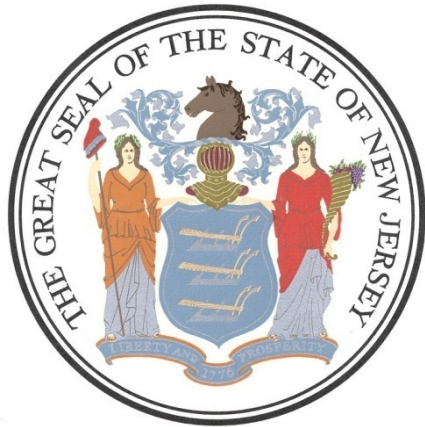


**State of New Jersey**

**Office of the State Comptroller**



***INVESTIGATIVE REPORT***  
***NEWARK WATERSHED***  
***CONSERVATION AND***  
***DEVELOPMENT CORPORATION***

**February 19, 2014**

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## **I. Introduction and Executive Summary**

State law authorizes New Jersey local governments to delegate some essential services to not-for-profit entities to perform. This investigation shows the dangers of delegating an essential government service to a not-for-profit entity without ensuring there are appropriate policies and procedures in place to monitor the not-for-profit entity's conduct.

For a number of years, the City of Newark (City) has delegated to the Newark Watershed Conservation and Development Corporation (NWCDC), a not-for-profit entity created to manage the City's watershed properties, the responsibility to operate the City's water assets through service contracts. This Office of the State Comptroller (OSC) investigation found that from 2008 through 2011, the NWCDC recklessly and improperly spent millions of dollars of public funds with little to no oversight by either its Board of Trustees or the City. We also went beyond that timeframe when necessary for continuity and context.

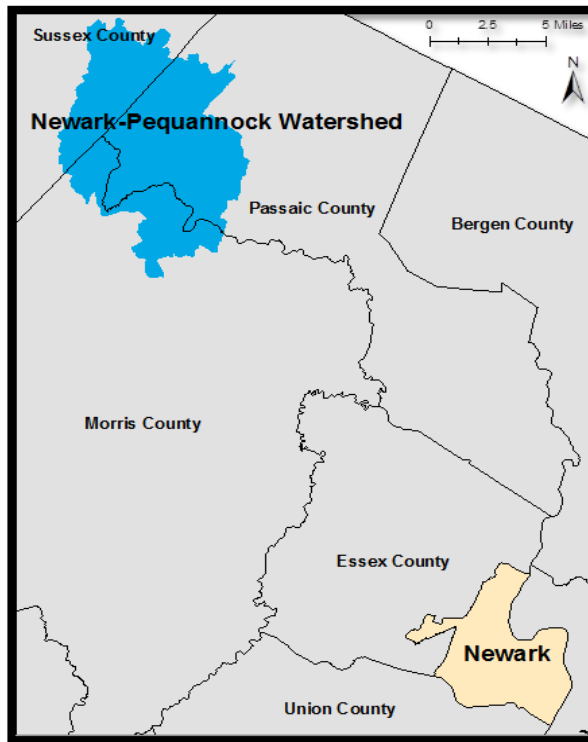
For example, OSC found that NWCDC's Executive Director continually engaged in wasteful and abusive spending practices with City money. Specifically, she: (1) wrote unauthorized payroll checks to herself; (2) maintained an actively traded NWCDC brokerage account and surreptitiously expanded it to include risky margin trading, resulting in a substantial loss of public funds; (3) handed out no-bid contracts worth millions of dollars, including contracts to her former husband, her close personal associates and NWCDC employees; (4) gave a no-interest loan to a not-for-profit agency of which a sitting Board Trustee was president and chief executive officer; (5) gave improper bonuses and payroll advances to NWCDC employees; (6) distributed hundreds of thousands of dollars of public funds to community organizations without Board knowledge or approval; and (7) acted recklessly in her use and management of NWCDC's petty cash and other accounts through which public funds were spent.

Moreover, OSC's investigation revealed that neither the NWCDC Board nor the City provided sufficient oversight of the NWCDC. The Board approved an improper payout to the Executive Director and failed to institute appropriate contracting and spending policies and practices that could have prevented many of the acts described above. The City, after awarding the NWCDC two no-bid service contracts, neglected to take meaningful steps to supervise those contracts.

OSC issues this report to document the NWCDC's repeated and significant misuse of funds belonging to the people of Newark, to seek sanctions against culpable parties, and to provide guidance to government agencies that delegate government functions to not-for-profit or similar entities.

## II. Background and Methodology

In 1900, the City purchased 35,000 acres of property in northern New Jersey, spanning across Morris, Passaic and Sussex counties. The purchased property included a number of fresh water reservoirs that have provided and continue to provide fresh drinking water to residents of the City as well as a number of surrounding municipalities. The specific location of the property is depicted in the map below.



In 1973, the Newark Municipal Council (Council) adopted an ordinance authorizing the City to enter into service contracts for the conservation, development and management of the watershed properties, instead of having a City department handle those functions. That same year, the Council authorized the then-mayor to establish the NWCDC as a not-for-profit entity that, pursuant to a contract with the City, would manage and plan for the conservation of the

watershed properties. In 1998, through a second service contract, NWCDC's responsibilities grew to include operating the City's water treatment facility and water storage reservoirs.

The City provides taxpayer funds to the NWCDC through those two service contracts, which have accounted for more than 99 percent of NWCDC's income since 2008. NWCDC's remaining income is derived from its collection of fees for recreational permits for use of the watershed property and interest income from its bank accounts. From 2008 through 2011, the City paid NWCDC a combined total of more than \$40.5 million under the two service contracts.

The NWCDC is governed by a Board of Trustees (Board). According to NWCDC's Articles of Incorporation, the Board shall be comprised of seven to eleven trustees, including the mayor serving in an *ex officio* capacity as Board chair, two members of the Council, and up to eight other individuals appointed by the mayor with the advice of the Board and the advice and consent of the Council. The Board elects a vice chair, a secretary and a treasurer.

The Board is charged with managing the affairs of the NWCDC, which includes, among other things, adopting by-laws, establishing policies and procedures, approving an annual budget and authorizing all contracts, loans and other financial commitments. The Board appoints an executive director to manage the day-to-day operations of the NWCDC. Linda Watkins-Brashear (Watkins-Brashear) held that position of executive director from 2007 through March 25, 2013. Watkins-Brashear previously had held various other positions at NWCDC.

In January 2011, pursuant to its authority under *N.J.S.A. 52:15C-1 et seq.*, OSC's Procurement Division commenced a review of the City's contracts with the NWCDC. OSC's Investigations Division subsequently received a written complaint alleging various improprieties by NWCDC management, staff and vendors. In light of our preliminary findings, OSC

commenced a comprehensive investigation of NWCDC's contracting and spending practices as well as Board operations.

As part of our investigation, we issued numerous document requests and subpoenas seeking records from the NWCDC, the City and various third parties. The items we reviewed included, among other materials, contracts, invoices, policies and procedures, internal memoranda, employment records, payroll records, checks and check registers, general ledgers, investment records, Board meeting minutes and Council resolutions. OSC's investigation also included interviews of City officials, Board Trustees, NWCDC staff members and various NWCDC vendors. Specifically, we interviewed, for example, City officials such as the former Business Administrator, Director of Finance, Acting Director of Water and Sewer and the then-Mayor, as well as several Board Trustees.

During the course of our investigation, we found that Watkins-Brashear, without Board approval, surreptitiously had authorized high-risk securities trades in an NWCDC brokerage account since 2007. OSC interviewed NWCDC's accountant and investment broker regarding that account. Within a week of those interviews, the Board called an emergency Board meeting and voted to dissolve the NWCDC. At the same meeting, the Board also accepted Watkins-Brashear's resignation.

OSC subsequently interviewed the City's former Business Administrator, who also had served as an NWCDC Trustee, about a series of NWCDC matters. The City's Chief Corporation Counsel represented the Business Administrator during that interview. The day following the interview, the City filed an Order to Show Cause in the Superior Court of New Jersey seeking court approval to take several steps to protect its assets held by the NWCDC. That Order to Show Cause included a proposal to appoint provisional Board Trustees to oversee the winding



down of the NWCDC's affairs. The court ultimately entered a Consent Order appointing four provisional Trustees to oversee the NWCDC's dissolution. These provisional Trustees were not present on the Board during the conduct that is at issue in this report. The provisional Trustees have cooperated with the OSC during this investigation resulting in the production of thousands of documents that had been previously requested from the NWCDC.

The provisional Trustees are now in the process of implementing a dissolution plan. As part of that plan, the NWCDC has returned to the City the responsibility of operating and managing its water treatment facility, storage reservoirs and the watershed property.

We provided a draft copy of the relevant portions of this report to the individuals and entities referenced in this report for their review and comment. We received responses from nearly all of them. All of the responses we received were considered in preparing this final report and have been incorporated herein where appropriate.

In general, the responding parties pointed to each other instead of themselves as the parties responsible for the conduct in this report. For example, Watkins-Brashear, in the written response from her attorney, generally contended that she acted appropriately and as directed in discharging her duties. She further contended that any misconduct should be focused on the Board and its professionals who had a fiduciary obligation to the NWCDC. In its response, the City claimed it relied on Watkins-Brashear and NWCDC's professionals to act appropriately and in the best interests of the City.

### **III. Investigative Findings**

#### **A. The NWCDC Executive Director Abused Her Authority by Improperly Enriching Herself, Her Associates and NWCDC Employees with Public Funds**

##### **1. Inappropriate Compensation for the NWCDC Executive Director**

As part of this investigation, OSC reviewed Watkins-Brashear's compensation for serving as NWCDC's Executive Director. OSC found that Watkins-Brashear received \$1.98 million in total compensation from January 1, 2006 to March 25, 2013. However, NWCDC records reported her salary over that time period to be a total of \$1.16 million. Our investigation concerning the additional approximately \$800,000 revealed that most of those payments were in the form of manually generated corporate checks and two severance payments. As set forth more fully below, NWCDC was unable to justify this additional compensation paid to Watkins-Brashear.

##### **(a) Watkins-Brashear Wrote Herself Manual Payroll Checks in Addition to the Bi-Weekly Paychecks She Received from NWCDC's Payroll Vendor**

According to NWCDC's Employee Manual, "[a]ll employees are paid bi-weekly on every other Friday . . . and [p]aychecks will include earnings for all work performed through the end of the previous payroll period." NWCDC's payroll vendor issues NWCDC employees those automated bi-weekly paychecks. During the course of reviewing NWCDC's general ledgers and check registers for the years 2008 through 2011, however, OSC noted numerous manually generated NWCDC checks issued to Watkins-Brashear in addition to those automated bi-weekly paychecks. Watkins-Brashear herself signed these checks on behalf of NWCDC, and there was no co-signor. NWCDC's business manager confirmed to us that Watkins-Brashear herself

maintained possession of NWCDC’s checkbooks and had sole discretion to issue manual checks from the payroll accounts.

OSC found that the issuance of these manual checks contributed to Watkins-Brashear’s compensation exceeding her Board-approved salary each year from 2008 through 2011. The table below shows Watkins-Brashear’s Board-approved contract salary as compared to the total compensation she received, as confirmed by records maintained by the state Department of Labor and Workforce Development:

	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Base Contract Salary</b>	\$138,319	\$141,086	\$145,879	\$145,879
<b>Total Compensation Received</b>	<b>\$177,051</b>	<b>\$215,470</b>	<b>\$200,776</b>	<b>\$205,698</b>

In total, during this time period, Watkins-Brashear wrote herself 62 manual checks recorded in NWCDC’s general ledger that appear questionable or unsupported by further documentation. OSC also found seven manual payroll checks Watkins-Brashear issued to herself in 2011 that did not appear on NWCDC’s general ledger, including five separate checks issued in the month of May. Those seven checks totaled more than \$22,500 and were similarly unsupported by any further documentation.

We interviewed several Board Trustees and asked them about the additional compensation. They each stated that Watkins-Brashear was not authorized to issue herself manual payroll checks and that her salary payments should not have exceeded her contract salary.

OSC also spoke to Walter Frye, with whom NWCDC contracted to provide accounting services, about the manual checks Watkins-Brashear issued during this time period. Frye stated that he believed that Watkins-Brashear had authority to issue NWCDC checks for up to \$100,000 without Board approval. However, NWCDC did not produce to us any such policy granting Watkins-Brashear that authority. Frye also stated that he believed the manual checks were for unused vacation time or other reimbursements, or to correct mistakes on other payroll checks. However, the number of these manual checks, the timing of the check issuances, and the amounts of the checks are not consistent with Frye's suggested explanation. In his response to a draft of this report, Frye denied making such a statement to us.

Ultimately, NWCDC was unable to provide adequate documentation or justification for the manual checks Watkins-Brashear issued to herself. When we questioned Watkins-Brashear about these payments, she asserted her Fifth Amendment right and declined to answer any questions posed by OSC investigators. We are referring this matter to law enforcement authorities.

**(b) Watkins-Brashear's Inappropriate 2006 Severance Payment**

NWCDC payroll records show that on June 23, 2006 Watkins-Brashear received a total payment of \$209,097, which was comprised of \$167,341 for severance and \$41,756 in unused vacation and sick time. However, the weight of the available evidence suggests she was not entitled to that payment because she continued to be compensated as though she never actually left employment at the NWCDC.

A Board resolution approved in April 2006 entitled NWCDC employees to a severance payment if they had a minimum of five years of continuous service and separated from NWCDC in good standing. Employees meeting those criteria could receive a one-time payment equivalent

to up to four weeks of salary for every year of service. We note that the City does not have a similar program for its employees, raising the question why NWCDC even had such a program when nearly all of its funding comes from the City.

In any event, Watkins-Brashear did not satisfy the separation requirement of the severance program. Specifically, although NWCDC produced memoranda reciting that Watkins-Brashear resigned on June 9, 2006 and then returned to work three weeks later on July 3, 2006, payroll records demonstrate that she received three paychecks over the course of the three pay periods between her resignation and rehire dates. Moreover, later NWCDC documents refer to Watkins-Brashear's year of hire as 1980, including documents used to calculate her longevity and pension payments.

Aside from Watkins-Brashear's lack of entitlement to the severance payment, she also received \$10,000 more than she should have even if she had satisfied the separation requirement. That is, while Watkins-Brashear received a severance payment of \$167,341, NWCDC internal documentation calculated her entitled severance as \$157,341. We found no records explaining the basis for the additional \$10,000 Watkins-Brashear received and no further explanation was provided by NWCDC.

**(c) Watkins-Brashear's Inappropriate 2013 Separation and Settlement Payout**

In addition to the 2006 severance payment, the Board approved a separation and settlement payout for Watkins-Brashear on March 25, 2013, in the amount of \$453,805. The Board approved that payment the same day it voted to dissolve the corporation. Pursuant to the terms of the Separation Agreement, the payment to Watkins-Brashear included her unearned salary through December 31, 2015, as well as the value of her unused vacation and sick time.

This separation payout was in addition to Watkins-Brashear being entitled under NWCDC's defined-benefit pension plan to collect \$65,000 annually from NWCDC upon reaching retirement age.

We reviewed the terms of Watkins-Brashear's employment contract to determine whether the unearned salary portion of the separation payout was justified. Pursuant to the terms of that contract, Watkins-Brashear was entitled to future, unearned salary only if the NWCDC terminated her without good cause. We found no indication from our interviews or review of documents that the NWCDC terminated Watkins-Brashear without good cause. While there was a pro forma Board resolution and a settlement agreement and release that stated that Watkins-Brashear and the NWCDC were terminating their relationship, in reality all of the other evidence was consistent with her having resigned. For example, NWCDC's General Counsel, Elnardo Webster, told us that weeks before the March 25, 2013 emergency Board meeting, Watkins-Brashear had asked to be bought out of her contract because of the high level of stress associated with the job. A Board Trustee similarly told us that his understanding was that Watkins-Brashear had resigned from her employment.

The separation payment to Watkins-Brashear was also made larger by virtue of changes to her contract that had been executed several months prior. Specifically, on May 21, 2012, the Board had approved a new two-year employment contract for Watkins-Brashear to act as the NWCDC Executive Director at an annual salary of \$154,807. The term of the contract commenced on January 1, 2013 and continued through December 31, 2014. Then, eight months later, on January 22, 2013, the Board approved another contract for Watkins-Brashear. The only material change to the contract was that it extended Watkins-Brashear's term through December 31, 2015. When OSC asked Webster about the contract extension, he stated that Watkins-

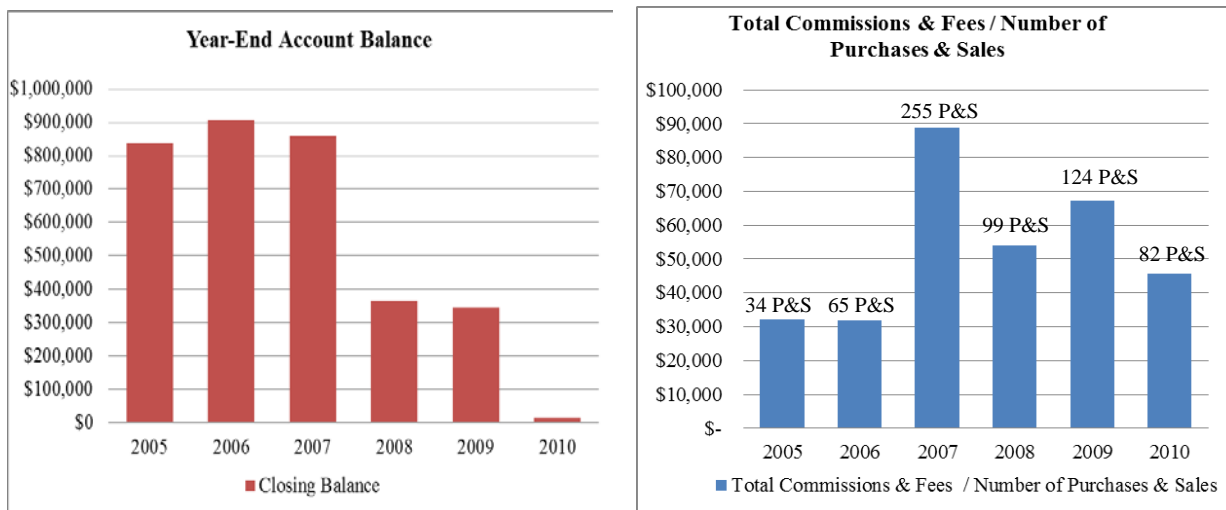
Brashear had requested it. No one at NWCDC was able to provide us with any compelling business justification for extending Watkins-Brashear's contract term for another year just weeks after her new term had begun.

In light of the lack of any documentation showing legal entitlement to the unearned salary payout, we attempted to determine the motivating force behind the payout. According to Webster, at a Board meeting held on March 18, 2013, the Board had directed him to draft a Board resolution for Watkins-Brashear's payout to include a calculation of the remaining amount of money Watkins-Brashear would be owed under her current contract. However, we reviewed the Board minutes from that meeting and found no mention of a separation payout for Watkins-Brashear. Further, the Board Trustees we spoke to told us there were no such discussions at the March 18 meeting. To the contrary, they stated that when the Board met for the emergency meeting on March 25, 2013, it was Webster who presented the Board with a resolution to approve Watkins-Brashear's payout. When we attempted to further question a Board Trustee about the matter, the NWCDC's attorney asserted attorney-client privilege as to any discussions between the Board and General Counsel with regard to the separation payout (as well as other issues). Ultimately, while witness accounts substantially differ as to the specific circumstances that led to the payout, it appears that the individuals involved were focused on having Watkins-Brashear depart from the NWCDC on terms that she would view as favorable.

**2. Without Board Approval, the NWCDC Executive Director Maintained an Actively Traded Brokerage Account Which She Substantially Expanded to Include Margin Trading**

In December 2005, the NWCDC opened a brokerage account with a financial planning firm. When Watkins-Brashear took over as Executive Director in 2007, activity in the account increased substantially. During the life of the account, from December 2005 to February 2011,

NWCDC made deposits totaling \$852,265 and withdrew a total of \$293,597 reflecting a loss to NWCDC of approximately \$558,000, or approximately 65 percent of the value of the account. During that time period, the account broker made 660 purchases and sales in the account and NWCDC paid more than \$319,000 in commissions and fees. During our investigation, the remaining funds were withdrawn and the account was closed with a zero balance. The tables below show NWCDC's year-end account balances, total commissions and fees paid and number of purchases and sales made during the life of the account as reflected in NWCDC's monthly brokerage statements and trade blotter. (Note: A single sale in 2011 is not reflected in the tables.)



Our investigation revealed that the Board never approved any of this trading activity. NWCDC did not produce to us any Board resolutions concerning the account.

In February 2007, Watkins-Brashear signed an agreement expanding the account to include margin trading, which involves the borrowing of funds to make securities trades. In total, NWCDC paid approximately \$47,000 in margin interest from 2007 to 2010 for the funds Watkins-Brashear borrowed to make trades in the account. In 2008 alone, during a major stock market downturn, the account declined \$499,925 in net asset value. That loss was equivalent to



approximately 5 percent of the \$9.85 million in public funds the City paid NWCDC under its contracts that year.

The City itself was not permitted under state law to invest public funds in this manner. Under the Local Fiscal Affairs Law, *N.J.S.A. 40A:5-1 et seq.*, permitted investments by local governments are limited to those traditionally considered safe or conservative, such as government bonds, money market mutual funds and the state's Cash Management Fund. *N.J.S.A. 40A:5-15.1*. Permitted trading activity does not include high-risk trading of securities on margin.

Moreover, the Local Fiscal Affairs Law further requires that local governments adopt policies for selecting and evaluating potential investments. *N.J.S.A. 40A:5-14(d)*. "Such policies shall consider preservation of capital, liquidity, current and historical investment returns, diversification, maturity requirements, costs and fees." *Id.* The local government must further adopt a cash management plan that provides for monthly reporting to the governing body of investments made and redeemed. *N.J.S.A. 40A:5-14(e)*. In contrast, the Board had no policies concerning the investment of NWCDC's funds and we found no evidence that it received monthly reports of its investments from Watkins-Brashear.

When we interviewed NWCDC Trustees, several of them indicated an awareness of the investment account, but understood that the account was being used as a reserve account to address cash flow issues at NWCDC. They stated that they were unaware of the trading in the account or the use of high-risk margin trading. However, Watkins-Brashear and NWCDC's outside auditor, Lawrence Belcher were aware of the activity. When OSC spoke to Belcher about the account, he admitted that the margin investing and the types of securities purchased in the account struck him as "crazy." He said he considered the trading in the account as

“churning” and noted that none of his other clients would use public money so recklessly. He said he had discussions with Watkins-Brashear in which he expressed concern over the account.

In April 2009, Belcher verbally presented to the Board his 2008 Independent Audit of the NWCDC’s financial statements. OSC’s review of NWCDC’s Board meeting minutes revealed that neither Belcher nor Watkins-Brashear brought this issue to the Board’s attention. The audit report reflected the 2008 losses in the investment account as a change in asset value. During his presentation to the Board, Belcher did not detail the reasons for the \$490,000 decline in asset value. In response to a draft of this report, Belcher stated that the \$490,000 was withdrawn from the investment account for operating cash flow, and that he did inform the Board about investment practices that he believed were high risk and unreasonable. However, OSC reviewed NWCDC’s investment account statements and found that no withdrawals were made in 2008, nor do the April 2009 Board meeting minutes reflect the concerns Belcher claims to have raised to the Board. Clearly fiscal governance would have been improved had he shared with the Board the investment conduct by which he was troubled.

Additionally, when Board members questioned Watkins-Brashear at the April 2009 meeting about the investments, she told them that the corporation had not invested in the past three years and had sustained its operations on interest from those investments. While no new deposits had been made, in reality, numerous transactions had occurred in the account and less than \$100 had been withdrawn from the account up to that point in 2009. Ultimately, NWCDC lost hundreds of thousands of dollars in taxpayer funds as a result of its use of this account.

As stated earlier, we attempted to question Watkins-Brashear about the trades in the investment account. However, she asserted her Fifth Amendment right and declined to answer any questions about the matter.

**3. The NWCDC Executive Director, Without Board Knowledge or Approval, Awarded No-Bid Contracts to Her Former Husband, Close Personal Associates and NWCDC Employees**

Without the Board's knowledge or approval, Watkins-Brashear awarded a series of no-bid contracts worth millions of dollars, including contracts to her former husband, her close personal associates and NWCDC employees.

Any contracts awarded by the City itself are subject to New Jersey's Local Public Contracts Law (LPCL), *N.J.S.A. 40A:11-1 et seq.*, which imposes a series of requirements including public bidding. While non-governmental agencies such as the NWCDC generally are not required to award their contracts pursuant to the State's public bidding laws, the NWCDC's Articles of Incorporation explicitly provide that NWCDC contract awards "shall be subject to the provisions and requirements of the 'local public contracts law' of the State of New Jersey to the extent that such provisions and requirements can be applied to the Corporation." NWCDC's Articles of Incorporation also require the Board to approve all NWCDC contracts.

Various City officials and NWCDC Board Trustees confirmed in interviews with OSC that they expected the NWCDC to award its contracts in accordance with the LPCL. For example, the City's former Business Administrator, who also served as a Board Trustee, explained that the City expected the NWCDC to abide by the LPCL. She explained that the City required any agency that received the majority of its funding from the City to follow that law. The City's then-Mayor confirmed this during his interview as well. In fact, in an email dated March 8, 2011, Watkins-Brashear herself advised the City Council that the NWCDC followed the LPCL in its awarding of contracts.

Notwithstanding this representation, OSC found that Watkins-Brashear handed out a series of no-bid contracts to those with whom she had a personal or pre-existing relationship.

The facts suggest that those vendors received those contracts based on their relationship with Watkins-Brashear. One of those vendors had no prior experience performing the work NWCDC hired him to perform. We further found that the Board never approved any of these contracts and that Board Trustees were unaware of many of them. We set forth examples of some of these contracts in the sections of this report that follow.

**(a) Contracts Awarded to the Executive Director's Former Husband**

In reviewing NWCDC contracts, OSC noted several interior design contracts Watkins-Brashear awarded to two firms owned by her former husband, DaWayne Brashear. NWCDC records reveal that between 2008 and 2011, Watkins-Brashear issued NWCDC checks to DaWayne Brashear and his two companies totaling more than \$332,000 for interior design work at NWCDC's rented office space and at City-owned structures located on the watershed property. We found no Board resolutions awarding these contracts, thereby violating NWCDC's Articles of Incorporation.

If NWCDC had been a government agency, Watkins-Brashear's awarding of contracts to her former husband would have violated the Local Government Ethics Law, *N.J.S.A. 40A:9-22.5(c)*. Similarly, NWCDC had adopted its own conflicts of interest policy in its corporate by-laws. That policy provides in relevant part, "No officer, Director or employee of the Corporation shall have a personal interest in any contract with the Corporation or in compensation for work done for or materials or supplies furnished to the Corporation, or to any contractor . . . ." NWCDC policies further provide that any violation of the conflicts of interest policy constitutes grounds for discipline, including suspension or removal. Watkins-Brashear's personal awarding of these contracts to DaWayne Brashear falls within this policy. Nonetheless, no employment

action was ever taken. The Trustees we spoke to stated they were unaware of these contracts at the time.

We also found that Watkins-Brashear alone approved all of these projects as well as any cost estimates and cost overages. We noted in this regard that the invoices prepared by DaWayne Brashear often lacked detail with regard to the work performed. In response to our resulting questions, DaWayne Brashear stated that Watkins-Brashear had confidence in him and thus did not require him to be particularly detailed when submitting his invoices.

On some occasions Watkins-Brashear paid DaWayne Brashear before he actually performed the work in question. DaWayne Brashear explained to us that his company had “cash flow issues” and he needed the money to pay his vendors and bills. He told us that in some instances, he asked Watkins-Brashear to make the payment check payable to him personally. He recalled that in response she told him that “it didn’t look good” and that she had to keep it looking a “particular way.” Nevertheless, he said she often relented and made the checks payable to him personally.

The advance payments to DaWayne Brashear could not have been made had the City itself been directly making these payments. Specifically, the advance payments would have violated *N.J.S.A. 40A:5-16(b)*. That statute provides in pertinent part that “the governing body of any local unit shall not pay out of any of its moneys unless it carries a written or electronic certification of some officer or duly designated employee of the local unit having knowledge of the facts that the goods have been received by, or the services rendered to, the local unit.” Moreover, DaWayne Brashear admitted to OSC that neither of his firms had insurance and that Watkins-Brashear did not require him to provide proof of insurance, even though he was performing work on City-owned property. Under state law, his companies would have been

excluded from bidding on any City projects as a result of his failure to provide proof of workers' compensation insurance. *See N.J.S.A. 34:11-56.52(b); N.J.A.C. 12:62-2.1(c)(7).*

**(b) Contracts Awarded to Others Connected to NWCDC or Watkins-Brashear**

Watkins-Brashear similarly awarded numerous no-bid contracts to others connected either to her or to others at the NWCDC. For example, Watkins-Brashear gave no-bid consulting contracts to a Board Trustee's father, without the knowledge or approval of the full Board. Specifically, NWCDC paid Oscar James, Jr.'s father, Oscar James, Sr., and his firm, The James Group, a total of more than \$162,000 between 2007 and 2010 for various consulting matters. Those matters included attending public meetings to "monitor opposition" to the creation of a municipal utilities authority (MUA) in the City and to assist NWCDC in finding vendors to provide chemicals for the City's water treatment facility. OSC found no Board resolutions awarding these contracts.

James, Sr. explained to OSC that Watkins-Brashear contacted him after the 2006 City mayoral election and told him that the Booker Administration and its then-Business Administrator wanted to make changes at the NWCDC. Specifically, the City was interested in creating an MUA that would replace the NWCDC. According to James, Sr., Watkins-Brashear assigned him the task of determining "what was the real intention of the Administration towards the NWCDC." This became an ongoing assignment consisting in large part of interviews with high-level City officials such as the City's Business Administrator and Corporation Counsel to discern their opinions of and intentions with regard to the NWCDC.

James, Sr. stated that Watkins-Brashear also asked him to bring members of the Newark community to events sponsored by the NWCDC and the City to create an audience with people

more favorable to the NWCDC. He described this activity as community organizing. Other tasks identified in the invoices paid by NWCDC to James, Sr. included “confidentially obtain support for the MUA,” “consult with the entire Newark Municipal Council,” and “opposition research as requested.” James, Sr. indicated to OSC that he believed that the reason he personally was hired to provide these services was so Watkins-Brashear could gain access to the new City Administration through him.

Watkins-Brashear also retained James, Sr. to determine why NWCDC was paying high prices for chemicals and oil for the City’s water treatment facility. James, Sr. told OSC he carried out these responsibilities by performing Google searches, checking industry prices and searching for other reliable vendors. However, when we asked the NWCDC’s Supervising Engineer/manager of the water treatment plant whether he knew about James, Sr.’s research, he said he did not. He questioned the need for such services and stated he never saw any reports from James, Sr.

In our review of these invoices, we also noted that Watkins-Brashear paid James, Sr. in advance for some of his services. No business justification was provided to us for those advance payments. As noted earlier, had NWCDC been a local government entity, it appears those advance payments would have violated state law.

Watkins-Brashear also gave no-bid contracts to firms related to Donald Bernard, a former NWCDC employee. Bernard confirmed to OSC investigators that he owns or has a financial interest in Donald Bernard, Sr. Consulting, Bernard and Associates, and New Beginnings Environmental, LLC. NWCDC paid those entities more than \$780,000 between 2008 and 2010 for purported services such as research and technical assistance, oversight of NWCDC land-use

projects, coordinating ethics training for NWCDC employees, and supervising and monitoring other NWCDC vendors.

Bernard told OSC that after he left employment with the NWCDC in 2006, he learned that Watkins-Brashear had concerns about increased levels of dumping and trespassing on watershed properties. He also thought that the no-hunting/no-trespassing signage on the property needed to be refreshed. According to Bernard, he saw an opportunity and created New Beginnings Environmental with another individual in 2007. Bernard then approached Watkins-Brashear and proposed that his new company would provide debris removal services and install new signage for NWCDC. Bernard told OSC that he suggested a price to Watkins-Brashear and she agreed.

Watkins-Brashear also gave the firms owned by Bernard no-bid contracts to provide technical assistance to NWCDC. That work included acting as a special projects manager, updating the NWCDC's website and performing public relations work. Upon our specific questioning, Bernard was unable to provide additional details concerning that work other than to refer us to the generic invoices he had submitted. Bernard later re-joined NWCDC as an employee.

Watkins-Brashear also awarded no-bid contracts without Board approval to two other companies for landscaping, debris and snow removal services from 2008 to 2011. One of those companies was owned by Edward McRae and the other by Carlos Arocho, both of whom were NWCDC employees when their companies performed some of the work at issue.

McRae became an NWCDC employee in April 2011. OSC found that in June and August of that year McRae's company received a total of \$24,000 from NWCDC for landscaping services. Both Watkins-Brashear and McRae were in violation of NWCDC's



conflicts of interest policy when McRae's company performed this work while he was an NWCDC employee.

In total, NWCDC paid McRae's company nearly \$390,000 between 2008 and 2011. When OSC asked McRae how his company got the contracts with NWCDC, he explained that he had met Watkins-Brashear while working on a political campaign and that "buzz" had been circulating about NWCDC handing out contracts. Although he had no prior experience in the landscaping business, McRae created his company in 2008 so he would be prepared to obtain contracts from the NWCDC. McRae said that he purchased his landscaping equipment only after Watkins-Brashear had awarded him the contracts.

OSC's investigation revealed similar circumstances regarding Arocho Landscaping, which also received no-bid landscaping contracts from NWCDC. Carlos Arocho, the owner of Arocho Landscaping, became an NWCDC employee in June 2011. Subsequently, he signed a contract in September 2011 for his company to perform landscaping and snow removal services for NWCDC. Arocho's company submitted invoices for \$15,000 in both September and October 2011 for those services. Department of Labor and Workforce Development records confirm that Arocho received compensation from the NWCDC as an employee during the same time period, implicating NWCDC's conflicts of interest policy. Nonetheless, no action was taken against Arocho or Watkins-Brashear.

In his response, Arocho claimed that he stopped working as an NWCDC employee in early September 2011 but that he continued to receive paychecks thereafter for hours he had worked up to that date. However, an NWCDC document shows Arocho ceased his employment with NWCDC on October 28, 2011. Like McRae, Arocho told OSC that he initially met

Watkins-Brashear while working on a political campaign. In total, NWCDC paid Arocho Landscaping \$415,500 between 2008 and 2011.

Despite the requirements of NWCDC's Articles of Incorporation, the Board never approved any of these landscaping contracts that we reviewed. The Trustees we spoke to generally stated that they were unaware of these specific contracts or that NWCDC had spent such significant funds on these services.

Board meeting minutes indicate Watkins-Brashear was less than truthful to the Board about these expenses. For example, the minutes indicate that during a Board meeting held on September 15, 2008, Watkins-Brashear told the Board that NWCDC had spent approximately \$50,000 on landscaping services for 17 watershed sites to date that year. However, NWCDC's general ledger and check register for 2008 reveal that NWCDC actually had paid a total of more than \$500,000 to companies performing those services, including some of the companies previously referenced. Similarly, according to the minutes of the Board's January 24, 2011, meeting, Watkins-Brashear told the Board that "on April 11, 2011, the Newark Watershed shall discontinue the snow removal and landscaping services." However, numerous entries in NWCDC's check register well after April 2011 show payments to vendors performing these services.

OSC attempted to interview Watkins-Brashear about these no-bid contracts she awarded. However, she declined to be questioned about those topics, invoking her Fifth Amendment right.

**4. Without the Knowledge or Approval of the Board, the NWCDC Executive Director Loaned Public Funds to a Not-For-Profit Agency Whose President and Chief Executive Officer Was a Sitting Board Trustee**

Without the knowledge or approval of the Board, Watkins-Brashear loaned NWCDC funds to a not-for-profit agency of which a sitting Board Trustee was president and chief executive officer. Specifically, NWCDC Trustee William Merritt is the president and chief executive officer of a Newark-based organization named the National Black United Fund, Inc. (NBUF). NWCDC's Articles of Incorporation require that any loans of NWCDC funds must be authorized by the Board. Nonetheless, on October 7, 2010, Watkins-Brashear loaned \$20,000 of NWCDC funds to NBUF without the knowledge or approval of the full Board. When we asked him about the loan, Merritt stated to us that NBUF needed the funds to meet its operating expenses. NWCDC has not provided any explanation as to how the loan was in the business interest of NWCDC.

The terms of the loan were memorialized in a loan agreement between NWCDC and NBUF. According to those terms, NBUF was not required to pay interest on the loan, but the loan was required to be repaid by April 2011. NBUF ultimately repaid the loan late, by check dated July 27, 2011, without any penalty being imposed.

In securing the loan for NBUF, Merritt may have violated NWCDC's conflicts of interest policy. The pertinent part of that policy states that "No officer, Director or employee of the Corporation shall have a personal interest in any contract with the Corporation . . . or receive any compensation, commission, gift or other reward for his services except the salary or fees established pursuant to law." The policy also provides that officers, directors and employees are prohibited from accepting "any gift, favor . . . or any other thing of value which he knows or has

reason to believe is offered to him with the intent to influence him in the performance of his corporate duties and responsibilities.”

**5. The NWCDC Executive Director Approved Salary Advances and Bonuses for NWCDC Employees Without the Knowledge or Approval of the Board**

OSC also found that Watkins-Brashear approved salary advances and bonuses for NWCDC employees without Board knowledge or approval, despite the fact that those payments were not authorized by NWCDC’s Employee Manual. For example, Watkins-Brashear approved a \$2,242 salary advance for Donald Bernard in 2010 and a \$6,535 salary advance for Bernard in 2011. Similarly, Watkins-Brashear awarded Bernard a \$5,000 bonus in 2011 without Board knowledge or approval. Watkins-Brashear also approved annual bonuses for NWCDC’s Business Manager that were similarly unauthorized by the Employee Manual. The Board Trustees we interviewed told us that they were unaware of any such payments and confirmed that Watkins-Brashear was not authorized to make them.

We further noted in this regard that the Business Manager’s 2012 total compensation at NWCDC far exceeded her reported salary. Specifically, NWCDC reported to us that her 2012 salary was \$47,736, but payroll records show she received approximately \$87,700 that year. She stated to us that the extra payments reflected bonus pay and pay for overtime work. Because the Business Manager had what appears to be managerial status, the law did not require NWCDC to make any overtime payments to her, even if she had worked additional hours. 29 U.S.C.A. § 201 *et seq.* To the contrary, these payments with City-derived funds were made in the sole discretion of Watkins-Brashear.

**6. The NWCDC Executive Director Distributed Public Funds to Community Organizations Without Board Knowledge or Approval**

OSC also found that Watkins-Brashear unilaterally gave hundreds of thousands of dollars in funds from the City to various community organizations of her choosing without Board knowledge or approval. Specifically, from 2008 through 2011, Watkins-Brashear issued NWCDC checks totaling more than \$250,000 to such organizations including charitable and religious institutions.

We noted that a number of the funding recipients had connections to individuals affiliated with the NWCDC. For example, NWCDC employee Donald Bernard is the chairman of the organization that received the majority of the funding. E-mails and Bernard's own statements to OSC investigators confirmed that Bernard personally solicited these contributions from Watkins-Brashear. His conduct violated NWCDC's conflicts of interest policy and should have been grounds for termination. Again, Watkins-Brashear invoked her right to remain silent rather than respond to our questions in this regard.

The City itself was not permitted to make any such charitable contributions, as that use of public funds is barred by the New Jersey State Constitution. *N.J. Const.* art. VIII, § 3, ¶ 2. When we informed the City of these payments, the City confirmed that they were not an appropriate use of City funding.

**7. The NWCDC Executive Director Was Reckless in Her Use of Petty Cash and Other NWCDC Financial Accounts**

OSC's investigation further found that Executive Director Watkins-Brashear authorized numerous payments from NWCDC's petty cash and other financial accounts that either were unsupported by documentation or simply wasteful.

From 2008 through 2011, more than \$498,000 in expenses were classified as either “petty cash” or “miscellaneous” on NWCDC’s general ledger. We examined a sample of those expenditures to determine whether they were supported by appropriate documentation.

The records pertaining to expenses incurred by NWCDC’s executive office in Newark were incomplete and in disarray. For example, the office failed to provide any records to support its 2008 petty cash expenses. With regard to its 2009 expenses, the office produced only copies of NWCDC reimbursement checks with no receipts or other supporting documentation. For other years, in some instances copies of receipts were attached to copies of checks, but the majority of the records consisted of checks and unattached receipts not attributed to any particular check. For instance, in January 2010, petty cash reimbursement checks totaled \$2,100, but the receipts totaled only \$1,155.

We also found that the office routinely categorized expenses as “miscellaneous” despite there being more specific general ledger categories in which to account for those expenses. For example, NWCDC’s ledger entry for “meals” for 2008 through 2011 totaled less than \$2,500. Yet, we found more than \$5,400 in other food expenses charged to the “miscellaneous” category for those years. Further, we found more than \$3,500 in other food expenses categorized as “petty cash” in 2010 alone. Such mischaracterization of entries serves to conceal total expenditures for various types of items and services.

Instead of comprehensively maintaining receipts for items or services purchased, NWCDC frequently documented petty cash expenses simply by memorializing checks issued directly to an NWCDC employee for reimbursement. These checks typically were issued in round dollar amounts, often \$500 or more, as opposed to actual reimbursement amounts. For example, in May 2011, NWCDC issued seven checks in round dollar amounts to its Business

Manager as petty cash reimbursement totaling \$3,900. Yet, the supporting receipts totaled less than \$1,100. The Business Manager was unable to explain the discrepancies in amounts between reimbursement checks and supporting receipts, other than to note that some receipts may have been lost.

In reviewing the receipts that were in NWCDC's files, we found numerous examples of improper or questionable spending by the NWCDC executive office from its petty cash and other financial accounts. For example:

- The receipts maintained in NWCDC's file included items such as diapers, mouthwash, shampoo, deodorant, soda, juice, candy, soup, detergent and dryer sheets. While NWCDC's Business Manager acknowledged that personal care and baby items noted on receipts were comingled with NWCDC purchases, she denied that NWCDC actually reimbursed anyone for these items. However, this is impossible to confirm from an accounting perspective and there are no notes or redactions on any of the receipts.
- NWCDC's records included questionable food-related expenses. For example, we noted a receipt from a distributor in Florida for the purchase of imported drinking water in the amount of \$534. We also found receipts for candy and soda totaling more than \$2,700 for 2010 and 2011.
- In 2010, the NWCDC paid a total of \$2,707 for Watkins-Brashear and seven other NWCDC employees to stay overnight in Atlantic City to attend the annual New Jersey State League of Municipalities Conference. That total included reimbursement for a dinner for twenty individuals which alone cost \$1,410. That meal, paid for with public funds, included lobster, king crab and filet mignon in addition to martinis, margaritas, wine and cognac, and a \$220 tip.
- NWCDC records show that from 2008 through 2011, petty cash "reimbursement" checks totaling \$23,700 were issued to an individual to compensate him for running various errands for Watkins-Brashear, including cashing checks and picking up the newspaper. This individual was not an NWCDC employee. Instead of placing him on the payroll, Watkins-Brashear simply paid him with manual checks.
- NWCDC records show that more than \$4,600 was spent on flowers to decorate NWCDC's Newark office from 2008 to 2011.

When we informed the City of these practices, the City confirmed that these expenditures were not an appropriate use of City funds.

**B. The Board and its Outside Professionals Failed to Ensure the Responsible Expenditure of Public Funds**

The egregious and improper practices set forth in the previous sections of this report led us to seek to determine how these acts were carried out without appropriate oversight. Our findings are set forth below.

**1. The Board Failed to Implement Policies Limiting the Executive Director's Authority to Award Contracts and Issue Corporate Checks**

As part of its duty of reasonable care, the Board had an obligation to put in place appropriate written policies outlining the Executive Director's authority with regard to NWCDC contracts and spending. *See N.J.S.A. 15A:6-14.* The Board failed to institute appropriate contracting and spending policies, which could have prevented many of the acts described above.

For example, NWCDC's Articles of Incorporation specifically require the Board to authorize all NWCDC contracts. During the time periods relevant to this investigation, the Board had not adopted any resolutions delegating to the Executive Director the authority to award contracts without Board approval. Nonetheless, the Board took no action to implement the contract-approval requirements.

In fact, Trustees we interviewed had varying understandings as to the scope of the Executive Director's authority in the area of contracting. For example, one Trustee said that she expected the Executive Director to bring all contracts to the Board for approval. In contrast, the former Board Vice Chair told OSC he was unaware of these requirements and stated that the Board relied on Watkins-Brashear's discretion as to which contracts should be brought before the Board. He stated that his understanding was that Watkins-Brashear could award some



contracts without Board approval. He also believed that contracts for “big ticket items,” such as those related to the MUA and contracts relating to the safety and reliability of the City’s water assets all came before the Board. However, we showed the Vice Chair several awarded contracts that fell into those categories and he was unaware of any of them.

The Board similarly failed to adopt written policies or procedures concerning the issuance of NWCDC checks, including payments made by manual check. Trustees stated to us that in 2011, after our investigation had commenced, the Board instituted a policy requiring two signatories on corporate checks exceeding \$25,000. NWCDC then frequently proceeded, however, to violate any such policy. For example, in 2011 alone, we found that NWCDC issued more than 30 checks with only one signature, which in each case appears to be that of Watkins-Brashear. Those checks included payments for general counsel services, construction services and insurance services. Similarly, in 2013, NWCDC issued Watkins-Brashear’s settlement check with only one signature. Again, that signature appears to be that of Watkins-Brashear.

NWCDC’s by-laws provide that the “Board Treasurer shall supervise the Executive Director in the custody of the corporate funds and securities and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Corporation.” OSC asked Board Treasurer Merritt to describe his duties in this regard. He stated that he merely “reviewed budgets and audits and signed checks that required two signatures or checks needed in an emergency.” In short, even in areas where the Board was specifically charged with oversight responsibilities, there is no evidence that those responsibilities were discharged in a comprehensive or substantive way.

## **2. NWCDC Operated in Violation of its Articles of Incorporation**

As noted previously, NWCDC's Articles of Incorporation provide that the Board shall consist of seven to eleven members. The members are to include the City's mayor, *ex officio*, two members of the Council, and up to eight others (but not less than four) appointed by the mayor with the advice of the Board and the advice and consent of the Council.

We noted that from July 18, 2011 through the Board's vote to dissolve on March 25, 2013, the Board operated in violation of its Articles of Incorporation by failing to have the minimum required number of trustees. Specifically, the Board had only five trustees, two short of the minimum number required. Moreover, according to Board meeting minutes, only three Trustees actually appeared for Board meetings from October 2011 through March 25, 2013. Notwithstanding the lack of trustees, the Board approved numerous significant resolutions, including resolutions awarding new employment contracts for the Executive Director, a resolution amending the NWCDC's Articles of Incorporation, resolutions awarding consulting contracts, a resolution approving a generous settlement package for the Executive Director and the resolution dissolving the NWCDC. While under state law these actions had legal effect because a quorum was present, the actions were nonetheless taken without the minimum number of trustees required by NWCDC's Articles of Incorporation.

We asked NWCDC's General Counsel, Elnardo Webster, whether he was aware the Board was approving these resolutions in violation of its Articles of Incorporation. He stated that he did not become aware of that issue until September 2012. Even after that point, the Board continued to approve resolutions in violation of its Articles of Incorporation through its vote to dissolve in March 2013.

As General Counsel, Webster had an obligation to ensure that the Board was operating according to its Articles of Incorporation. He failed to meet that obligation by allowing the Board to consider and vote on resolutions for more than 18 months despite not having the required minimum number of trustees.

Further, as noted previously, the NWCDC awarded numerous no-bid contracts. Those contract awards similarly violated NWCDC's Articles of Incorporation, which indicate that the NWCDC is to award contracts pursuant to the LPCL. As General Counsel, Webster should have ensured that the Board's contracting practices were consistent with its Articles of Incorporation, but he did not do so.

**3. NWCDC's Accountant and Independent Auditor Failed to Effectively Discharge Their Obligations to the Board and the NWCDC**

**(a) NWCDC's Accountant Failed to Meet His Obligations Under His Contract with the NWCDC**

OSC similarly found that Walter Frye, with whom NWCDC contracted to provide accounting services, failed to discharge all of his obligations under his contract with NWCDC. As set forth more fully below, some of those obligations related directly to the safekeeping of NWCDC funds.

Frye is a Certified Public Accountant and has provided accounting services to the NWCDC since 1999. Pursuant to the terms of the only contract provided to OSC, Frye had the obligation to "[i]mplement and maintain financial system benchmarks" for NWCDC to include "[e]ffective control over [and] accountability for all funds and assets." In his response to a draft of this report, Frye contended that the document setting forth those obligations was only a proposal that had not been accepted by the Board. We note, however, that there is a contract signed by both Frye and Watkins-Brashear specifically setting forth those obligations.

Frye failed to implement appropriate controls over NWCDC's funds and assets. For example, as discussed earlier, Frye knew that Watkins-Brashear was issuing manual payroll checks to herself in addition to the bi-weekly automated checks from NWCDC's payroll vendor. Nonetheless, he did not seek to implement procedures or take other appropriate action to cease that practice. He did not bring the practice to the attention of the Board or even seek to have NWCDC document its policies in this regard.

Frye's contract also required him to "[r]eview approved purchase orders, invoices, contracts and prepare checks for signature by [the] Executive Director in accordance with approved accounts payable schedule[s]." While the contract appears to envision for him a substantive fiduciary role, Frye described to us that in reality his duties were more ministerial and included "bookkeeping, bank reconciliations, budgeting and after-the-fact accounting." He explained that after Watkins-Brashear took over as Executive Director, he began to pay NWCDC's bills based solely upon invoices provided to him by NWCDC's Business Manager. He admitted that he generally did not conduct any further investigation to determine whether the payment was appropriate. For example, he told OSC that he did not check invoices against the terms of any vendor contracts, although his contract appears to have required him to do so. In his response, Frye stated that he was unable to conduct such a review because NWCDC did not provide him with access to vendor contracts.

Thus, Frye failed to implement effective internal controls at NWCDC, and in so doing, he contributed to the deficiencies in those controls. These deficient controls facilitated the improper financial practices previously discussed.

**(b) NWCDC's Independent Auditor Failed to Properly Prepare NWCDC's Federal Form 990 to Include Relevant Investment Information**

The transparency of the misconduct at NWCDC was further obscured by actions of the NWCDC's independent auditor, Lawrence Belcher.

The Internal Revenue Service (IRS) has determined that the NWCDC qualifies as a not-for-profit organization that is exempt from paying federal income taxes. Pursuant to the requirements of federal law, the NWCDC is instead required to file annually with the IRS a Federal Form 990 that sets forth its gross income, gross receipts, and disbursements, and that accounts for all sales of securities, including gains and losses, investment fees and interest. 26 *C.F.R.* 1.6033-2; Instructions to Federal Form 990.

NWCDC hired Belcher to complete its annual independent audits and prepare its Federal Form 990s. Belcher has performed that role for NWCDC for most years since 1973. OSC found that Belcher failed to include complete information about NWCDC's investments as required by Form 990's instructions. For example, in 2008, Belcher failed to disclose any sales of securities and that the NWCDC had paid its broker \$53,900 in commissions and fees and \$21,691 in margin interest that year. By failing to include such information, the full extent of NWCDC's investment activity that year would not have been apparent to anyone reviewing the Form 990.

In his response to a draft of this report, Belcher stated that he followed trust fund Generally Accepted Accounting Principles (GAAP) in preparing NWCDC's Form 990s. However, Belcher's explanation would not excuse him from including disclosures required by Form 990. More diligent action by NWCDC's independent auditor might have avoided some of the misconduct at the NWCDC that our investigation revealed.

**C. The City Awarded Contracts to the NWCDC in Violation of the LPCL and Failed to Properly Oversee Those Contracts**

**1. The City's No-Bid Contracts with the NWCDC**

During the course of this investigation, OSC further found that the City violated the LPCL in its award of contracts to NWCDC. Thus, aside from the improper expenditures with City funds previously discussed, NWCDC was not even a bona fide City vendor.

New Jersey statutory law at *N.J.S.A.* 40A:11-4 generally requires local governments to advertise available contracts for services and goods and to award those contracts to the lowest responsible bidder. The LPCL provides several exceptions to that rule, including an exception where the local government cannot adequately describe the services in bid specifications because those services are “extraordinary and unspecifiable” (EUS). *N.J.S.A.* 40A:11-5(1)(a)(ii). In order to utilize the EUS exception, the contracting agency must demonstrate in writing that it is unable to prepare written specifications describing the nature of the services required. *N.J.A.C.* 5:34-2.3.

As noted previously, the City has awarded contracts to the NWCDC for the management, planning, conservation and development of the watershed properties. Each of those contracts we reviewed from 2008 to 2011 were awarded without public bidding and contrary to state law.

For example, in 2008, the City awarded the NWCDC a two-year no-bid contract for approximately \$8.4 million using the EUS exception. The City awarded the NWCDC similar one-year contracts in 2010 and 2011, again using the EUS exception. Those contracts were valued at approximately \$5.2 million and \$5.7 million respectively. In each instance, the City's procurement process violated the LPCL. Specifically, the City should not have utilized the EUS exception as a basis for making the no-bid awards because these services were neither extraordinary nor unspecifiable. Under these contracts, the NWCDC essentially acted as a

property manager, issuing recreation permits and awarding various subcontracts for landscaping services, building renovations, road work, tree cutting and security services. The NWCDC also awarded subcontracts to a law firm to handle tax appeals concerning the watershed properties. There is no reason why the City could not have prepared specifications describing those services. In fact, after this investigation commenced, the City ultimately drafted the necessary specifications in 2012 when it advertised a request for proposals (RFP) for these same services the NWCDC had been performing. The NWCDC was the only bidder in response to that RFP.

During our review period, the City also awarded a three-year no-bid contract to the NWCDC to manage and operate its water treatment facility and its water storage reservoirs. We found that the City violated the LPCL in making that award as well.

Specifically, in April 2009, the Council approved a resolution awarding a three-year water supply services contract to the NWCDC valued at \$4.8 million for the first year, \$5.1 million for the second and \$5.3 million for the third. The City's procurement documents state that the City awarded the contract without advertising pursuant to an exception set forth in *N.J.S.A. 40A:11-5(1)(z)*. That statutory section permits a local government to negotiate and award a contract to provide water supply services pursuant to the requirements of the New Jersey Water Supply Public-Private Contracting Act, *N.J.S.A. 58:26-19*. However, that statute does not provide a legal basis for the City to award a no-bid contract to a not-for-profit entity such as the NWCDC. Rather, the statute governs contracts between a public entity and a private, for-profit company for the provision of water supply services.

The LPCL does provide a separate exception from advertising requirements for contracts between a public entity and a not-for-profit entity for the provision of water supply services. *N.J.S.A. 40A:11-5(1)(gg)*; *N.J.S.A. 40A:11-5.1*. However, those provisions set forth several

requirements that the government entity must satisfy before awarding such a contract, and none of those requirements were satisfied by the City. Those requirements include, among other things, providing public notice and a public hearing on the proposed contract and then obtaining approvals from the state Department of Community Affairs and the state Board of Public Utilities. We found no evidence that the City satisfied any of these requirements.

## **2. The City Failed to Oversee its Contracts with the NWCDC**

OSC further found that the City failed to properly oversee its contracts with the NWCDC after it awarded them, although several legal mechanisms had been put in place for it to do so. That failure permitted the NWCDC to misspend the public funds it had received and improperly expand the scope of its contracts with the City.

In establishing the NWCDC, the City provided for a built-in oversight mechanism by ensuring its representation on the Board itself. Specifically, the NWCDC's Articles of Incorporation and by-laws provide that the City's mayor is an *ex officio* Board Trustee and also acts as its chair. As chair, the mayor has a lead role in ensuring the Board properly manages the affairs of the NWCDC, sets appropriate policies and responsibly spends taxpayer funds. Notwithstanding that role, we found that during the time period covered by this investigation then-Mayor Cory Booker did not attend any Board meetings. The then-Mayor told OSC that he is an *ex officio* member of numerous boards and commissions, and did not personally participate on all of them in light of time constraints. He stated that with respect to the NWCDC, he relied on the City's Business Administrator to attend Board meetings on his behalf. However, that individual resigned from the City's employment and the Board in May 2010 and the Mayor never designated a replacement.



When we asked the then-Mayor about the lack of Board members, he said that he had difficulty moving Board nominees through the Council. We note, however, that the Mayor held the seat *ex officio* and thus did not need the advice and consent of the Council to designate an alternate for himself.

In addition to the Board membership provisions, two City ordinances require the NWCDC to file with the City various documents and financial reports. However, NWCDC generally ignored these requirements and the City failed to require that NWCDC actually submit these documents.

For example, *Newark Municipal Ordinance 2:3-1.13(a), (b)* requires the NWCDC to submit to the City Clerk copies of its Board meeting agendas and minutes on a monthly basis, as well as its annual audited financial statements. Failure to comply with these requirements constitutes grounds for the City to withhold funding to the NWCDC. *See Newark Municipal Ordinance 2:3-1.13(c)*. Nonetheless, the City advised us that it has no record that the NWCDC filed any such Board agendas or meeting minutes. Moreover, the City did not receive NWCDC's audited financial statements until February 7, 2011, when the statements from 2005 through 2009 were filed.

Similarly, *Newark Municipal Ordinance 2:7-2.2(g)* requires that NWCDC file its annual certified audit with the City's Director of Finance and with the City Clerk. That ordinance also requires the NWCDC Executive Director to report semi-annually to the City's Director of Finance on the financial status of the NWCDC. We interviewed the City's current Director of Finance, who started with the City in July 2010, with regard to those requirements, with which NWCDC had not complied. She told us that she first learned of the ordinance in January or February 2012. She stated that she then contacted Watkins-Brashear in early 2012 and requested

NWCDC's financial statements and annual audit. However, according to the finance director, Watkins-Brashear questioned why she needed those documents and never provided them. The finance director stated that she never followed up on her request.

In its response to a draft of this report, the City claimed that it believed the NWCDC was appropriately discharging its obligations under its contracts and that the City had no reason to believe otherwise. The City further maintained that it relied on Watkins-Brashear and NWCDC's hired professionals to act responsibly and in the City's best interests.

The City's oversight also was impaired by the City's failure to appoint a permanent director of the City's Water and Sewer Department to oversee the contracts with the NWCDC. *See N.J.S.A. 40:69A-43(b)* (requiring that each municipal department "shall be headed by a director, who shall be appointed by the mayor with the advice and consent of the council"). Instead of hiring a permanent director approved by the Council, for many years the City has maintained an Acting Director of the Water and Sewer Department. Prior to his appointment, the current Acting Director had held positions in the City's Department of Neighborhood Services and Recreation, Department of Child Welfare and the Business Administrator's office. The Acting Director stated to us that he does not hold any technical degrees or certifications relevant to the operation of a water or sewer department. When we asked him about his duties within the department, he said that he tends to focus on billing and collections matters. He further stated that he relies heavily on an NWCDC paid consultant to run the department's day-to-day operations.

NWCDC's paid consultant confirmed to us that he oversees the department's daily operations. As part of those responsibilities, he prepares department budgets, signs requisitions and appears before the Council on matters concerning the City's water and sewer assets.

Although he is a paid NWCDC consultant and not a City employee, he also signed an EUS certification on behalf of the City in connection with one of the contracts between the City and NWCDC. In this regard, OSC noted numerous references in Board meeting minutes referring to NWCDC's consultant as the City's Director of Water and Sewer or indicating that he was running the department. By failing to appoint a permanent director and instead delegating to an NWCDC vendor the responsibility of operating the Water and Sewer Department (and supervising the NWCDC itself), the City further removed the NWCDC from any meaningful City oversight.

The City, in its response, maintained that it was focused on the creation of an MUA at that time and not the appointment of a permanent director of its Water and Sewer Department.

Perhaps as a result of the lack of City oversight, beginning in 2008 and through 2011 the amounts NWCDC received under its contracts with the City grew dramatically from \$7.8 million to \$11 million, while its prescribed services to the City remained the same. We noted that many of these increased costs stemmed from various professional services, including legal, accounting and auditing services. NWCDC internal documents and meeting minutes suggest the increase was the result of additional work related to the proposed creation of an MUA during that period. However, OSC found no contracts or other agreements between the City and the NWCDC authorizing those additional services or expenditures.

The table below sets forth the increase in NWCDC payments we noted for selected professional services for the time period of 2007 through 2011.

	<b>General Counsel Services (Elnardo Webster)</b>	<b>Accounting Services (Walter Frye)</b>	<b>Auditing Services (Lawrence Belcher)</b>
<b>2007</b>	\$98,689	\$34,140	\$43,980
<b>2008</b>	\$301,277	\$38,200	\$141,470
<b>2009</b>	\$184,906	\$42,650	\$98,200
<b>2010</b>	\$298,436	\$76,100	\$116,213
<b>2011</b>	\$206,009	\$102,475	\$90,830

With regard to general counsel services, Webster stated to OSC that the Board had approved a contract authorizing him to provide legal services related to the MUA, separate from his contract to act as General Counsel. However, the parties were unable to produce a copy of any such contract. Instead, NWCDC produced one Board resolution, dated November 19, 2007, authorizing NWCDC to expend \$50,000 for such services. During the time period of 2007 to 2010, Webster's actual MUA-related services exceeded that amount by more than \$400,000.

We also asked NWCDC for contracts authorizing Frye to perform services related to the MUA or other additional work. In response, NWCDC produced one contract for Frye's services covering the period of March 1, 2007 to February 28, 2008, but that contract makes no mention of any such additional work. In the contract, Frye estimates spending 24 hours per month for NWCDC at a cost of \$3,000 for various accounting services. Consistent with that estimate, we found that from 2007 through 2009, Frye billed the NWCDC \$3,000 per month for his services. However, Frye's monthly invoices increased to \$3,500 in 2010 and in 2011, they increased to \$8,000 per month.

Similarly, Belcher attributed his increased costs following 2007 to work concerning the MUA. However, there is no Board authorization approving this additional work, even though NWCDC approved invoices for Belcher that included work related to the MUA.

As discussed earlier in this report, Frye had the responsibility to review NWCDC invoices and contracts to ensure payment was appropriate. Frye failed to discharge that responsibility yet again with regard to these services provided to the NWCDC.

In its response to this report, the City did not dispute the increased costs set forth above or that those costs were beyond the scope of its contracts with the NWCDC. The City did, however, deny that the rising costs were due to a lack of oversight. Instead, it maintained that the costs were reportedly the result of increases in property taxes, fees associated with the creation of an MUA and operational costs.

#### **IV. Recommendations**

To provide guidance to New Jersey public officials, government agencies and the non-profit entities with whom they contract, OSC recommends the following.

New Jersey government units that contract with a vendor to provide essential services should have in place appropriate policies and procedures concerning supervision of the vendor in its expenditure of public funds. For example, the government agency should assign a contract manager who is authorized, qualified and personally responsible for supervising all matters relating to the contract, such as contract activities and progress, ensuring that necessary documentation is provided to appropriate government personnel, and reviewing and monitoring expenditures as appropriate. The agency should take steps to ensure that the contract vendor has instituted appropriate policies and internal controls to guide its management in the responsible expenditure of public funds. Those controls should govern, for example, issuance of corporate checks, use of a petty cash account and use of a general ledger and other accounting documentation.

The government unit also should take steps to ensure that the contract itself includes provisions designed to protect the interests of the public, such as clear and unambiguous language detailing the vendor's scope of work and other obligations. In cases where the contract amount is not known at execution, the entity should include "not to exceed" language to protect against unwarranted expenditures of the taxpayer funds at issue.

Where the vendor is a non-profit entity receiving a majority of its funding from the government agency, the agency should consider further steps to ensure that the entity is not used simply as a means to avoid protective measures that would be imposed upon the government agency by law if it performed the service itself. These steps could include ensuring that the

entity is awarding contracts pursuant to public contracting laws or through similarly transparent and competitive means. Guidance and best practices in this regard may be found in previous OSC reports, such as OSC's March 4, 2010 report entitled *Best Practices for Awarding Service Contracts*.

The government agency's monitoring also should include review of the vendor's annual audits and financial statements. Based on the findings of previous OSC reports, consideration also should be given to requiring the vendor to periodically rotate its independent auditor. The vendor also should be required to adhere to high ethical standards in awarding contracts and expending public funds. Steps should be taken to eliminate or mitigate potential or actual conflicts of interest to ensure public confidence in the contracting and expenditure processes.

The government agency also should consider imposing limitations on the compensation to be provided to the non-profit entity's executive director or other management officials. Consideration may be given in this regard to the salary structure and compensation provided to New Jersey public-sector employees, as well as to compensation limitations the state Department of Human Services has imposed on its vendors. *See* Department of Human Services Policy Circular P2.01. The government agency also should consider imposing restrictions on the not-for-profit entity's investment activities to ensure the entity is not using taxpayer funds for inappropriate investments. The Legislature and Governor should consider enacting legislation in this regard.

The performance of government services by a non-profit or other vendor can often lead to greater efficiencies in the delivery of those services. The public should remain vigilant, however, in providing scrutiny to ensure that the relaxed legal standards that apply in those circumstances do not result in waste or misuse of public funds.

**V. Referrals**

In view of the findings of this investigation, OSC is referring this report to law enforcement and other regulatory agencies to ensure that the culpable parties are sanctioned as warranted by law. Specifically, the findings of this investigation are being referred to the state's Division of Criminal Justice, the New Jersey Bureau of Securities, the state Division of Taxation and the Internal Revenue Service.