consulting to sub-contract for the services of a former Real Estate Division employee. The TO applied a 2.6 multiplier to the direct labor cost. The scope of the TO was to provide "Right-of-Way" acquisition services at MSD on a full time basis. The TO term was extended twice with a total contract amount of \$1 million. During much of the acquisition period, the City Law Department attorney assigned to MSD was also the Acquisition Manager for Environmental Programs at MSD. The former Law Department employee (a non-lawyer) now a consultant, had the title of MSD Acquisition Project Manager. As a consultant, the former employee reported to the MSD City Law attorney, who reported to the MSD Deputy Director and the City Solicitor. On 2/14/2013, MSD approved a TO 681000494 on a CH2M Hill, Inc. MSA 95x10557, dated 5/7/09, to sub-contract with Dunrobin Associates, LLC for the same right-of-way services with a contract amount of an additional \$1 million. The former City Law Department employee is the founder and a principal of Dunrobin. Thereafter, RA Consulting was no longer the contractor with Dunrobin as the sub-contractor for real estate services.

2. Uniform Act and Law Department Standard Practice

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), sets forth legal requirements when property is acquired for a project in which Federal funds are used. The Uniform Act applies any time people or businesses are displaced by a project using Federal funds. Federal agencies such as the Housing and Urban Development Department (HUD) and the Federal Highway Administration (FHWA) have rules and regulations for Uniform Act compliance. States and local governments have taken action to comply with the Uniform Act as well. The Ohio Department of Transportation (ODOT) has developed written policies and procedures to comply with the Uniform Act. As a standard practice, the Real Estate Division of the Law Department uses

ODOT and HUD rules and regulations for Uniform Act compliance when Federal funds are involved or potentially involved in projects that require real property acquisition.

For the Lick Run project, MSD management made a strategic decision to comply with the Uniform Act, and follow ODOT, HUD, and FHWA only to the extent “possible and practical.” To the extent that there were inconsistencies with the Uniform Act, MSD’s plan was to correct them after the fact if necessary. The principle rationales were that only rate payer funds (no Federal funds) were being used and that property acquisition needed to occur more expeditiously than full compliance with State and Federal regulations would have allowed.

The Surface Transportation and Uniform Assistance Act of 1987 designated the U.S. Department of Transportation as the Federal Lead Agency for the Uniform Act. According to the U.S. Department of Transportation, if Federal Funds are used in any phase of a project, the rules of the Uniform Act apply. The federal funding need not be just for real property acquisition.

Documentation was provided to us which indicates that a HUD Community Challenge Planning Grant awarded to the City Planning Department in 2011 to update the City’s Land Development Code included Lick Run Watershed Master Plan and Lower Mill Creek Watershed Master Plan. MSD was a sub-grantee for \$160,000. This can be considered a “phase” of the MSD projects that could require adherence to the Uniform Act.

The Law Department cautioned MSD about not following the State and Federal laws. An email, dated 1/23/14, from an Assistant City Solicitor assigned to MSD real estate matters, noted that both she and a County Prosecutor recommended that ODOT procedures be followed generally and specifically in the case of a billboard property interest to be acquired. An email, dated 12/17/13, from another Assistant City Solicitor, noted the need to follow Ohio and Federal laws and regulations with regard to establishment of just compensation for property MSD acquisitions. He also noted that it was imperative for a City employee (not a contractor) familiar with agency real estate acquisitions to approve the contracts.

We have found instances in which the Uniform Act was not followed in property acquisitions unrelated to Lick Run. On at least four Value Analyses for CSO 483 Sewer Separation on Winton Road, the MSD Acquisition Project Manager, a contractor, was the Agency Signature Establishing Fair Market Value Estimate (FMVE) rather than a City or MSD employee as is required.

There were also instances in which property option contracts were used in the Lick Run area that did not comport with the Uniform Act and Law Department, Real Estate Division, standard practice. Through a Professional Services Agreement (PSA), MSD hired the Columbus law firm of Schottenstein, Zox & Dunn to provide property acquisition legal services. This contract was approved by the Law Department, but was administered by MSD. The law firm, in turn, subcontracted with ME Companies of Westerville to provide general real estate services to MSD at the direction of the law firm. With MSD oversight, the purchase options with property values set with restricted use (limited) appraisals were offered by ME without identifying MSD as the offeror. As noted by current MSD and City Real Estate staff, any offer should have been based on an established FMVE through an appraisal, proper appraisal review, and setting the FMVE by City staff. Furthermore, the property owners should have been told that MSD was the potential buyer and, if applicable,

that MSD as government buyer could resort to eminent domain to purchase the land. Former staff told us and current staff verified that, upon review, these discrepancies were corrected by MSD before closing on the properties in question. MSD not only incurred the cost of the option contracts, which had to be corrected but also for adjustments in final sale price. When the FMVE was below the option price, the option price was honored and when FMVE was greater than the option price, FMVE was paid.

In 2015, MSD explored the use of the Ohio EPA Water Pollution Control Loan Fund (WPCLF) as a lower cost funding alternative to MSD bond financing. The Ohio EPA mandates that a Site Title Opinion Letter be signed by an attorney stating that MSD has sufficient legal vested interest in real property and that MSD complies with the Uniform Act. In anticipation of submitting a loan application, MSD contracted with a consultant, O.R. Colan Associates, to audit the records of Lick Run property acquisition to determine Uniform Act compliance. They found Uniform Act compliance inconsistencies which MSD has endeavored to correct where possible. Not all of the inconsistencies could be remedied but MSD believes that the corrective actions will result in loan eligibility because the MSD has substantially cured non-compliance with the Uniform Act.

Finding: Although well-intentioned, the decision by MSD management to forgo full compliance with the Uniform Act and Law Department standard practice has resulted in compliance gaps which could jeopardize future eligibility for State and Federal funding. With regard to potential State and Federal funding, a more prudent acquisition policy would have been to adopt rules and regulations such as ODOT's to ensure full Uniform Act compliance. Current MSD staff reported that the expected benefit of more timely real property acquisitions has not been realized and that following stricter rules and regulations would not have delayed the Consent Decree schedule.

Going forward, the current MSD management's position is to comply with the Uniform Act and be consistent with the standard practice of the Law Department, Real Estate Division. This should result in more funding options and less corrective work regarding Uniform Act compliance inconsistencies. While the Uniform Act allows for curative action for errors in property acquisition, that process should not be used to remedy mistakes that can be avoided from the beginning of a project.

Recommendation C. 2. a: We recommend that MSD continue on the course of corrective action and full compliance with the Uniform Act and the Law Department's, Real Estate Division, standard practice. We also recommend that MSD establish written policies and procedures for real property and real property rights acquisitions with the approval of the Law Department. Lastly, we recommend that the Law Department have final approval authority on all real property and property rights acquisitions and that the Law Department's Real Estate Division be appropriately staffed to provide needed real estate services to the City's utilities.

D. Human Resources Services Billing and Payment

City staff brought to our attention that MSD (including SMU) and GCWW may have paid for professional services which were not provided to them but were provided for citywide benefit instead. Our investigation led to documentation that would support that claim.

1. Background

Ribway Engineering Group, Inc. was engaged under contract 95X10666, dated 10/14/09, and Task Order 1310000499, dated 5/15/13, to provide Human Resources (HR) support services for the implementation of the merged GCWW/MSD Joint Utility. Scope of Work services included: recruitment and hiring, training and development, classification and compensation, payroll systems, technology solutions, talent management, labor relations, communications, workforce safety and health, and cost/benefit analysis. (For a further discussion, see the Procurement section.)

A Ribway employee assigned to the project under the TO with MSD from 5/15/13 to 10/11/13 later was hired as the City's Assistant HR Director. According to invoices billed and paid by MSD, this individual's total hours worked were 1,064.5 as a Ribway employee, which is full-time equivalent during that period of time. Of the total bill of \$134,251.65, the amount for this individual's time was \$124,546.50. For the purpose of comparison the equivalent annualized cost for her billed time as the contractor's employee would be \$234,360. Other Ribway hours billed under the TO included \$9,705.15 for management and administration. The bills included a 2.6 multiplier. All of the Ribway Monthly Progress Reports for the billed time reflect the services provided as "Joint Utility Support Services Project."

Email correspondence provided to us shows this individual worked for much of the time on citywide tasks in the City's HR Department, reported to the City Human Resources Director, and interacted with HR staff on citywide matters from approximately 6/15/13 until 10/11/13. Examples of citywide work performed related to FOP, IAFF, CODE, and AFSCME labor contract issues, employee discipline, police chief selection, and department climate assessment. The individual remained a Ribway employee during this time working under a MSD contract paid for with MSD funds. Monthly progress reports submitted by Ribway noted work done for MSD for each month from 6/15/13 through 10/11/13 at 698 hours which is approximately full time during that period of time. The amount of \$81,666, including the 2.6 multiplier, was billed by Ribway and paid by MSD for the individual's time during this period. No interdepartmental billings back to City HR were made. There is email correspondence provided to us between HR and MSD that shows some discussion of the HR Department reimbursing MSD for hours spent on City-wide work. We did not find any documentation that the reimbursement was made.

The individual's Citywide work began when an HR Division Manager separated from City employment on 6/15/13. The Ribway employee had an office at the City HR Department, and was subsequently hired as Assistant Human Resources Director by the City on 10/13/13 at an annual salary plus benefits of \$157,033 which is approximately 67% of the annualized cost under contract.

An Interdepartmental bill dated 12/2/13 for \$134,251.65 was approved by the MSD Director and paid by GCWW and MSD each for 50% of the Ribway work related to Shared Services. This included the individual's time.

Finding: Documents show that time was being billed to MSD by Ribway for full-time joint utility work even though the individual worked a significant part of the time on citywide human resources activities. MSD and GCWW split the cost. In addition, management and administration time by Ribway was also billed and paid by MSD and GCWW.

Recommendation D. 1. a: We recommend that the City audit the billed time of the Ribway employee and reimburse MSD and GCWW for the time worked on general fund citywide human resources activities and not on utility activities.

Recommendation D. 1. b: We recommend that MSD substantiate the cost of management and administration hours, including the multiplier, related to the work billed for 6/15/13 to 10/11/13. If such hours cannot be substantiated, the cost should be recovered from Ribway.

E. Former Director Residency

1. Background

Several MSD employees have commented on the former MSD Director's residency noting that during his tenure his actual place of residence was in Butler County, Ohio but he listed Cincinnati addresses as his actual place of residence. The concerns expressed are that the MSD Director falsified his address, violated the City residency requirement, received special treatment, and did not receive adequate disciplinary action.

In a memo dated June 13, 2014, the then Interim City Manager "concluded that the only director not in compliance with the residency requirement is the Director of Sewers" (the MSD Director). The Butler County Auditor property records show a residence owned by the MSD Director in Butler County. The MSD Director was disciplined by the Interim City Manager with a loss of 40 hours of vacation time. Financial Disclosure Statements signed by the MSD Director on 4/13/07 and 4/14/08 show a home address on Westwood Ave., Cincinnati, Ohio. Financial Disclosure Statements signed by the MSD Director on 4/14/09, 4/14/10, 4/14/11, 4/15/12, 4/14/13, and 4/11/14 show a home address on Greenlawn St., Cincinnati, Ohio. The Financial Disclosure Statement signed by the MSD Director on 4/13/15 shows the Butler County home address.

The City's employee database Cincinnati Human Resource Information System (CHRIS) shows the MSD Director's address on 3/16/2005, at the time of his hiring, as being in Butler County, Ohio. On 3/13/06 the address was changed to a Westwood Avenue address. On 4/13/14 the address was changed back to the Butler County address.

The **City's Administrative Regulation No. 32, Financial Disclosure Requirement** states the following under the Penalties section: "Deliberate falsification or omission of required information from the disclosure statement shall be grounds for criminal prosecution under the Ohio Revised Code."

Recommendation E. 1. a: Because this remains a concern for some MSD staff and given the discrepancies regarding the former MSD Director's residency, some follow-up is recommended. Given the previous City discipline, we recommend an outside agency determine if there are grounds for any criminal proceeding.

F. Interdepartmental Billing

1. Background

Certain MSD, GCWW and SMU functions (information technology, human resources, regulatory compliance and safety, accounting and finance, laboratory services, engineering, and communications) were merged in the City Budget from July 1, 2013 – June 30, 2015 (FY14-15); however, a cost sharing methodology between the utilities was never properly documented, finalized, or communicated. The lack of planning caused confusion and different approaches to be taken by the utilities involved. (Note: MSD is on a calendar year budget cycle, and GCWW is on a fiscal year.)

We obtained a Joint Utility Management Cost Allocation Plan from the City's Budget Department that was created by K Bealer Consulting, Inc., dated December, 2013. However, the plan was not distributed and could not be obtained by MSD, GCWW or SMU personnel who were involved in the accounting processes.

According to an Accountant at GCWW, GCWW initially created new reporting codes to be used by its employees when conducting shared service work for MSD. However, when the merger occurred GCWW discovered that MSD did not document their time in the same manner as GCWW.

A memo, dated 1/5/15, was sent by the MSD Director, to all GCWW, MSD and SMU senior staff regarding shared services cost allocation ID (interdepartmental) billing processes. According to the memo, as of December 2014, there were approximately 133 shared positions. The memo directed senior staff to no longer account for shared services positions by coding timesheets. Instead, monthly ID bills were to be prepared based upon proposed percentage allocations for all shared services and joint management employees (Note: GCWW employees reported to us that they were not asked to validate the allocation percentages).

The breakdown was as follows:

Division	Shared Positions	MSD %	GCWW %	SMU %
Administration OOD	17	58	39	3
Human Resources	17	46	52	2
Information Technology	43	46	52	2
Finance & Accounting	47	63	35	2
Engineering Services	7	70	30	-
Lab Management	2	44	56	-

The memo also addressed Professional Service Contracts that were shared. It stated, “Contracts that include work performed for the utilities must receive prior approval from the Executive Director. Upon approval, the appropriate funding codes/accounting strip will be used in the contracts.” Staff reported to us that the allocation of contract costs was determined by the Director’s Office.

In addition, the MSD Director stated that monthly billings would be reviewed based on the budget and annual allocations specified and billed quarterly. A true-up was to be performed every six months, and new projected allocations would be created if necessary.

We found that ID bills were not reviewed monthly and not billed quarterly. In addition, a true-up was not performed, meaning there was never a periodic audit completed to determine if the method used to charge shared services was accurate; therefore, updated projected allocations were never created. Further, it was not until the end of 2014 that the shared services were ID billed and paid for the 18-month period from 7/1/13 -12/31/14 (MSD owed GCWW). Because the ID bills have not been finalized for 2015 each utility had to encumber funds at the end of the year.

A recurring comment made to us by current and former accounting employees working at the utilities was that they were unsure of the accuracy of the shared cost model. In addition, consultants were involved in a large portion of the accounting/finance work, and their deliverables were poorly communicated to City accounting personnel; therefore, it is difficult to determine if all shared services were captured and properly ID billed to the correct department and their designated funds.

The manager initially tasked with reviewing ID bills, prior to final approval by the MSD Director, questioned the appropriateness of costs allocated to GCWW for services provided by a particular contractor. That manager stated to us that they were then removed from the review and approval process for all subsequent billings.

Finding: There has yet to be closure on the allocation of cost and billing for shared services among SMU, GCWW, and MSD.

Recommendation F. 1. a: We recommend that MSD (including SMU) and GCWW, with approval of the City Finance Department, finalize the outstanding ID billings in this fiscal year based on the information available. Assumptions made in determining cost allocations should be documented in the process. MSD and GCWW estimate that the amount due to MSD is \$1.45M and the amount due to GCWW is \$1.615M for a net amount due to GCWW of \$165,000. At this point it is not likely that more accurate information about cost allocations can be ascertained in a cost effective manner.

G. Environmental Engineering Technology (EVT) Degree Program

1. Background

We reviewed the Environmental Engineering Technology (EVT) program due to several concerns being brought to our attention by MSD staff. MSD and Cincinnati State have collaborated to offer courses for the two-year EVT program since the mid-90s. From 2011 through 2015 the program cost was \$258,600, an average of \$51,720 per year. The two-year program was initially created to assist Plant Operators in obtaining their licenses, which were required for compliance with the Federal Consent Decree. The MSD/Cincinnati State EVT Policies and Procedures guide the program. An EVT committee made up of MSD and Cincinnati State employees created these policies to offer courses to employees who are EVT Water & Wastewater majors.

However, any MSD employee is eligible to take the selected courses, and the policy does not require that the employee has to complete the program, nor does it discuss the length of time required to complete the program. The program is separate from the “citywide” Human Resource Department (HR) Policies and Procedures on tuition reimbursement. Some of the EVT program conditions are as follows:

- Employees can only register for courses listed on a schedule created by Cincinnati State that is sent out by the MSD Registrar every semester;
- MSD covers the cost of tuition and books. Employees pay for their own parking;
- Employees can take as many courses as they desire;
- Employees must turn in their grade report to the MSD Registrar as proof of completion and they must maintain a C (2.0) average;
- Policies allow an employee to take a course during work hours at the discretion of his or her supervisor; however, no overtime, compensatory, or flex time will be granted for any courses taken as part of the program.

MSD receives a bill from Cincinnati State, and the funds are obtained from each Division’s training budget. MSD does not track how many employees complete the two year degree, and Cincinnati State cannot provide MSD with the data, due to federal privacy laws.

The City has a decentralized HR model in place, and there is no City policy that states departments are required to inform HR or get HR approval when creating a department education assistance program separate from any citywide HR education program. When asked, HR was not aware of the EVT program.

Finding: There are deficiencies with regard to sanctioning of the program, data gathered about the program and its participants, and the program’s cost/benefit justification that need to be corrected.

Recommendation G. 1. a: We recommend that MSD (and all City departments) be required to inform HR and get HR approval of any department education assistance program that is not provided for or differs from the City’s HR Policies and Procedures.

Recommendation G. 1. b: We recommend that MSD maintain a list of employees who complete the two year EVT program to ensure MSD is benefiting from the Cincinnati State contract, and that ratepayer dollars are being spent appropriately.

Recommendation G. 1. c: We recommend that the program duration for participants be time limited unless approved by the MSD Director to assure that MSD is benefiting from program participation.

Recommendation G. 1. d: We recommend MSD conduct a cost benefit analysis of the EVT program on a yearly basis to determine if MSD should continue to administer and offer the program to MSD employees.

H. Use of Stormwater Management Utility Funds

1. Background

The Stormwater Management Utility (SMU) was established by Ordinance No. 330 which was passed by City Council on 8/1/84. The Ordinance stated SMU is “responsible for developing and implementing stormwater management plans and solely managing facilities, stormwater systems and stormwater sewers” and included “implementation and collection of the storm drainage service charge on or about July 1, 1985”. Organizationally, SMU was originally a division of the Public Works Department. Initial funding was provided by two advances of \$200,000 each from the Parking Meter Fund, one in 1982 and one in 1984. One advance was repaid by SMU from service charge revenue in 1986 and the remaining \$200,000 liability was cancelled in 1986 by order of the City Manager based on a consensus of City Council. SMU is currently a division within MSD and will soon become a division of Greater Cincinnati Water Works.

Finding: City financial records show that SMU began to support the storm sewer inlet cleaning and street sweeping by the Public Services Department in 2003. The rationale was that: 1) the cleaning of inlets and gutters on City right-of-way assist in the capture of stormwater runoff and 2) Public Services already performs other right-of-way maintenance functions on a routine basis. The annual cost has ranged from \$1,028,892 to \$1,309,303. The 2015 amount was \$1,219,111.

Similarly, City financial records show that SMU began to support storm sewer inlet cleaning and streambed maintenance in City parks by the Parks Department in 2004. The rationale was similar to that of Public Services support - better capture of stormwater runoff and Parks Operating Division maintenance staff already routinely servicing parks. In 2004, the cost was \$234,659. In 2009, SMU support increased significantly to \$762,169 as the City looked to shore up the General Fund during the recession. The rationale became the Park Board’s over 5,000 acres mitigates stormwater through the natural water shed into green infrastructure. Beginning in 2009, the annual cost ranged from \$762,169 to \$870,184, which is the 2015 cost.

City budget documents from 2005 through 2012 clearly described the SMU Fund 107 support of Public Services and Parks Departments. Because a new budget system was used thereafter and because the budget format changed, the SMU support was not described. Nonetheless, each annual appropriation ordinance showed a separate appropriation of Fund 107 for the Public Services and Parks Departments.

There are differences of opinion and memory regarding the appropriateness of using SMU funds for street sweeping and inlet cleaning in the public right-of-way and inlet cleaning, streambed maintenance, and additional expenditures in City parks. From a legal perspective, the last review occurred in 2004 before significant increases occurred in SMU Fund 107 appropriations for the Public Services and Parks Departments.

Current MSD/SMU management has expressed a concern about the utility’s ability to meet high priority future stormwater runoff mitigation needs given the extent of support for street sweeping and park maintenance activities. Significant expected cost increases are noted by SMU for the following:

1. Stormwater infrastructure improvements related to the City's expanded street rehabilitation/paving program;
2. Repair and maintenance of the Mill Creek Barrier Dam and Lower Mill Creek Flood Walls as instructed by the U.S. Army Corps of Engineers (USACE);
3. Repair and maintenance of the Duck Creek Flood Protection system;
4. Upgraded stormwater collection system condition assessment and resulting maintenance and repair schedule;
5. Potential ownership transfer of Mill Creek Channels from USACE to the City and resulting increased maintenance and repair costs.

Recommendation H. 1. a: The allocation of SMU Fund 107 is a matter of budget priority. We recommend that the City Administration review the current and future operating and capital needs of the City's stormwater system and prioritize the use of the fund accordingly in a six-year financial plan.

Recommendation H. 1. b: We recommend that the Law Department provide a legal opinion on any use of SMU Fund 107 beyond the SMU division.

Recommendation H. 1. c: We recommend that the City's budget documents be more transparent by listing and describing each fund that supports each City department/division, including SMU Fund 107.

I. Green Infrastructure

1. Background

The Consent Decree's Final Wet Weather Improvement Program (WWIP) conditionally approved by regulators on 1/1/10 included a MSD Sustainable Infrastructure (Green) Program. The program was intended to remove stormwater from CSO and SSO areas. Program activities included Demonstration and Pilot Projects that were to be evaluated on volumetric reduction of stormwater and unit cost per gallon of water removed from the system. Both the City and County were signatories of the WWIP. Furthermore, in a letter dated 9/15/08, from the County Administrator to the MSD Director, the County expressed its support of the Green Program that was eventually included in the final WWIP.

MSD developed the Enabled Impact Project (EIP) to assess whether green infrastructure could significantly mitigate CSO. From 2009 through 2012, MSD has implemented 33 projects totaling approximately \$10.4 million, which potentially capture approximately 86 million gallons of stormwater annually. EIP has been implemented through partnerships with 22 public and private organizations through MSD grants or reimbursements. Projects include some of the following: green roofs, pervious pavement, rain gardens, dry wells, biofiltration trenches and basins, and bioswales. Some of the partners include the American Red Cross; Christ Hospital; Cincinnati Public Schools; Cincinnati State; Cincinnati Zoo and Botanical Gardens; University of Cincinnati; Wyoming Board of Education; Cincinnati Museum Center; and City Departments of Parks, Recreation, and Transportation & Engineering. Also as part of the EIP program, MSD identified 10 priority major watershed areas for the implementation of green management best practices such as biofiltration, reforestation, and porous pavement. Seven of them were implemented at a cost of \$11.6 million.

Two memorandums of understanding (MOU) were executed by MSD and the City Parks Department under which Parks implemented and monitored some of the green infrastructure projects. Maintenance became a property owner financial responsibility. The first MOU, from 2010 through 2012, included \$4 million maximum annual cost of which a maximum of \$250,000 could include administrative overhead. The second MOU, from 2013 through 2014, included a \$4 million maximum annual cost of which a maximum of \$300,000 could include administrative overhead. According to MSD interdepartmental bills, expenditures from 2010 through 2014 totaled \$1,426,414 of which Direct Staff and Project Management costs were \$1,119,103, or 78% of the total cost; Administrative Overhead costs were \$260,847, or 18% of the total cost; and Reimbursements were \$46,464, or 3% of the total cost. MSD completed the implementation of EIP projects by the end of 2012 and shifted that focus to major large scale projects with more impact on stormwater removal. Many of the EIP projects had significant quantitative and qualitative impact. The EIP projects continue to be monitored on a qualitative basis (site inspections of conditions, controls, and maintenance) and several are being monitored for qualitative results (flow monitoring). The quantitative monitoring projects include Cincinnati Zoo and Botanical Gardens, Cincinnati State, St. Francis Court Apartments, and Civic Garden Center.

Finding: The EIP program has demonstrated that green infrastructure successfully reduces the stormwater entering the CSO system and the program was terminated

Given that the implementation phase of the demonstration project has concluded and the monitoring phase is ongoing, we make no recommendations.

Summary of Recommendations

1. **Recommendation A. 2. a:** We recommend that any formal approval or recommendation of contracts or approval of contractor work for payment, typically as evidenced by signed documents, be done only by City employees. Contractors should not have the authority to do so.
2. **Recommendation A. 2. b:** We recommend that contractor staff be prohibited from rating or reviewing City employee performance through the Annual Performance Evaluation. Contractors should not have the authority to do so. If appropriate, MSD staff can consult with contractors about performance of City employees.
3. **Recommendation A. 3. a:** The significant improvements initiated in 2016 provide the opportunity to open the MSD procurement process for more competition, better alignment with vendor strengths, more inclusion, and better proposals to evaluate. This will help to ensure that the best choice for MSD is made. The challenge will be to award contracts in a timely manner and to meet the SBE goals of the organization. We recommend that the City create reportable metrics for the new RFQ and RFP processes to assure timeliness of available services.
4. **Recommendation A. 4. a:** We agree with the Richardson recommendations noted herein and encourage their implementation. The observations and recommendations would result in increased control of costs and competition. For example, using a multiplier range as a guide but requiring vendors to calculate overhead, indirect costs, etc. to justify multipliers are likely to result in a negotiated rate beneficial to MSD.
5. **Recommendation A. 4. b:** Decisions to contract for Staff Supplementation (and by extension Departmental Support) should be viewed on a case-by-case basis with a documented cost calculation and benefit analysis.
6. **Recommendation A. 4. c:** Per discussion in Section 3 on Procurement, we recommend eliminating or limiting Task Order scope add-ons, which should serve to control multipliers as well.
7. **Recommendation A. 4. d:** As noted by Richardson & Associates, periodic multiplier recalibration should provide assurance that costs are controlled.
8. **Recommendation A. 5. a:** Regarding the delegation of contract authority, we asked the Law Department for an opinion to determine if such delegation is lawful. The opinion is that the City Charter and the Administrative Code authorize such delegation by the City Manager as the chief executive of the City. As we noted in the Procurement section of this report, the result at MSD was the expansion of contract scope far beyond the intent of the original contracts via department authorized task orders, outside of City Manager approval. Although the delegation of contracting authority to department heads and others is lawful, it is not a good business practice. In particular, when any department head is given the ability to order goods and services under task orders in a Master Services Agreement, the City Manager loses significant control and oversight of departmental contracting.

9. **Recommendation A. 5. b:** The long standing practice of the City is to certify contract amounts for the fiscal year in which the contract is made. Certification is a significant financial check on departmental spending. In fact, the City’s financial system is set up to require pre-certification of all spending. Nonetheless, we have found instances at MSD in which funds were certified after work was ordered, completed, and invoices were received. It is an appropriate and generally accepted government practice to determine, prior to approval of a contract or Task Order requiring expenditures, that funds are appropriated and available for that purpose. Beyond the general acceptance of this financial practice, even when not required, a financial check on departmental spending creates an important counterbalance to department discretion. We recommend that the City Manager require that for all utility contracts, including task orders under master service agreements, funds be certified for each current fiscal year. Even though state law does not require certification of funds for utility purposes, we recommend that the City follow a certification process for each utility contract over a dollar limit set by the City Manager as supervised by the City’s procurement officer.
10. **Recommendation A. 6. a:** Because the Urban Strategies sub-contractor work was completed after the Bricker & Eckler contract “not-to-exceed” amount was effectively met, we were initially concerned that a moral obligation ordinance approved by the Mayor and City Council may be necessary to make the payment to the contractor. Of additional concern is that under ORC 5705.45, “Any officer or employee...who expends or authorizes the expenditure of public funds on any such void contract...shall be liable...for the full amount...” We requested that the Law Department review this matter and determine if a moral obligation ordinance was needed. The Law Department has opined that a moral obligation ordinance is not needed based on ORC 5705.44 (see section A.5) and the City Manager’s authority to contract on behalf of the City, as delegated to the MSD director. Nonetheless, the implementation of Recommendation A.5.b regarding certification of funds and the recent City Administration procurement reforms described in section A. 3. should serve to eliminate contracting irregularities such as this in the future.
11. **Recommendation A. 7. a:** Significant legal and consulting costs were incurred due to the flowmeter issue. There are conflicting reports as to why no legal recourse was pursued, and we could not identify any formal written rationale for any resolution of the issue. We recommend that MSD evaluate the cost versus potential financial reward to further investigate legal recourse against contractors regarding the flowmeter problems.
12. **Recommendation A. 7. b:** We recommend that a final summary memo or similar closing document from an appropriate expert be obtained from the Solicitor’s office or outside legal counsel when significant legal matters are determined. For example, in this case regarding the flowmeters, either a legal memorandum or an expert opinion regarding whether the engineering and or construction professional Standard of Care was met should document the termination of the project issues.
13. **Recommendation A. 7. c:** We recommend that the City Law Department review legal summary memos (noted above) and provide an opinion to management regarding legal recourse when the performance of projects completed by MSD vendors does not meet specifications, especially in those circumstances when outside professionals have been retained to provide a third party professional opinion.

14. **Recommendation B. 2. a:** Current MSD management has indicated that the Student Intern Academy program will not be held in the summer of 2016. We recommend that MSD management thoroughly evaluate any future SIA program, including the performance of a long-term cost vs. benefit analysis prior to any reintroduction of the program. Further, to the extent this program is not in core services of the MSD, we recommend that both the City and the County legislative policy makers determine if this or similar internships should continue to be funded.
15. **Recommendation B. 4. a:** We recommend that the City establish clear rules and guidelines for how the City and its employees will interact with or participate in the activities of public charities and foundations whose purpose is primarily for the benefit of a City department, City division or City-owned asset. This would include any financial or in-kind support to be provided to a public charity or foundation, and specifically limit how entities doing business with the City contribute to foundations that primarily benefit a City function or department.
16. **Recommendation B. 4. b:** We recommend that no City employee sit on the board of or have fiduciary responsibility for a public charity or foundation whose purpose is primarily for the benefit of a City department, City division or City-owned asset.
17. **Recommendation B. 5. a:** Given the Law Department's direction in March, 2012 regarding Ohio Ethics Law and our own consultation with the Law Department, we recommend that the Law Department refer issues regarding the Foundation to the Ohio Ethics Commission for investigation. Specifically, the City should refer this issue for an investigation to determine if it is lawful for a City employee, who is also a Foundation trustee, to engage in and/or direct and approve contractors to engage in, direct and indirect fund solicitation activities on behalf of and for the benefit of the Foundation and MSD. If appropriate, the City should refer this issue to the Ohio Attorney General to investigate the activities of the Foundation. The Ohio Attorney General has jurisdiction to investigate charitable foundations in Ohio.
18. **Recommendation B. 5. b:** Given the Law Department's direction in March, 2012 regarding Ohio Ethics Law and recent consultation with the Law Department, we recommend that the Law Department seek an Ohio Ethics Commission investigation to determine if it is lawful for an MSD contractor to engage in direct and indirect solicitation activities on behalf of and for the benefit of the Foundation and MSD.
19. **Recommendation B. 5. c:** To the extent that such activities noted benefit the Foundation, we recommend that the Law Department determine if it is lawful to spend MSD funds and other resources for the benefit of the Foundation.
20. **Recommendation B. 5. d:** We recommend that MSD prohibit contractor sponsorship of or payment for MSD related events or meetings.
21. **Recommendation B. 5. e:** We recommend that the City refer this matter to the Ohio Ethics Commission opinion to determine if it is lawful for City employees and City vendors to engage in fund solicitation activities for the Foundation, the funds from which are used to pay salaries of interns who are children of City employees.

22. **Recommendation B. 5. f:** We recommend that the City refer this matter to the Ohio Ethics Commission to investigate the intern selection and hiring process with regard to hiring family members of public officials to make sure that the four criteria for hiring any minor children were met. If further investigation warrants, we recommend that the Law Department seek an Ohio Ethics Commission opinion concerning the hiring of family members of public officials.
23. **Recommendation C. 2. a:** We recommend that MSD continue on the course of corrective action and full compliance with the Uniform Act and the Law Department's, Real Estate Division, standard practice. We also recommend that MSD establish written policies and procedures for real property and real property rights acquisitions with the approval of the Law Department. Lastly, we recommend that the Law Department have final approval authority on all real property and property rights acquisitions and that the Law Department's Real Estate Division be appropriately staffed to provide needed real estate services to the City's utilities.
24. **Recommendation D. 1. a:** We recommend that the City audit the billed time of the Ribway employee and reimburse MSD and GCWW for the time worked on general fund citywide human resources activities and not on utility activities.
25. **Recommendation D. 1. b:** We recommend that MSD substantiate the cost of management and administration hours, including the multiplier, related to the work billed for 6/15/13 to 10/11/13. If such hours cannot be substantiated, the cost should be recovered from Ribway.
26. **Recommendation E. 1. a:** Because this remains a concern for some MSD staff and given the discrepancies regarding the former MSD Director's residency, some follow-up is recommended. Given the previous City discipline, we recommend an outside agency determine if there are grounds for any criminal proceeding.
27. **Recommendation F. 1. a:** We recommend that MSD (including SMU) and GCWW, with approval of the City Finance Department, finalize the outstanding ID billings in this fiscal year based on the information available. Assumptions made in determining cost allocations should be documented in the process. MSD and GCWW estimate that the amount due to MSD is \$1.45M and the amount due to GCWW is \$1.615M for a net amount due to GCWW of \$165,000. At this point it is not likely that more accurate information about cost allocations can be ascertained in a cost effective manner.
28. **Recommendation G. 1. a:** We recommend that MSD (and all City departments) be required to inform HR and get HR approval of any department education assistance program that is not provided for or differs from the City's HR Policies and Procedures.
29. **Recommendation G. 1. b:** We recommend that MSD maintain a list of employees who complete the two year EVT program to ensure MSD is benefiting from the Cincinnati State contract, and that ratepayer dollars are being spent appropriately.

30. **Recommendation G. 1. c:** We recommend that the program duration for participants be time limited unless approved by the MSD Director to assure that MSD is benefiting from program participation.
31. **Recommendation G. 1. d:** We recommend MSD conduct a cost benefit analysis of the EVT program on a yearly basis to determine if MSD should continue to administer and offer the program to MSD employees.
32. **Recommendation H. 1. a:** The allocation of SMU Fund 107 is a matter of budget priority. We recommend that the City Administration review the current and future operating and capital needs of the City's stormwater system and prioritize the use of the fund accordingly in a six-year financial plan.
33. **Recommendation H. 1. b:** We recommend that the Law Department provide a legal opinion on any use of SMU Fund 107 beyond the SMU division.
34. **Recommendation H. 1. c:** We recommend that the City's budget documents be more transparent by listing and describing each fund that supports each City department/division, including SMU Fund 107.