

City of Glendale Council Special Workshop & Executive Session Agenda

November 5, 2012 – 9:30 a.m.

Regular workshop meetings are telecast live at 1:30 p.m. on the first and third Tuesday of the month. Repeat broadcasts are telecast the first and third week of the month – Wednesday at 3:00 p.m., Thursday at 1:00 p.m., Friday at 8:30 a.m., Saturday at 2:00 p.m., Sunday at 9:00 a.m. and Monday at 2:00 p.m. on Glendale Channel 11.

Welcome!

We are glad you have chosen to attend this City Council workshop. We hope you enjoy listening to this informative discussion. At these “study” sessions, the Council has the opportunity to review and discuss important issues, staff projects and future Council meeting agenda items. Staff is present to answer Council questions.

Form of Government

Glendale follows a Council-Manager form of government. Legislative policy is set by the elected City Council and administered by the Council-appointed City Manager.

The City Council consists of a Mayor and six Councilmembers. The Mayor is elected every four years by voters city-wide. Councilmembers hold four-year terms with three seats decided every two years. Each of the six Councilmembers represent one of the six electoral districts and are elected by the voters of their respective districts (see map on back).

Workshop Schedule

Council workshops are held on the first and third Tuesday of each month at 1:30 p.m. in the Council Chambers of the Glendale Municipal Office Complex, 5850 W. Glendale Avenue, Room B-3, lower level. The exact dates of workshops are scheduled by the City Council at formal Council meetings. The workshop agenda is posted at least 24 hours in advance.

Agendas may be obtained after 4:00 p.m. on the Friday before a Council meeting, at the City Clerk's Office in the Municipal Complex. The agenda and supporting documents are posted to the city's Internet web site, www.glendaleaz.com.

Executive Session Schedule

Council may convene in “Executive Session” to receive legal advice and discuss land acquisitions, personnel issues, and appointments to boards and commissions. As provided by state statute, this session is closed to the public.

Questions or Comments

If you have any questions or comments about workshop agenda items or your city government, please call the City Manager's Office at (623) 930-2870.

If you have a concern you would like to discuss with your District Councilmember, please call (623) 930-2249, Monday - Friday, 8:00 a.m. – 5:00 p.m.

Public Rules of Conduct

The presiding officer shall keep control of the meeting and require the speakers and audience to refrain from abusive or profane remarks, disruptive outbursts, applause, protests, or other conduct which disrupts or interferes with the orderly conduct of the business of the meeting. Personal attacks on Councilmembers, city staff, or members of the public are not allowed. Engaging in such conduct, and failing to cease such conduct upon request of the presiding officer will be grounds for removal of any disruptive person from the meeting room, at the direction of the presiding officer.

Citizen Participation

The City Council does not take official action during workshop sessions. These meetings provide Council with an opportunity to hear a presentation by staff on topics that may come before Council at a voting meeting. There is no Citizen Comments portion on the workshop agenda.



**** For special accommodations or interpreter assistance, please contact the City Manager's Office at (623) 930-2870 at least one business day prior to this meeting. TDD (623) 930-2197.**

**** Para acomodacion especial o traductor de español, por favor llame a la oficina del administrador del ayuntamiento de Glendale, al (623) 930-2870 un día hábil antes de la fecha de la junta.**

Councilmembers

Norma S. Alvarez - Ocotillo District
Vacant - Cactus District
Manuel D. Martinez - Cholla District
Joyce V. Clark - Yucca District
Yvonne J. Knaack – Barrel District



MAYOR ELAINE M. SCRUGGS

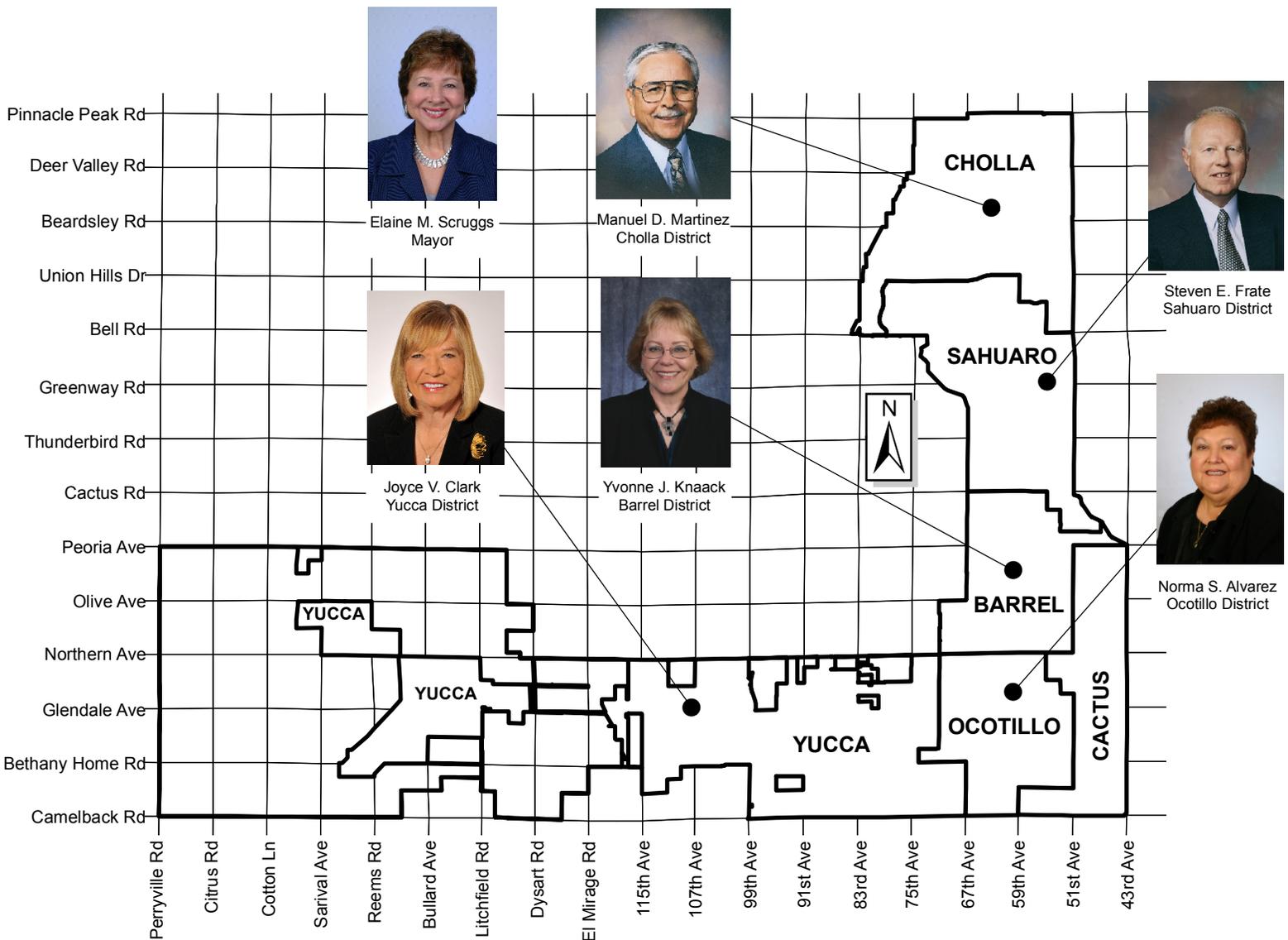
Vice Mayor Steven E. Frate - Sahuaro District

Appointed City Staff

Horatio Skeete – Acting City Manager
Craig Tindall – City Attorney
Pamela Hanna – City Clerk
Elizabeth Finn – City Judge



Council District Boundaries





GLENDALE CITY COUNCIL SPECIAL WORKSHOP SESSION
Council Chambers - Workshop Room
5850 West Glendale Avenue
November 5, 2012
9:30 a.m.

One or more members of the City Council may be unable to attend the Special Workshop and Executive Session Meeting in person and may participate telephonically, pursuant to A.R.S. § 38-431(4).

WORKSHOP SESSION

1. 2012 AUDIT OF THE RISK MANAGEMENT TRUST FUND
PRESENTED BY: Horatio Skeete, Acting City Manager

CITY MANAGER'S REPORT

This report allows the City Manager to update the City Council. The City Council may only acknowledge the contents to this report and is prohibited by state law from discussing or acting on any of the items presented by the City Manager since they are not itemized on the Council Workshop Agenda.

EXECUTIVE SESSION

1. LEGAL MATTERS
 - A. The City Council will meet with the City Attorney for legal advice, discussion and consultation regarding the city's position in pending or contemplated litigation, including settlement discussions conducted in order to avoid or resolve litigation. (A.R.S. § 38-431.03(A)(3)(4))
 - B. The City Council will meet with the City Attorney for legal advice, discussion and consultation regarding the 2012 Audit of the Risk Management Trust Fund and other matters reflected therein. (A.R.S. § 38-431.03(A)(2)(3))

2. LEGAL MATTERS – PROPERTY & CONTRACTS

- A. Discussion and consultation with the City Attorney and City Manager to receive an update, consider its position and provide instruction and direction to the City Attorney and City Manager regarding Glendale’s position in connection with agreements associated with the Arena and the Hockey Team, which are the subject of negotiations. (A.R.S. § 38-431.03(A)(3)(4)(7))

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) discussion or consideration of personnel matters (A.R.S. § 38-431.03(A)(1));
- (ii) discussion or consideration of records exempt by law from public inspection (A.R.S. § 38-431.03(A)(2));
- (iii) discussion or consultation for legal advice with the city’s attorneys (A.R.S. § 38-431.03(A)(3));
- (iv) discussion or consultation with the city’s attorneys regarding the city’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. § 38-431.03(A)(4));
- (v) discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. § 38-431.03(A)(5)); or
- (vi) discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.0 (A)(7)).

Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. § 38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys’ fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced for violation of the statute unless the City Council takes a legal action at a properly noticed open meeting to approve of such expenditure prior to incurring any such obligation or indebtedness. A.R.S. § 38-431.07(A)(B).

Items Respectfully Submitted,



Horatio Skeete
Acting City Manager



CITY COUNCIL REPORT

Meeting Date: **11/5/2012**
Meeting Type: **Workshop**
Title: **2012 AUDIT OF THE RISK MANAGEMENT TRUST FUND**
Staff Contact: **Horatio Skeete, Acting City Manager**

Purpose and Policy Guidance

This is an opportunity for Council to discuss the 2012 Audit of the Risk Management Trust Fund.

Background Summary

On October 4, 1983, Council adopted Ordinance No. 1254 New Series establishing a Risk Management Loss Trust Fund. On March 8, 1994, Council adopted Resolution No. 2880 New Series authorizing the City Manager to establish a self-funded Workers' Compensation program for the City of Glendale. On December 13, 1994, Council adopted Ordinance No. 1826 New Series amending the Code of the City of Glendale, Chapter 2, Article V, Sections 2-201 through 2-215 to include a Workers' Compensation Trust Fund.

The fund is managed by the Risk Management Division in the Human Resources and Risk Management Department. Risk Management's mission is to protect human resources and assets of the city from injury, loss or damage through effective loss control and prevention programs and provide an environment that is a safe place to live and work.

As part of the approved annual audit plan, the City Auditor's Office completed an audit of the Risk Management Trust Fund in June 2012.

Attachments

Ordinance No. 1254 New Series

Resolution No. 2880 New Series

Ordinance No. 1826 New Series

Other

ORDINANCE NO. 1254 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, CREATING A RISK MANAGEMENT LOSS TRUST FUND; PROVIDING FOR THE APPOINTMENT OF TRUSTEES; ESTABLISHING AUTHORITY AND PROCEDURES FOR THE HANDLING OF CLAIMS; AND DECLARING AN EMERGENCY

SECTION 1. That a fund be established for the payment of defense, losses, anticipated losses and premiums for the purpose of insurance and that such fund shall not be used for any other purpose. The amount of money to be appropriated to the fund will be based on:

- A. Losses incurred in the past
- B. Projected exposure of risk assumed
- C. Insurance premium costs

SECTION 2. That the following terms shall have said definitions:

1. "City" means the City of Glendale, Arizona, including public officials, boards, commissions, employees and supervised volunteers while performing duties for the City within the scope of employment.

2. "Liability Loss" means defense and damages for losses to persons or property for which the City is liable.

3. "Property" means buildings and other improvements to real estate, inventories, vehicles and equipment but not shrubbery, landscaping, traffic signals, street improvements and water and sewer lines.

4. "Property Loss" means damage to tangible City-owned property by an accidental event but not property of officials, boards, commissions, employees or volunteers.

SECTION 3. The Loss Trust Fund shall provide defense and payment of claims for property, liability, losses and payment of insurance premiums subject to the following exceptions:

1. Claims or punitive damages arising out of the willful violation of a penal statute or ordinance.

2. Claims arising out of acts of bad faith and/or fraud committed by or at the direction of an individual with affirmative dishonesty or actual intent to deceive or defraud.

3. Claims which are covered by a valid insurance policy or which shall be deemed uninsurable under law.

4. Any claim based upon an individual gaining in fact any personal profit or advantage to which they were not legally entitled.

5. Any claim when a service was allegedly rendered for compensation from a source other than the City of Glendale and when the City is not liable.

6. Inventory shrinkage and damages to City property that has customarily been repaired by City employees.

7. Lost wages not covered under the Workers' Compensation Laws of the State of Arizona or any other state.

SECTION 4. That the City Council shall appoint five (5) joint trustees, of whom no more than one shall be a member of the City Council and no more than one may be a City employee. The trustees shall be responsible for recommendations to the City Council regarding the administration of the trust fund. The trustees shall meet at least once a year and submit a report to the City Council as to the status of the trust fund. Such report shall include recommendations the trustees deem necessary. The trustees shall be bonded in a minimum amount of \$10,000.00. Costs for bonding will be paid by the City of Glendale.

The trustees shall be appointed for terms of three (3) years and a chairman shall be designated by the Mayor.

SECTION 5. That the City shall designate a Risk Manager who shall be licensed pursuant to Title 20, Chapter 2, Arizona Revised Statutes. The Risk Manager, in matters of claims and litigation, will maintain a client/attorney relationship with an attorney or attorneys representing the City. The decision to effect claims and lawsuit settlements or to try lawsuits rests with the Risk Manager subject to the approval of the City Attorney.

SECTION 6. That claims management and lawsuit fiscal responsibility rests with the Risk Manager. The responsibility for response to questions of law and trial legal services rests with the City Attorney.

SECTION 7. That the Risk Manager, with the approval of the City Manager shall have the authority to settle claims against the City up to the amount of the insurance policy self retention.

SECTION 8. That the Risk Manager shall consult with the City Attorney when claims are likely to involve litigation. The City Attorney may provide defense for damage suits against the City if he determines that his department has the necessary expertise in that particular area of defense.

SECTION 9. That claims referred to outside law firms for defense shall be the responsibility of the City Attorney.

Referral to particular outside firms shall be based upon their expertise and experience in the particular type of litigation and past performance. Expenses for the above shall be charged to the Loss Fund.

SECTION 10. That the City shall purchase excess insurance above the risk retention limit determined by the City Council.

SECTION 11. That expenditures during the fiscal year from the trust fund and monies in the trust fund at the close of the fiscal year shall not be subject to the provisions of Title 42, Chapter 2, Article 4, Arizona Revised Statutes. An audit shall be performed annually by an external auditor and said report shall be kept on file for a minimum of five (5) years.

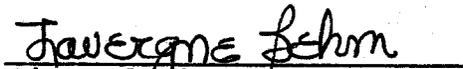
SECTION 12. WHEREAS, the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety of the City of Glendale, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage, adoption and approval by the Mayor and Council of the City of Glendale, and it is hereby exempt from the referendum provisions and laws of the State of Arizona.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 4th day of October, 1983.

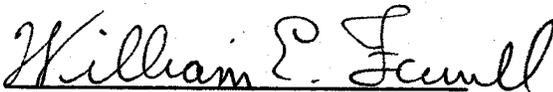


George R. Renner
M A Y O R

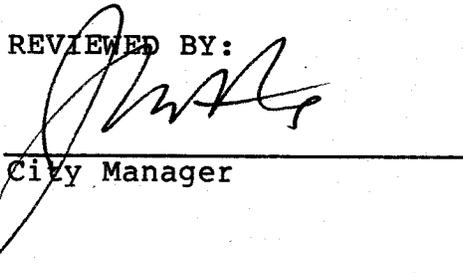
ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

RESOLUTION NO. 2880 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO REQUEST THAT THE INDUSTRIAL COMMISSION OF ARIZONA AUTHORIZE THE CITY OF GLENDALE TO PROVIDE WORKER'S COMPENSATION BENEFITS DIRECTLY THROUGH SELF FUNDING; AND, AUTHORIZING THE CITY MANAGER TO ESTABLISH A SELF-FUNDED WORKER'S COMPENSATION PROGRAM FOR THE CITY OF GLENDALE.

WHEREAS, Arizona Revised Statutes, Title 23, Chapter 6, requires that employers in the State of Arizona secure worker's compensation benefits to their employees by providing either insurance or a self-funded worker's compensation program; and

WHEREAS, the Council of the City of Glendale has determined it to be in the best interest of the City and its employees to seek approval and qualification from the Industrial Commission of Arizona for the City of Glendale to be a self-funded worker's compensation employer.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

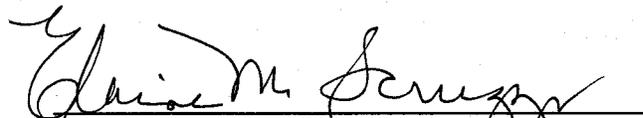
SECTION 1. That the City Manager is hereby authorized to execute all applications, forms or other documents requesting authorization from the Industrial Commission of Arizona for the City of Glendale to provide worker's compensation benefits through a self-funded program.

SECTION 2. That the City Manager is hereby authorized to execute all documents required by the Industrial Commission of Arizona, or other regulatory agencies, exhibiting the City of Glendale's guarantee to satisfy worker's compensation benefits, in compliance with A.R.S. Secs. 23-901 et seq., from the self-funded program of the City of Glendale.

SECTION 3. That the City Manager is hereby directed to establish a worker's compensation self-funded program for the City of Glendale which will comply with all applicable laws of the State of Arizona and all rules, regulations and policies of the Industrial Commission of Arizona.

SECTION 4. That the City of Glendale shall allocate adequate resources to administer, manage and supervise a worker's compensation self-funded program and demonstrate satisfactory proof of financial ability to pay compensation directly in the amount and manner and when due as provided by law or the Industrial Commission of Arizona.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 8th day of March, 1994.


MAYOR

ATTEST:


City Clerk

(SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

PUBLISHED: THE GLENDALE STAR
March 10, 1994

POSTED: March 4, 1994

ORDINANCE NO. 1826 NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING THE CODE OF THE CITY OF GLENDALE, CHAPTER 2, ARTICLE V, SECTIONS 2-201 THROUGH 2-215 ESTABLISHING A WORKERS' COMPENSATION TRUST FUND AND PROVIDING FOR ITS ADMINISTRATION; AND DECLARING AN EMERGENCY.

WHEREAS, by Resolution No. 2880, New Series, the Council of the City of Glendale authorized the City Manager to establish a self-funded workers' compensation program for the City of Glendale; and

WHEREAS, the Council of the City of Glendale hereby determines it to be in the best interest of the City that a separate workers' compensation trust fund be established for the payment of defense, losses, anticipated losses and insurance premiums related to workers' compensation claims and expenses.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That the Code of the City of Glendale, Chapter 2, Article V, Sections 2-201 through 2-215 are hereby amended to read as follows:

DIVISION 5. RISK MANAGEMENT LOSS
TRUST FUND AND WORKERS' COMPENSATION
TRUST FUND

Sec. 2-201. Definitions.

Liability **RISK MANAGEMENT** loss: Defense and damages for losses to persons or property for which the city is liable.

WORKERS' COMPENSATION LOSS: DEFENSE, LOSSES, DAMAGES, AND AWARDS BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR INJURIES INCURRED BY AN EMPLOYEE OR VOLUNTEER AS COVERED BY THE ARIZONA WORKERS' COMPENSATION LAWS AND STATUTES.

Sec. 2-202. Established; size.

(a) A fund to be known as the "**less RISK MANAGEMENT** trust fund" established for the payment of defense, losses, anticipated losses and **INSURANCE** premiums ~~for the purpose of insurance~~ **RELATED TO LOSSES FOR PERSONAL INJURY OR PROPERTY DAMAGE**, and that such fund shall not be used for any other purpose. The amount of money to be appropriated to the fund will be based on:

- (1) ~~Losses-incurred-in-the-past~~ **PRIOR LOSS EXPERIENCE OF THE FUND;**
- (2) Projected exposure of risk assumed;
- (3) Insurance premium costs, if any.

(b) A FUND TO BE KNOWN AS THE "WORKERS' COMPENSATION TRUST FUND" IS HEREBY ESTABLISHED FOR THE PAYMENT OF WORKERS' COMPENSATION LOSSES AND ANY INSURANCE PREMIUMS FOR WORKERS' COMPENSATION COVERAGE. THE AMOUNT OF MONEY TO BE APPROPRIATED TO THE FUND SHALL BE BASED ON:

- (1) PRIOR LOSS EXPERIENCE OF THE FUND;**
- (2) PROJECTED EXPOSURE OF RISK ASSUMED; AND**
- (3) INSURANCE PREMIUM COSTS, IF ANY.**

Sec. 2-203. Use.

(a) The less RISK MANAGEMENT trust fund shall provide defense and payment of claims ~~for-property,-liability,-losses~~ AND LOSSES FOR PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY and payment of insurance premiums, IF ANY, subject to the following exceptions:

- (1) Claims or punitive damages arising out of the willful violation of a penal statute or ordinance.
- (2) Claims arising out of acts of bad faith and/or fraud committed by or at the direction of an individual with affirmative dishonesty or actual intent to deceive or defraud.
- (3) Claims which are covered by a valid insurance policy or which shall be deemed uninsurable under law.
- (4) Any claim based upon an individual gaining in fact any personal profit or advantage to which they were not legally entitled.
- (5) Any claim when a service was allegedly rendered for compensation from a source other than the city and when the city is not liable.
- (6) Inventory shrinkage and damages to city property that has customarily been repaired by city employees.
- (7) Lost wages not covered under the workers' compensation laws of the state or any other state.

(b) THE WORKERS' COMPENSATION TRUST FUND SHALL PROVIDE DEFENSE AND PAYMENT OF CLAIMS AND AWARDS PURSUANT TO THE WORKERS' COMPENSATION

LAWS AND STATUTES OF THE STATE OF ARIZONA, AND THE PAYMENT OF INSURANCE PREMIUMS, IF ANY, FOR WORKERS' COMPENSATION COVERAGE.

Sec. 2-204. Trustees.

The city council shall appoint five (5) joint trustees, of whom no more than one (1) shall be a member of the city council and no more than one (1) shall be a city employee, **TO SERVE AS TRUSTEES FOR BOTH THE RISK MANAGEMENT AND WORKERS' COMPENSATION TRUST FUNDS. THE CITY'S RISK MANAGER SHALL BE AN EX OFFICIO MEMBER OF THE RISK MANAGEMENT TRUST FUND AND THE EMPLOYEE SAFETY COORDINATOR SHALL BE AN EX OFFICIO MEMBER OF THE WORKERS' COMPENSATION TRUST FUND.** The trustees shall be responsible for recommendations to the city council regarding the administration of the less trust funds. The trustees shall meet at least once a year and submit a report to the city council as to the status of the trust funds. Such report shall include recommendations the trustees deem necessary. The trustees shall be bonded in a minimum amount of ten thousand dollars (\$10,000.00). Costs for bonding will be paid by the city. The trustees shall be appointed for terms of three (3) years and a chairman shall be designated by the mayor.

Sec. 2-205. Risk manager.

. . . .

(c) The risk manager, with the approval of the city manager, shall have the authority to settle claims against the city ~~up-the amount-of-the-insurance-policy-self-retention~~ **IN AN AMOUNT TO BE DETERMINED BY THE CITY MANAGER.**

. . . .

Sec. 2-206. Referral of claims to private law firms.

Claims referred to outside law firms for defense shall be the responsibility of the city attorney. Referral to particular outside firms shall be based upon their expertise and experience in the particular type of litigation and past performance. Expenses for the above shall be charged to the less **APPLICABLE** trust fund.

Sec. 2-207. Insurance.

The city shall **MAY** purchase excess insurance ~~above-the-risk retention-limit~~ **FOR RISK MANAGEMENT OR WORKERS' COMPENSATION LOSSES AS** determined by the city council.

Sec. 2-208. Exemption of expenditures and audit.

The expenditures during the fiscal year from the less trust funds and monies in the trust funds at the close of the fiscal year shall not be subject to the provisions of Title 42, chapter 2, article 4, Arizona Revised Statutes [A.R.S. Sec. 42-301 et seq.]. An audit shall be

performed annually by an external auditor and the report shall be kept on file for a minimum of five (5) years.

SEC. 2-209. EMPLOYEE SAFETY COORDINATOR; THIRD PARTY ADMINISTRATOR.

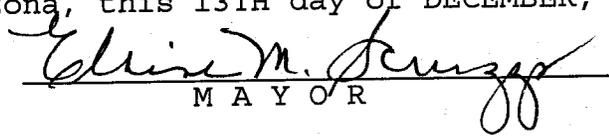
(a) THE CITY'S EMPLOYEE SAFETY COORDINATOR, OR SUCCESSOR, SHALL BE RESPONSIBLE FOR ADMINISTERING THE CITY'S SELF-FUNDED WORKERS' COMPENSATION PROGRAM. THE DECISION WHETHER OR NOT TO SETTLE CLAIMS AND LAWSUITS RELATING TO WORKERS' COMPENSATION CLAIMS RESTS WITH THE EMPLOYEE SAFETY COORDINATOR SUBJECT TO THE APPROVAL OF THE CITY ATTORNEY. THE LIMITATION ON THE AMOUNT THE EMPLOYEE SAFETY COORDINATOR CAN SETTLE CLAIMS ON LAWSUITS SHALL BE SET BY THE CITY MANAGER.

(b) THE CITY MAY CONTRACT WITH A THIRD-PARTY ADMINISTRATOR TO ADMINISTER THE INVESTIGATION AND PAYMENT OF WORKERS' COMPENSATION CLAIMS. THE THIRD-PARTY ADMINISTRATOR SHALL REPORT TO AND BE DIRECTED BY THE EMPLOYEE SAFETY COORDINATOR.

Secs. 2-210 -- 2-215. Reserved.

SECTION 2. Whereas the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety of the City of Glendale, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor and Council of the City of Glendale, and it is hereby exempt from the referendum provisions of the Constitution and the laws of the State of Arizona.

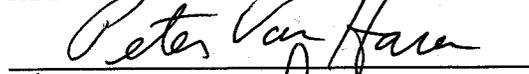
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 13TH day of DECEMBER, 1994.


MAYOR

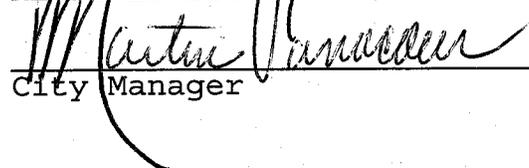
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager



City Auditor's Office Memorandum

Date: September 19, 2012

To: Horatio Skeete, Acting City Manager

From: Candace MacLeod, City Auditor

Subject: Audit of Risk Management Trust Fund

As part of the approved annual audit plan, the City Auditor's Office has completed an audit of the Risk Management Trust Fund (RMTF). The final report is attached which includes 39 recommendations, of which management concurred with 37. Also included are management responses from the City Attorney's Office, Financial Services, and Human Resources & Risk Management.

Key audit recommendations to strengthen internal controls include:

- Ensuring that the RMTF trustees, City Attorney's Office and City Council are notified of transfers out of the fund.
- Ensuring that City Code is complied with concerning the submission of annual reports to City Council, the proper licensing of the risk manager and the payment of only qualified expenses out of the RMTF.
- Monitoring RMTF contracts and ensuring that they receive legal review.

We would like to extend our appreciation to the staff that assisted us throughout this audit.

Attachments

cc: Jacque Behrens, Materials Manger
Jim Brown, Interim Executive Director Human Resources & Risk Management
Diane Goke, Chief Financial Officer
Andy Jennings, Risk Manager
Sherry Schurhammer, Executive Director Financial Services
Craig Tindall, City Attorney



Risk Management Trust Fund Audit

June 2012

Executive Summary

An audit of the City's Risk Management Trust Fund (RMTF) was conducted by the City Auditor's Office in June 2012. A summary of our observations follows:

1. Over \$3.2 million was transferred out of the RMTF in FY2010 to pay for Arizona State Retirement System unfunded liability assessments as part of the city's retirement incentive program without consulting the RMTF Trustees, the City Attorney's Office or City Council.
2. In FY2011 and FY2012, transfers of \$1.45 million and \$1.2 million were made out of the RMTF respectively to the Workers Compensation Trust Fund, which did not receive budgeted premiums of \$985,920 in FY2010.
3. A \$2.3 million expenditure relating to an airport lawsuit was charged to the RMTF in August 2011 and later reversed out in January 2012 to a general fund suspense account where it is still recorded.
4. The RMTF Trustees did not submit the 2011 annual report to City Council as required by Ordinance. The 2011 annual report was sent out during the audit.
5. The city did not have a licensed risk management consultant from September 2009 to February 2012, as required by state law and Ordinance.
6. Risk Management's agreement for residential and commercial claims repair services did not go before City Council and controls over the administration of the agreement need to be strengthened.
7. Salaries and other administrative expenses were paid out of the RMTF in FY2011 and FY2012 and this is not allowed under the Ordinance.
8. Every city insurance contract, other than property coverage, has not been forwarded to the City Attorney's Office, City Council or the City Clerk for review.
9. It is unclear if an additional external audit of the RMTF is required by Ordinance.
10. Risk Management should determine if the RMTF Trustees need separate bonding, as required by Ordinance.
11. Risk Management's agreement for insurance broker services does not include five of the six types of insurance purchased by the city and the term of the agreement is inconsistent with the Request for Proposal.

-
12. Claimants are not always required to sign a general release after reimbursement by Risk Management.
 13. Risk Management has been using the same actuarial firm since 2009 without periodically checking with other firms in the market.
 14. Many important RMTF procedures are undocumented.
 15. Risk Management is not monitoring the stadium security fees that are deposited into the RMTF.
 16. At least one of the two vehicles assigned to risk management should be returned to the city fleet due to very low usage.
 17. A number of procurement card issues were identified through a review of the risk manager's statements.
 18. Controls over access and backup of Risk Management's automated claims database should be strengthened.
 19. Risk Management staff is not adequately cross-trained to perform the functions of the risk manager.
 20. Backup signors for the RMTF should be designated.
 21. Risk Management is keeping some records beyond the required retention periods.

Background

An audit of the Risk Management Trust Fund (RMTF) was conducted by the City Auditor's Office in June 2012. The purpose of the audit was to ensure that the fund is being managed in accordance with the City Code and adequate internal controls exist over financial transactions posted to this fund.

In 1987, the city established a RMTF that is managed by the Risk Management Division (RM) in the Human Resources and Risk Management Department. RM's mission is to protect human resources and assets of the city from injury, loss or damage through effective loss control and prevention programs. RM is comprised of four employees that oversee safety, loss prevention and claims management. Three of these employees work with the RMTF.

Arizona revised Statutes Section 11-981 authorizes Glendale to establish a self-insurance program for the management and administration of a system for direct payment of benefits, losses or claims or any combination of insurance and direct payments, including liability and property loss exposures. The statute requires the city to designate a licensed risk management consultant to manage the fund and five trustees to administer the RMTF. Part II, Chapter (Administration), Article V (Financial Affairs), Division 5 of the Glendale City Code discusses the establishment, use and oversight of the RMTF. The City Code states that the RMTF is established for the payment of defense, anticipated losses and insurance premiums related to losses for personal injury or property damage. The city maintains a protected self-insurance program. Risk is retained and excess insurance is purchased to protect against catastrophic losses.

The RMTF operates as an internal service fund and generates revenue from premiums charged to city departments based on a number of factors including the number of employees, operating budgets and actual claims history. Other sources of revenue include fees assessed to partner agencies for staffing stadium events and interest income. The fund is used to pay claims against the city and to cover premiums for outside insurance coverage including property, excess liability and crime insurance. The fund balance was reported to be approximately \$2.94 million as of June 30, 2012 which is above the required \$2.6 million balance for a 50% to 55% confidence level. This is the confidence level that the city uses to fund claims and is the generally accepted level to set accrued liabilities by the Government Accounting Standards Board. The fund balance has declined 65% since July 2010 from \$8 million (opening fund balance with a confidence level in excess of 90%) to approximately \$2.94 million as of June 30, 2012. This decline is primarily due to the large transfers made out of the fund over the last three years. A summary of the RMTF revenues, expenses and changes in fund net assets for the past three years is reported in the following table:

Risk Management Trust Fund	FY2010	FY2011	FY2012
Opening Fund Balance	\$8,031,899	\$4,781,428	\$3,393,542
Revenue:			
Self-insurance Premiums	\$2,488,937	\$2,499,891	\$2,500,000
Security Revenue	\$28,483	\$22,858	\$25,994
Interest	\$47,020	\$21,397	\$7,835
Transfers Out	(\$3,245,736)	(\$1,450,000)	(\$1,200,000)
Expenses:			
Administrative & General	\$0	\$229,481	\$260,809
Insurance Premiums	\$932,307	\$1,003,918	\$606,415
Insurance Claims	\$1,636,868	\$1,248,633	\$915,404
Net Loss	(\$3,250,471)	(\$1,387,886)	(\$448,799)
Ending Fund Balance (Net Assets)	\$4,781,428	\$3,393,542	\$2,944,743
Confidence Level	90%	70%	50% to 55%

Scope & Methodology

Our fieldwork was performed in accordance with generally accepted government auditing standards for the period July 1, 2009 to June 30, 2012. Procedures included:

- Interviews with staff
- Review of budgets and financial reports
- Review of contract terms and conditions
- Review of laws, regulations, policies and procedures
- Review of minutes and annual reports
- Review of revenues and expenditures

Observation 1

Over \$3.2 million was transferred out of the RMTF in FY2010 to pay for unfunded ASRS liability assessments as part of the city's retirement incentive program without consulting the RMTF Trustees, the City Attorney's Office or City Council.

Condition

On February 2, 2010 and April 5, 2010, a total of \$3.2 million was transferred out of the RMTF to pay for Arizona State Retirement System (ASRS) unfunded pension liability assessments for 53 employees under the city's retirement incentive program. This payment was not budgeted in the city's annual FY2010 budget and the RMTF Trustees, City Attorney's Office and City Council were not consulted.

On January 25, 2011 a \$121,336 payment was made out of the RMTF to pay for the unfunded liability assessment for one employee that terminated with the city in October 2009. The RMTF Trustees, City Attorney's Office and City Council were not consulted.

RM could not explain why these payments were made out of the RMTF and stated that these payments would not qualify as valid expenditures under the Ordinance.

According to internal memos in 2009 and discussions with staff, the city was not aware of the fact that ASRS would assess penalties as a result of the retirement incentives that were paid out in FY2009 until after the incentive plan was offered to employees. The Human Resources and Risk Management Department developed a funding plan to pay for the \$3.2 million in ASRS assessments. This plan called for a reduction of contributions to the city's trust funds by way of "premium holidays" as detailed below:

- A \$1 million premium holiday for the Workers Compensation Trust Fund (WCTF) which did occur in 2010.
- A \$2 million premium holiday for the RMTF. This did not occur as the RMTF received department premiums in 2010, 2011 and 2012.
- A \$1.6 million premium holiday for Employee Benefits Trust Fund (EBTF).

A review of financial records indicated that the following transfers were actually made between city funds:

Trust Fund	FY2009	FY2010	FY2011	Net Amount
EBTF	(\$2,694,269)	\$985,926	-	(\$1,708,343)
WCTF	-	(\$985,926)	\$1,450,000	(\$464,074)
RMTF	-	(\$3,245,736)	(\$1,450,000)	(\$4,695,736)

The EBTF medical contributions account was reduced by \$2,694,269 in FY2009. In

FY2010, the EBTF received a transfer of \$985,926 from the WCTF to recover the \$1 million that was taken above the \$1.6 million that an actuarial review indicated was the most the city should take from the EBTF to remain adequately funded.

Effect

Inadequate demonstration of fiduciary responsibilities and improper notification of governing boards.

Noncompliance with the RMTF Ordinance and state law.

Cause

Staff from the Human Resources and Risk Management Department never considered consulting the RMTF Trustees, City Attorney's Office or City Council before transferring money between internal service trust funds. On February 22, 2011, Budget staff reported to City Council, via the FY2010 Clean Up Ordinance, that \$3.2 million in transfers were needed to address the cost of the unusual number of retirements that occurred.

Criteria

Section 2-202 of the Glendale City Code states that the RMTF is established for the payment of defense losses, anticipated losses and insurance premiums related to losses for personal injury or property damage and that such fund shall not be used for any other purpose.

The City Council passed Resolution 3987 in 2006 stating that the city would sufficiently fund the WCTF annually to cover actuarial liabilities for workers compensation as determined by the self-insurer in accordance with City Code Sec. 2-202(b) and the Governmental Accounting Standards Board Statement No. 10.

According to the City Attorney, while municipalities are exempt from specific reserve balances for self-insured retention, the city has many contractual obligations that require an adequate retention amount. Failure to adhere to recognized self-insurance fund balances is a violation of the contractual provisions.

Recommendation

RM should:

- A. Ensure that proper notifications and approvals are obtained before transfers are made from the RMTF.
- B. Ensure only qualifying payments are made out of the RMTF.

C. Forgo future attempts to maintain the regulatory requirements that apply to the WCTF by transfers from the unregulated RMTF without proper assessment of the legal and financial impact on the RMTF.

Observation 2

In FY2011 and FY2012, transfers of \$1.45 million and \$1.2 million were made out of the RMTF respectively to the Workers Compensation Trust Fund, which did not receive budgeted premiums of \$985,920 in FY2010.

Condition

In the last two years, unbudgeted transfers have been made out of the RMTF to the WCTF as follows:

Description	FY2011	FY2012
Budgeted Transfers per Schedule 1 of the Budget Book	\$0	\$0
Actual Transfers from RMTF to WCTF	\$1,450,000	\$1,200,000
RMTF Trustees Notified	\$450,000 – In 2011 \$1,000,000 – In 2012	Yes
City Attorney’s Office Notified	No	Yes
City Council Notified	In FY2012	Yes

In FY2010, the city budgeted approximately \$985,926 in workers compensation premiums. During the first three months of FY2010, workers compensation premiums were collected from city departments and then reversed out per the recommended funding plan for the ASRS assessments that the Human Resources and Risk Management Department put forth. As a result, the WCTF did not receive any premiums for FY2010 despite incurring \$1.4 million in expenditures, causing the WCTF to fall below the recommended 55% discounted confidence level as reported by the risk manager in the 2010 annual report.

In FY2011, \$1.45 million was transferred from the RMTF to the WCTF to ensure the fund balance met required standards. The RMTF Trustees were notified at the year-end annual meeting of the \$450,000 transfer only and not the \$1 million transfer. The \$1.45 million in transfers were provided to City Council in January 2012 as part of the FY2011 Clean Up ordinance.

On March 8, 2012, the City Attorney’s Office issued advice to city management and the Mayor and City Council that all transfers between department budgets are limited to the last quarter of the calendar year and require city council approval.

In FY2012, two transfers were made out of the RMTF to the WCTF. A \$1 million transfer occurred on February 24, 2012 and was presented to City Council as part of the FY2012 Clean Up Ordinance on May 22, 2012. A second transfer of \$200,000 was presented to

City Council as part of the second FY2012 Clean Up Ordinance on June 26, 2012. This second transfer occurred after the Council's approval at the June 2012 meeting.

A \$1 million transfer out of the RMTF was posted by an accountant in Finance as directed in an email from the chief financial officer in February 2012. The email did not include an explanation for the transfer. The transfer was recorded and appeared in the city's Revenue Report as of April 2012. The journal entry was incorrect as both the RMTF and WCTF increased by \$1 million and was later removed from the Revenue Reports altogether. Finance stated these transfers should not have been recorded in the Revenue Reports at all. According to the Chief Financial Officer (CFO), additional time is needed to review where these transfers should be reported in the city's financial reports.

The following table summarizes the activity associated with the two transfers in FY2012.

Date	Amount Transferred from RMTF To WCTF	Requested By	Business Reason	Recorded in Revenue Report	RMTF Board Notified Before Transfer
2/24/2012	\$1,000,000	CFO	None provided in an email to the accountant that made the journal entry.	April – Yes June – No	No
5/11/2012	\$200,000	Risk Manager	Ensure adequate balance above the minimum per the Industrial Commission of Arizona.	June – No	No

Effect

Inadequate communication with the RMTF Trustees, limiting their ability to fulfill their fiduciary responsibilities.

Ineffective control environment whereby journal entries are posted without adequate explanation and supporting documentation.

Funds may not be sufficient to cover any unplanned losses, claims or emergencies and the funding will need to be obtained from another area with short notice.

The WCTF was underfunded at the end of FY2010 per the Industrial Commission of Arizona.

Cause

RM and Finance have made these transfers in the past without consulting either the RMTF Trustees or City Council.

Accountants have made journal entries when requested to do so without supporting backup documentation.

Procedures have not been developed to define how transfers should be reported in city financial reports.

Criteria

In 2006, City Council adopted Resolution 3967 requesting exemption from the requirement by the Industrial Commission of Arizona to post security for Glendale's self-insured workers compensation claims. The city of Glendale would provide funding to the WCTF each year sufficient to cover actuarial liabilities for workers compensation as determined by the self-insurer in accordance with Glendale City Code Sec. 2-202(b) and the Government Accounting Standards Board.

Controls should be in place to ensure transactions are properly supported and approved.

Transfers should be properly approved by the RMTF Trustees and City Council.

Journal entries should only be posted if adequate documentation is attached explaining the transaction.

Financial reports should be periodically reviewed to ensure accuracy and completeness.

Recommendation

RM should:

- A. Ensure that the RMTF Trustees review proposed transfers from the RMTF and make any recommendations to City Council for review.

Financial Services should:

- B. Consider establishing an emergency transfer process from contingency funds to accommodate unplanned losses or emergencies.
- C. Ensure that journal entries are posted only if adequate supporting documentation has been provided.
- D. Develop procedures explaining where transfers should be reported in city financial reports.

Observation 3

A \$2.3 million expenditure relating to an airport lawsuit was charged to the RMTF in August 2011 and later reversed out in January 2012 to a general fund suspense account where it is still recorded.

Condition

A \$2.3 million garnishment relating to the Glendale Airport lawsuit was originally authorized to be charged to the RMTF in August 8, 2011 without consulting the RMTF Trustees in advance. This garnishment caused the RMTF to fall below the recommended confidence level for the fund. The June 30, 2011 external audit report stated that this liability was recorded on the RMTF and the city is pursuing reimbursement from the insurance company.

The \$2.3 million was transferred out of the RMTF on January 31, 2012 and recorded in the suspense account where it has remained. Audit requested supporting documentation to explain why the funds were recorded and have remained in the suspense account for the last five months. The CFO stated that Finance was still in the process of resolving where the transaction would be recorded.

The RMTF Trustees stated at their annual meeting in May 2012 that they were not aware that further litigation was being pursued to assist the city in getting more coverage from their outside insurance carriers and requested they be consulted in advance before such decisions are made in the future.

Effect

RMTF accounts are charged without proper consultation with the RMTF Trustees, City Attorney's Office or City Council.

Lack of communication with RMTF Trustees as major litigation was pursued without their knowledge.

Cause

Current RM staff has not been consulting trustees when making charges to the RMTF.

Criteria

The RMTF Trustees and City Council should be consulted in advance before material litigation is pursued.

Financial transactions should be posted to the correct financial account in a timely manner.

Recommendation

RM should:

- A. Formalize and communicate procedures to ensure that the RMTF Trustees are consulted when material charges are recorded in the RMTF.
- B. Ensure the RMTF Trustees and City Council is consulted when material litigation is pursued.

Financial Services should;

- C. Resolve where to record the \$2.3 million airport lawsuit expenditure.

Observation 4

The RMTF Trustees did not submit the 2011 annual report to City Council as required by City Code. The report was sent out during the audit.

Condition

In 2012, City Council had not received the 2011 RMTF annual reports as required by Ordinance. The 2011 report was provided to City Council during the audit in June 2012. The RM stated that the 2012 RMTF annual report would be provided to City Council in the fall of 2012. The 2010 report was provided to City Council in November 2010.

Additionally, the RMTF Trustees meet once a year where they are provided with a high level overview of annual activity. Periodic reports are not prepared and provided to the RMTF Trustees to update them on any pertinent issues or review financial activity in the RMTF.

Effect

Lack of compliance with the Ordinance.

The RMTF Trustees may not be provided with adequate information in a timely manner to assist them in carrying out their fiduciary responsibilities.

Cause

RM sent the report to management for comment in 2011 but did not follow up to ensure the report was issued to City Council in a timely manner.

Criteria

Part II of the Code of Ordinance, Chapter 2, Article V, Division 5, Risk Management Trust Fund and Workers Compensation Trust Fund, Section 2-204 states that the RMTF Trustees shall be responsible for the recommendations to the City Council regarding administration of the trust fund. The trustees shall meet at least once a year and submit a report to council as to the status of the trust fund.

In order properly carry out fiduciary responsibilities, periodic receipt of financial activity is recommended.

Recommendation

RM should:

- A. Develop controls to ensure City Council is provided with the annual report in a timely manner.
- B. Provide periodic reports to the RMTF Trustees for discussion.
- C. Consider meeting with the RMTF Trustees on a more frequent basis than annually.

Observation 5

The city did not have a licensed risk management consultant as required by law and the City Code from late September 2009 to February 2012.

Condition

The city's prior licensed risk manager retired on September 24, 2009. The current risk manager assumed the duties of risk manager, but did not obtain a risk management consultant license from the Arizona Department of Insurance until February 3, 2012. This license expires in December 2015. Additionally, a license was not submitted to City Council for verification as required by Ordinance.

Effect

Noncompliance with state law and City Code.

Increased risk of putting the city's self-managed fund in jeopardy.

Cause

The risk manager thought that their Associate of Risk Management certification met the state and city licensing requirements.

Criteria

Adequate oversight, monitoring and internal controls should be in place to ensure compliance with state laws and the City Code.

ARS 11-981 states that any city that has established self-insurance program shall designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Article 3 or 9, and such license shall be verified by the governing body of the city.

PART II of the City Code, Chapter 2 – Administration, Article V – Financial Affairs, Division 5 – Risk Management Trust Fund, Section 2-205 states that the city shall designate a risk manager who shall be licensed pursuant to Title 20, Chapter 2, Arizona Revised Statutes [A.R.S. § 20-201 et seq.].

Recommendation

RM should:

- A. Develop controls to ensure the risk manager is properly licensed at all times.
- B. Submit the risk manager's license to City Council for verification, as appropriate.

Observation 6

Risk Management's agreement for residential and commercial claims repair services did not go to City Council for approval and controls over the administration of the agreement need to be strengthened.

Condition

In 2009, the city entered into five agreements (C-6735, C-6736, C-6738, C-6739 and C-6740) with four different contractors for general, commercial and residential and water damage claims services based on Requests for Quotes (RFQ) issued through Materials Management in November 2008. The term of the agreement was one year with an option to extend the agreement for an additional four years in one year increments.

The agreements were structured on a per "project" basis instead of an "incident" basis with a maximum amount of \$50,000 per project.

Under C-6739, the city has paid the contractor over \$99,000 since January 2009 under the agreement for residential and commercial claims repair services. The agreement was not forwarded to City Council for approval since the agreement was based on the cost of a single project, not the total cost of all projects for one year.

A review of the five agreements for claims repair services identified the following issues:

- Invoices are paid using a check request versus procurement cards. The average invoice is small, averaging around \$635 for the past three years.
- RM staff does not monitor payments under the contract to manage their department budget.
- Until 2011, RM staff did not check invoices for accuracy and compliance with the terms of the agreements. The vendor is supposed to bill using an approved hourly rate; however, the invoices submitted and paid by the RM did not report hourly rates and 10% markups for materials purchased for projects, in accordance with the contract terms. The vendor has been calculating a 10% profit on both labor and materials as opposed to just materials as stated in the contract.
- Receipts for supplies and equipment are not attached to vendor invoices as required per the agreement.
- RM did not take advantage of the 2% vendor payment discounts in FY2010, FY2011 and the first two months of FY2012 amounting to an estimated \$1,500 in missed discounts for this period.
- Insurance certificates on file had expired for C-6736 and C-6738.
- Staff was unsure of the term of the agreements and the definition of a project.
- Five separate RFQ's were issued for the services instead of using a more efficient method whereby one multiple award contract is prepared with separate line item awards.

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- All five agreements have been renewed until January 2013.

Effect

Lack of compliance with the contract terms and conditions.

Reduced efficiency and increased costs to the city.

Increased risk that invoices are not accurate and the city is overbilled.

Reduced levels of accountability.

Cause

Staff was not verifying whether the vendor was complying with the terms and conditions of the contract.

Criteria

Solicitations should be performed in accordance with the city's procurement code.

Contracts over \$50,000 should be forwarded to City Council for approval.

Agreements should be properly monitored to ensure compliance with associated terms, conditions and billing requirements.

Recommendation

RM should:

- A. Meet with the City Attorney's Office and Materials Management and review all agreements and processes followed for claims repair services to ensure compliance with City Code.
- B. Meet with Materials Management to re-solicit the RFQ for residential and commercial claims repair services to a formal solicitation and obtain City Council approval on the new contract, as required.
- C. Ensure claims agreement terms and conditions are monitored for compliance.
- D. Develop adequate controls over the review and payment of vendor invoices to ensure they are accurate, complete and paid in an efficient and cost-effective manner.

Observation 7

Internal administrative expenses were paid out of The RMTF in FY2011 and FY2012 when there is no provision for such costs in the Ordinance.

Condition

A review of expenses paid out of the RMTF was conducted. The following internal administrative operating expenses were charged to the RMTF and are summarized in the table below:

- Salaries for three RM staff who work for the WCTF
- Cell phone costs for two RM staff

Description	FY2010	FY2011	FY2012
Salaries & Benefits	\$0	\$229,041	\$260,271
Cell Phones	\$0	\$440	\$520
Workers Compensation	\$0	\$0	\$18
Total	\$0	\$229,481	\$260,809

Other expenses, including actuarial costs, have also been charged to the RMTF.

Effect

The payment of administrative operating costs out of the RMTF is inconsistent with the Ordinance.

Cause

Human Resources' was aware that the Ordinance needed to be changed in order to charge administrative costs; however, staff did not take the RMTF Ordinance to City Council to have it amended.

Criteria

Section, 2-202 of the City Code relating to the RMTF states that the fund is established for the payment of defense, losses, anticipated losses and insurance premiums related to losses for personal injury or property damage, and shall not be used for any other purpose.

Recommendation

RM should:

A. Ensure only qualifying expenses are paid out of the RMTF.

Observation 8

A number of insurance contracts have not been forwarded to the City Attorney's Office, City Council or the City Clerk as required per City Manager Directives.

Condition

RM did not forward the following insurance contracts to the City Attorney's Office for review, City Council for approval (as appropriate) or the City Clerk's Office for filing:

Insurance Coverage	FY2012
Excess Liability (Tier 1)	\$370,745
Excess Liability (Tier 2)	\$112,500
Excess Liability (Tier 3)	\$92,311
Airport	\$10,931
Crime	\$24,411
Kidnapping & Ransom	\$9,813
Manistee Ranch - Property	\$2,047
Manistee Ranch - liability	\$1,074

Effect

Increased liability and lack of compliance with City Manager Directives.

Cause

Staff did not know that insurance contracts needed to go to the City Attorney's Office for review or be filed with the City Clerk.

Criteria

City Manager Directive No. 3 states that all contracts not drafted by the city must be submitted to the City Attorney's Office for review prior to City Council authorization or administrative approval. All contracts must be submitted to the City Clerk's Office for issuance of a contract number, to obtain signatures, to record, if required, and officially file.

Recommendation

RM should:

- A. Ensure that all insurance contracts are forwarded to the City Attorney's Office, City Council, and the City Clerk, as appropriate.

Observation 9

It is unclear as to whether a separate external audit of the RMTF is required to be performed annually.

Condition

External audits of the city's financial records are performed annually by an external auditor. These financial records include the RMTF. However, it is unclear if a separate external audit of the RMTF is required per the RMTF Ordinance. Audit contacted the city's external auditors about this requirement and they recommended that City Council be consulted as to whether a separate RMTF external audit is required. The City Attorney's Office was also contacted and they stated that this issue should be further researched by the city.

Effect

Lack of compliance with the Ordinance if a separate external audit of the RMTF is required.

Cause

Staff did not know whether the current external audit of the city's financial records covered the requirements for an external audit in the RMTF Ordinance.

Criteria

Section 2-208 of the RMTF Ordinance states that the expenditures during the fiscal year from the trust fund and monies in the trust fund at the close of the fiscal year shall not be subject to the provisions of Title 42, Chapter 2, Article 4, Arizona Revised Statutes. An audit shall be performed annually by an external auditor and the report shall be kept on file for a minimum of five years.

Recommendation

RM should:

- A. Consult with the City Attorney's Office and City Council regarding the requirements for a separate annual external audit of the RMTF.

Observation 10

RM staff is uncertain as to whether RMTF Trustees need separate bonding.

Condition

The risk manager is uncertain as to whether the RMTF Trustees require separate bonding or if they are covered by existing insurance policies. The risk manager contacted the City Attorney's Office about this issue during the audit.

Effect

Potential increased liability and lack of compliance with the Ordinance.

Cause

RM staff believes that the Crime Insurance Policy meets the bonding requirement and has contacted the City Attorney's Office to see if they agree with their assessment.

Criteria

Section, 2-204 of the City Code relating to the RMTF states that the trustees shall be bonded in a minimum amount of \$10,000 and costs for bonding will be paid by the city.

Recommendation

RM should:

- A. Follow up with the City Attorney's Office regarding bonding of RMTF Trustees.

Observation 11

The scope of the agreement for insurance broker services does not include five of the six types of insurance currently purchased by the city and the term of the agreement is inconsistent with the Request for Proposal.

Condition

On March 23, 2011, the city entered into C-7639 for professional insurance broker services and property insurance for an annual amount of \$219,248 (\$55,000 broker services and \$164,248 for property insurance) in year one. Under the agreement, the total cost of broker services over the five year period would amount to \$315,000. A review of Request for Proposal (RFP) 11-15 and C-7639 identified the following issues:

- The term in the RFP and Council Communication reported an initial one year period plus five one year extensions. The term in the executed agreement with the insurance company is one year plus an additional one year period. RM met with the City Attorney's Office during the audit and they developed a memo for the contractor to review and approve correcting the term provision.
- The agreement only specifies that the city will pay the contractor for property insurance and does not detail the other types of insurance that the city requires the broker to purchase. The city has paid the contractor for five other types of insurance not included in the scope of the contract including crime, excess liability, and airport coverage totaling \$955,478 in FY2011 and over \$1 million in FY2012.
- The agreement does not specifically state that the broker cannot receive contingent commissions from carriers.
- The vendor was paid \$190,068 for property insurance and \$29,180 for broker services under year one of the agreement. Although these amounts totaled the annual approved agreement amount, they were not the amounts specified in the agreement or reported to City Council.
- The insurance certificate with the insurance company had expired on February 1, 2012 and risk management did not have a current certificate on file. A current certificate was obtained during the audit.
- The agreement template contains many terms (project, sub-contractors, and monthly invoices) and requirements that do not apply to a professional services agreement of this nature.
- The agreement requires the contractor to conduct up to six site visits to the project during the performance of duties under the agreement. The RM stated the contractor visits quarterly versus six times per year.
- A review of other valley cities indicated that they solicit for professional insurance broker services only and require the broker to provide quotes for the specific types of insurance required annually to ensure the best price is received. Currently, not all insurance purchased by the city is taken out to market by the insurance broker and the city's risk manager does not select the layers for excess liability insurance.

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- A review of other valley cities indicated that broker fees were paid quarterly to save on cash flow. The city currently pays the broker fees upfront annually.
 - RM has not benchmarked insurance costs and coverage with other valley cities or industry standards since 2009 to determine how Glendale compares with them.

Effect

The best prices may not be received for insurance and increased liability.

Increased liability if the RFP and agreement are inconsistent or inaccurate.

Cause

The city has not changed the way it has solicited for insurance services in many years.

The city does not include the contract document in solicitations, increasing the risk of error since two documents are being created.

Agreement terms were not attached as backup to check requests to ensure the appropriate amounts were being paid.

Criteria

Services should be obtained in the most efficient and cost-effective manner.

Agreements should be accurate, complete and consistent with the terms in the original solicitation document.

Recommendation

RM should:

- A. Ensure the corrections to the term provisions in the agreement for insurance broker services are executed in consultation with the City Attorney's Office.

Financial Services and the City Attorney's Office should:

- B. Meet to discuss the possibility of incorporating contract terms into solicitation documents.

Observation 12

Risk Management does not always require that claimants sign a general release after reimbursement.

Condition

RM requests that claimants provide a written estimate for repair work which is forwarded to the RM for review and then a check is provided to a claimant. A review of this process indicated when a claim is settled, the claimant is not always required to sign a general release to ensure future litigation is not pursued.

Effect

Increased risk of litigation.

Increased costs to the city if multiple quotes are not obtained above a set threshold.

Cause

The risk manager stated that these practices were always in place at the city.

Criteria

Claimants should be required to sign a general release to ensure future litigation is not pursued.

The city should reimburse claimants after the work is done as evidence that the work was actually performed.

Recommendation

RM should:

A. Require claimants to sign a general release when a claim is settled.

Observation 13

Risk Management has been using the same actuarial firm since 2009 without periodically checking with other firms out in the market.

Condition

Risk Management has been using the services of an actuarial company to perform actuarial studies of the self-insured liability program since at least 2009. The actuarial company has been paid an average of \$6,750 on an annual basis for a total expenditure of \$27,750 over the past four years and no contract has been established.

Effect

Noncompliance with procurement procedures.

Increased liability if an approved contract has not been established.

Cause

The risk manager continued to use the same firm as the prior risk manager used in the past.

Criteria

The Purchasing Code states that procurement of services between \$5,000 and \$10,000 requires verbal or written quotations. The city procurement procedures state that contracts should be established for work performed over \$5,000.

The city should ensure adequate competition exists for the procurement of services.

It is a good business practice to periodically rotate consultants to obtain a different perspective.

Recommendation

RM should:

- A. Ensure city procurement procedures are followed to obtain actuarial services and enter into a professional services contract with the successful provider.

Observation 14

Many important RMTF procedures are undocumented.

Condition

Through review of documentation and discussion with staff it was noted that many important RM procedures have not been formalized or updated for:

- Reviewing and analyzing the cost and adequacy of insurance coverage and limits.
- Marketing coverage and buying insurance.
- Performing an organizational risk analysis and identifying acceptable levels of risk in the short and long term.
- Analyzing loss history.
- Disseminating risk information across the organization.
- Defining the powers and duties of the RMTF Trustees including providing financial oversight.
- Meeting separately from the Workers Compensation Board.
- Open meeting law training for RMTF Trustees and ensuring that meetings are held in an open setting where the public can easily access.
- Calculating and reporting confidence levels for the RMTF and comparison with industry and professional standards and other valley cities.
- Ensuring checks are secured prior to deposit.
- Managing and updating the RM preferred vendor lists.

Effect

Increased risk that practices are inconsistent or do not meet management's expectations.

Inability to adequately train staff.

Cause

Staff has not been performing analysis or documenting steps taken to determine the overall reasonableness and effectiveness of city insurance coverage.

Criteria

Effective policies and procedures should include analytical reviews to determine the reasonableness of financial data.

Adequate analysis should be performed and documented to determine the overall reasonableness and effectiveness of insurance coverage.

Recommendation

RM should:

A. Review, document and update RMTF procedures and train staff.

Observation 15

The risk manager is unaware whether stadium security fees deposited into the RMTF are complete and accurate.

Condition

The following stadium revenue was reported in the RMTF in the past three years:

	FY2010	FY2011	FY2012
Stadium Security Fees	\$28,483	\$22,858	\$25,994

The risk manager was unaware of the details of the agreements the city has with external agencies regarding payments of workers compensation and risk management fees for coalition officers providing security at stadium events. Risk Management could not provide backup documentation and analysis for:

- Whether the \$5 fee charged for coalition officers reflects full reimbursement to the city for actual costs associated with workers compensation and risk management as the fee has not increased since 2009.
- Why risk management fees are not specifically referenced in the contract with Global Spectrum.
- If adequate controls were in place to ensure the \$5 fee was accurately billed and collected by the city.

Effect

Potential risk that RMTF revenues are inaccurate or incomplete.

Increased risk that cost recovery is not obtained.

Cause

Staff never considered reviewing or requesting supporting documentation from the Police Department (PD) regarding stadium security fees.

Criteria

In 2009, the City entered into an Intergovernmental Agreement (IGA) with Global Spectrum for the city to provide qualified law enforcement security services at the University of Phoenix Stadium. According to the IGA, each assigned officer working an event at the Stadium will be paid the negotiated hourly rate, less a \$5 per hour

administrative fee, which shall be paid by Global Spectrum directly to Glendale and applied to the cost of providing worker's compensation insurance. Assigned officers' compensation shall be subject to all applicable federal and state taxes, which shall be deducted prior to payment, and which shall be evidenced by a W-2 statement issued by Glendale to each assigned officer. Glendale shall provide the workers' compensation coverage and liability coverage in such amounts and under the same terms and conditions as other sworn, full-time Glendale PD employees. The city also entered into individual IGAs with participating cities regarding payments of workers compensation fees for the officers.

Recommendation

RM should:

- A. Request and review supporting documentation for stadium security fees from the Police Department on an ongoing basis to ensure fees charged are accurate and complete.
- B. Review existing rates and agreements to ensure they are accurate and complete.

Observation 16

At least one vehicle assigned to risk management should be returned to the fleet due to very low usage.

Condition

Risk Management has two sedans assigned to the department to primarily inspect claims, conduct training and attend meetings. The following issues were noted during a review of operating costs and utilization of these vehicles:

- The two sedans average 1,500 miles per year with an annual reported low of 550 miles and a high of 2,500 miles. Equipment Management recommends at least 3,000 miles per year for the sedan class.
- The average cost per mile including Vehicle Replacement Fund (VRF) contributions for the two sedans is approximately \$1.02. Equipment Management recommends an average cost per mile of \$0.40.

Effect

Underutilization of city assets and increased cost to the city.

Cause

Staff thought the current monthly cost of the vehicles was reasonable.

Criteria

City assets should be utilized in an efficient and cost-effective manner.

Recommendation

RM should:

- A. Turn in any underutilized vehicles to Equipment Management.

Observation 17

A number of exceptions relating to the risk manager's procurement card statements were identified.

Condition

An audit of procurement card statements from nine Human Resources employees was conducted in May 2012 for the period October 1, 2012 to December 31, 2011. The risk manager was not included in the sample so a review of the risk manager's statements was conducted for the period January 1, 2012 to June 30, 2012. Five statements totaling \$3,176 were reviewed and the following exceptions were identified:

- Account Statement Reports listing monthly transactions were not run and attached to each monthly statement.
- Account codes changes on Cost Allocation Reports were not always initialed and never dated.
- The business purpose was not documented for five transactions totaling \$629.
- Account code changes totaling \$744 on two monthly Cost Allocation Reports were never made. Of this amount, \$565 in charges from May 2012 was not located in the default account either.
- Five receipts totaling \$2,115 were not signed.
- The risk manager's backup procurement card file that contains sensitive credit card information is not secured.

Effect

Lack of compliance with city procurement guidelines.

Reduced levels of accountability and oversight.

Increased risk of fraudulent transactions or misuse of a city procurement card.

Cause

Controls are still not in place to ensure procedures are being followed.

Criteria

City procurement card guidelines require the following:

- Account Statement Reports must be printed at the close of each cycle.

-
- Account code changes on Cost Allocation Reports should be initialed and dated. Liaisons have until the end of the month to log on to the system and make account code changes.
 - Written explanations must detail why a purchase was made.
 - Signed credit card receipts are required as supporting documentation for a purchase.
 - Procurement documents should be secured.

Recommendation

Human Resources should:

- A. Ensure that procurement card guidelines are complied with and monthly cardholder activity is adequately monitored.

Observation 18

Controls over access and backup of RM's automated claims database should be strengthened.

Condition

RM uses Docman, an Access database, to record and track all auto, property and liability claims and associated documents. RM data is stored on a shared directory and an SQL server. A review security and backup controls over the Docman database identified the following issues:

- Passwords to access Docman are not changed periodically.
- The user access list was out of date and included two employees that terminated in 2009 and 2010. Access for these two employees was removed during the audit.
- Backup and retention issues exist for RM files. Several PDF documents associated with closed claims that were saved during 2003 to 2005 could not be retrieved by the risk manager when requested during the audit.
- There is no remote capability to access and record data out in the field to save time.
- The Access database is not supported by IT and a consultant needs to be hired to make any updates or changes to the database.
- The risk manager stated that records cannot be deleted from the database.

Effect

Increased cost to the city and reduced levels of efficiency.

Lack of compliance with city policies.

Increased risk of unauthorized access to confidential and sensitive data.

Increased risk of liability or loss of essential data resulting in business interruption.

Cause

RM never considered changing passwords, updating the user access list or reviewing backup controls over their data.

Criteria

Information Technology (IT) Policy 821 states that all user-level passwords shall be changed at least every 90 days.

User lists should be updated when changes in staffing occur.

Management should explore alternate ways to perform duties to save time and money.

Business databases essential to operations should be in an enterprise level database where they are managed at a higher level.

Recommendation

RM should:

- A. Ensure Docman passwords are changed in accordance with IT policies.
- B. Ensure user access lists are updated when an employee terminates or changes job duties.
- C. Continue to work with IT to ensure RM data is protected.
- D. Explore other systems to record and track claims data for increased efficiency.

Observation 19

Staff has not been adequately cross-trained to perform the functions of the risk manager.

Condition

Existing staff in Human Resources has not been adequately cross-trained to perform the duties of the risk manager.

No one other than the RM is licensed or buys insurance for the city.

Effect

Lack of properly trained and licensed staff may result in inadequate knowledge base, increased errors in work being performed and potential business interruption.

Cause

Staffing for RM is limited.

Criteria

Staff should be adequately cross-trained and secure the proper certifications to ensure accurate and timely completion of work and continued business operations.

Recommendation

RM should:

- A. Ensure staff is adequately cross-trained and licensed, as appropriate, to perform the functions of the risk manager.

Observation 20

Backup signors should be designated for Risk Management.

Condition

Signature authority for Risk Management is as follows:

Fund	Acting City Manager	Interim Human Resources (HR) Director	Risk Manager
1000-11010	Under \$50,000	Under \$10,000	Under \$4,999
2540-18010	Under \$50,000	Under \$10,000	Under \$4,999

Backup signature authorization has not been delegated for the city manager and HR director positions in case an employee is out of the office or in emergency situations.

Effect

Approvals may not be made in a timely manner.

Increased risk of business interruption.

Cause

Staff has not recently updated signature authority for the RMTF.

Criteria

Signature authority should be accurate and appropriate backup approvers should be designated in a timely manner in case of emergency.

Recommendation

RM should:

A. Review and update the signature authorization for RM, as appropriate.

Observation 21

Some records are being retained beyond required retention periods.

Condition

Certain risk management documentation is being retained beyond the approved retention periods including:

- Safety training
- Certificates of insurance
- Insurance policies
- Budgets
- Occupational safety and health records

Effect

Lack of compliance with state retention periods may increase city liability.

Cause

Staff has retained documentation in case it is needed and does not frequently check the retention schedule to ensure compliance.

Criteria

Records should be retained in accordance with approved retention schedules.

Recommendation

RM should:

- A. Review risk management records to ensure compliance with approved retentions schedules.



Risk Management Trust Fund Audit

Management Responses



CITY ATTORNEY'S OFFICE

MEMORANDUM

DATE: August 31, 2012
TO: Candace MacLeod, City Auditor
FROM: Craig Tindall, City Attorney
SUBJECT: Comments to Risk Management Trust Fund Audit, June 2012

This memorandum will comment upon the findings of the Risk Management Trust Fund ("RMTF") Audit performed by your Office in June 2012. The City Attorney's Office has a significant interest in the management of the RMTF. The city attorney has broad general Charter responsibilities for the legal affairs of the city,¹ which obviously encompasses the RMTF, the sole purpose of which is for the payment of expenses associated with personal injury and property loss.² Additionally, this Office has responsibility for the preparation and review of the city's contractual obligations.³ Agreements commonly include insurance provisions representing that the city maintain appropriate self-insurance retention. Some agreements are more specific with respect to the standards for that retention. Therefore, when preparing agreements that contain such provisions, the City Attorney's Office must have confidence that the RMTF is being appropriately managed in order to continue drafting agreements in this manner and allow these to be approved by the City Council. Moreover, this Office has specific duties with respect to the RMTF that are mandated by ordinance.⁴ Therefore, it is critical that this Office maintain a high degree of confidence that the RMTF is being managed and utilized correctly and prudently.

I have reviewed your June 2012 Audit Report. I have also secured and reviewed other documents that I believe were relevant, necessary, or helpful in formulating the comments expressed herein. For ease of review, my comments will be presented in the order and with reference to the Observations of the Audit Report. I do not find it beneficial at this time to comment on each Observation, but I would be willing to supplement my comments if there are questions about any of the Observations in the Audit Report or my comment thereto.

Observation 1

Over \$3.2 million was transferred out of the RMTF in FY2010 to pay for unfunded ASRS pension liabilities as part of the city's termination incentive program without consulting the RMTF Trustees, the City Attorney's Office or City Council.

The legal requirements and restrictions for transfers among the city's funds were addressed at length in an opinion memorandum issued by this Office on February 13, 2012. Because that memorandum is available for review at any time, the requirements and restrictions outlined in that memorandum will not be restated here. In summary, consistent with that opinion, it is clear that the transfers out of the RMTF that were made in February and April 2010 lacked any of required authorization and there was no attempt to

¹ Glendale Charter art. IV, § 4.

² Glendale City Code ("G.C.C.") § 2-202(a).

³ Glendale Charter art. VIII, § 1.

⁴ E.g., G.C.C. § 2-205.

secure any legal substantiation whatsoever. On the contrary, these unusual transfers were inconsistent with the Charter and the City Code. Moreover, the transfers were made without modification to the publicly approved budget, without Council approval in a public process, and without communication with the Board of Trustees.

I have reviewed copies of emails from a former Risk Manager who facilitated the transfer by offering his interpretation of state statutes. Our Office was never consulted about that interpretation or about these transfers. The failure to consult with our Office precluded any legal analysis regarding the propriety of the transfers and significantly erodes the confidence in the management of this fund.

Even more importantly, it appears that another trust fund, the Employee Benefit Trust Fund (“EBTF”) was affected by unauthorized transfers. As is apparent from its title, this fund is an allocation of money held in trust. It incorporates money that is directly deducted from employee paychecks. Management, who has responsibility to attend to the EBTF, has a fiduciary duty to the intended beneficiaries; therefore money held in the EBTF can only be used for the benefit of those beneficiaries.⁵ The beneficiaries of the EBTF are the city’s employees and it is specifically set aside to provide healthcare coverage. Transfers made in the manner and for the purposes described in the Audit Report are inconsistent with that duty and law governing the use of the EBTF.

The Audit also found that funds assessed to the departments were not used for the purposes that were identified in the budget. In addition to being contrary to state budget law, from a management perspective, it is troubling that this Office and other departments were assessed internal premiums that were never used for the stated purpose. I have been particularly vocal about my concern about this Office’s ability to fulfill its responsibilities given the repeated across-the-board budget cuts. To learn that mandated assessments for internal services were used for purposes other than as represented is very disappointing, disrespectful of every manager’s efforts, and a poor decision from an organizational perspective.

In light of the above, I would agree with the Effect assessment for this Observation. There has clearly been an inadequate demonstration of fiduciary responsibility, a woeful lack of proper communication with Board and Council, as well as non-compliance with the City Code and state budget law. Consequently, I also agree with the Recommendations of this Observation. These Recommendations are properly given the purpose and scope of the Audit. In a broader perspective, however, the very serious issues raised by this Observation suggest that further actions be taken to address the decisions that were made which led to these transfers occurring.

Observation 2

In FY2011 and FY2012, transfers of \$1.45 million and \$1.2 million were made out of the RMTF respectively to the Workers Compensation Trust Fund, which did not receive budgeted premiums of \$985,920 in FY2010.

This Observation shares a factual basis with Observation 1. Consequently, the comments to Observation 1 are applicable here. The transfers outlined in Observation 2 were inconsistent with the City Code, were not reflected in the approved budget, lacked Council approval for a budget amendment, and

⁵ See RESTATEMENT (3d) TRUSTS § 76 *et seq.*

lacked the recommendation of the Board. Plainly stated, these transfer of these funds out of the RMTF lacked any authorization whatsoever.

The Audit Report reflects that the transfers for 2012 were approved by Council, although this was done after the fact. That was also the case with respect to the communication with the Board and this Office. Moreover, I would reiterate my disappointment to learn that the department's budgets, which take an extraordinary amount of effort to prepare, would be disregarded and modified in this manner without any attempt to communicate such matters to the public officials who are attempting in good faith to fulfill their responsibilities to the public.

As with Observation 1, I agree with the Effect and Recommendations of the Audit Report and make the same suggestion.

Observation 4

The RMTF Trustees did not submit the 2011 annual report to City Council as required by City Code. The report was sent out during the audit.

The Board has a legal responsibility to submit a report to Council. The RMTF serves as the city's insurance policy. As such, the health of the city's insurance coverage, like any other organization, is a vital financial consideration. Consequently, a full, comprehensive, and accurate report by the Board to Council is critical for Council's consideration of the city's financial condition. More importantly, as stated above the Board serves as fiduciaries for the fund, which heightens the legal duties imposed upon the Board. There is, therefore, no acceptable reason for the Risk Manager, who also serves as a member of the Board, not to facilitate a timely report.

While I agree with the Effects and Recommendation of the Audit Report, I would provide additional recommendations. First, given the nature and purpose of the Board's report to Council, it must be prepared and submitted in sufficient time for Council to consider it during its budget deliberations. Secondly, Council should be formally presented the report, given an opportunity to consider and discuss it, send it back to the Board for further information, and when acceptable adopte it by formal Council action.

Observation 7

Internal administrative expenses were paid out of the RMTF in FY2011 and FY2012 when there is no provision for such costs in the Ordinance.

The Code provides that disbursements from the RMTF may only be made to "provide defense and payment of claims and losses for personal injury and property damage liability and payment of insurance premiums."⁶ The Code further restricts these uses by providing a list of specific items that might otherwise fall within the authorized uses but for which the fund may not be used. There is no legal authorization for the RMTF to be used for administrative expenses. Use of funds for administrative expenses not only violates the Code, but is contrary to sound fiduciary management of the fund.

⁶ G.C.C. § 2-203.

In light of the clear legal restrictions on the use of RMTF money, I agree with the Effects and Recommendation of the Audit Report. The Risk Manager should be provided with a budget that is not within the RMTF in order to manage that division.

Observation 9

It is unclear as to whether a separate external audit of the RMTF is required to be performed annually.

The Code requires that “[a]n audit [of the RMTF] shall be performed annually by an external auditor and the report shall be kept on file for a minimum of five (5) years.”⁷ The city retains an independent accounting firm to conduct an annual audit of its financial management. This city audit is mandated by the Charter.⁸ The city audit is comprehensive, incorporating all aspects of the city including the RMTF. Therefore, if council had desired that the city audit serve as the required RMTF audit, it would not have specifically required a RMTF audit. Therefore, a separate audit of the RMTF should be performed each year.

The RMTF audit could, however, be done along with the city audit.⁹ If that is done, it would require a separate document setting forth the scope of the RMTF audit and require separate reporting by the auditor.

The Effect and Recommendation of the Audit Report defers to the opinion of the City Attorney’s Office, which is given above.

Observation 10

RM staff is uncertain as to whether RMTF Trustees need separate bonding.

The issue of bonding Board members is a complex question that requires in-depth review of the existing insurance policies that provide coverage for the Board members. While there are differences between bonding and insuring, those differences can be eliminated through appropriate insurance terms. Analyzing whether existing coverage is sufficient to serve as a bond requires time for review of the existing coverage and formulation of appropriate legal opinions.

As a result, the recommendation that the Risk Manager consult with the City Attorney’s Office on this matter is appropriate and acceptable to our Office. We will undertake the analysis on this matter and provide an opinion to the Risk Manager as quickly as possible.

Observation 11

The scope of the agreement for insurance broker services does not include five of the six types of insurance currently purchased by the city and the term of the agreement is inconsistent with the Request for Proposal.

An RFP can include the terms of a contract that the successful bidder will be expected to enter into with the city. In fact, the standard RFP that the City Attorney’s Office has recommended for solicitations of

⁷ G.C.C. § 2-208.

⁸ Glendale Charter art. VI, § 16.

⁹ While the code is unclear as to whether both the RMTF and the Workers’ Compensation Trust Fund (“WCTF”) are to be audited, there is little justification for or logic to reading the code as excluding the WCTF. Therefore, both the RMTF and the WCTF must be audited annually independent of the city audit.

software includes an extensive contract related to software maintenance agreements. Moreover, there is a significant benefit of providing the contractual terms in the RFP. Generally speaking, most RFPs result in some form of a contract with the successful bidder. By including the city's anticipation with respect to contractual terms, the RFP serves to establish the expectations of the responding party.

In some solicitations, the RFP may expressly require responding parties agree to the terms as proposed in the RFP as part of their bid. This method, however, may have the effect of limiting the number of responses received. Consequently, it should be used when seeking proposals for well-defined products or services that have a narrow range of pricing and that are normally purchased using commonly accepted contractual terms.

In most other proposals, the city should present contractual provisions in an RFP as the terms that city will expect the responding party to agree unless definitive statements of exception are provided in the responses. This method of presentation allows for some flexibility during subsequent contract negotiations. Moreover, it is helpful in evaluating the proposal because it provides feedback through the exception and may indicate an adjustment that should be made to the proposed contract terms. Proposing contract terms in an RFP is also helpful during negotiations because the proposed terms set some negotiating boundaries. To that end, it should be recognized that a significant variance from the contract terms proposed in the RFP should result in cancellation of the award and initiation of a new bid process; although, an exception could be made if all or most of the bids noted an exception to a practical term.

The Effect and Recommendation of the Audit Report defers to consultation with the City Attorney's Office, which is given above. We have worked with Risk Management and Purchasing to prepare the appropriate contract terms to include in an RFP.

Observation 12

Risk Management does not always require that claimants sign a general release after reimbursement.

This Office has in the past worked with Risk Management on this issue. The question of securing a release in any given situation is one that requires a degree of discernment, analysis and discretion on the part of the person representing the city. It is difficult to formulate a definitive rule that would ultimately be the most beneficial method of handling a matter.

Therefore, I would not disagree under some circumstances with the Effect but would moderate the Recommendation consistent with the above. We will continue to work with the Risk Manager on the issue.



FINANCIAL SERVICES DEPT MEMORANDUM

DATE: September 8, 2012
TO: Candace MacLeod, City Auditor
FROM: Sherry M. Schurhammer, Executive Director, Financial Services Department
SUBJECT: Management Response to Audit of Risk Management Trust Fund

The following represents the Financial Services Department's management response to the findings and recommendation in the audit that pertain to this department.

Observation #2:

Recommendation that the Financial Services Department should:

B. Consider establishing an emergency transfer process from contingency funds to accommodate unplanned losses or emergencies.

Management Response: Concur – There should be a process that outlines where the funds will come from in the case emergency funding needs to occur.

Timeframe for implementing the agreed upon response: Financial Services Department staff will work with the City Attorney's Office on an emergency transfer process that meets legal restrictions. This will be done during the fall of 2012 with completion expected by the end of December 2012. .

C. Ensure that journal entries are posted only if adequate supporting documentation has been provided.

Management Response: Concur – Finance ensures that journal entries have supporting documentation before they are posted.

Timeframe for implementing the agreed upon response: This is a practice that Finance currently follows.

D. Develop procedures explaining where transfers should be reported in city financial reports.

Management Response: Concur – Financial Services Department staff will develop a procedure that outlines where transfers are reported.

Timeframe for implementing the agreed upon response: By December 31, 2012

Observation #3:

C. Resolve where to record the \$2.3 million airport lawsuit expenditure.

Management Response: Concur – As discussed with the internal auditor the Financial Services Department staff has determined the proper recording of the airport lawsuit of \$2.3 million in the general fund.

Timeframe for implementing the agreed upon response: As part of the fiscal year 2011-12 year end process, this journal entry will be made.

Observation #11:

B. Meet to discuss the possibility of incorporating contract terms into solicitation documents.

Management Response: Concur – In 2012 Financial Services Department staff started incorporating contract terms into solicitation documents.

Timeframe for implementing the agreed upon response: This practice already has been incorporated into the solicitation process.

cc: Horatio Skeete, Acting City Manager
Jacque Behrens, Materials Manager
Rachel Bremen, Senior Management Assistant



Memorandum

DATE: September 19, 2012
TO: Candace MacLeod, City Auditor
FROM: Jim Brown, Interim Executive Director Human Resources & Risk Management
SUBJECT: Management Response to Risk Management Trust Fund Audit

Thank you for your assistance in conducting an audit of the Risk Management Trust Fund (RMTF). As you know, some of the audit recommendations in the report have already been implemented by staff and the following represents our management response to the findings and recommendations in the audit:

Observation 1:

- A. Ensure that proper notifications and approvals are obtained before transfers are made from the RMTF.

Response: Concur. The Risk Manager will ensure that proper notifications and approvals will be obtained from the RMTF Trustees and City Manager before transfers are made from the RMTF. Effective immediately.

- B. Ensure only qualifying payments are made out of the RMTF.

Response: Concur. The Risk Manager will work with the Management and Budget and Finance departments to ensure that only qualifying payments are made out of the RMTF. Effective immediately.

- C. Forgo future attempts to maintain the regulatory requirements that apply to the Workers Compensation Trust Fund by transfers from the unregulated RMTF without proper assessment of the legal and financial impact on the RMTF.

Response: Concur. The Risk Manager will consult with management and the RMTF Trustees prior to making transfers out of the RMTF. Effective immediately.

Observation 2:

- A. Ensure that the RMTF Trustees review proposed transfers from the RMTF and make any recommendations to City Council for review.

Response: Concur. The Risk Manager will ensure that the RMTF Trustees review proposed transfers from the RMTF and notify the City Council of these transfers. Effective immediately.

Observation 3:

- A. Formalize and communicate procedures to ensure that the RMTF Trustees are consulted when material charges are recorded in the RMTF.

Response: Concur. The Risk Manager will formalize and communicate procedures to ensure that the RMTF Trustees are notified when any monetary judgments or very large settlements are going to be recorded in the RMTF. Effective immediately.

- B. Ensure the RMTF Trustees and City Council is consulted when material litigation is pursued.

Response: Concur. The Risk Manager will work with the City Attorney's Office to ensure RMTF Trustees and City Council are notified when outside litigation is pursued in relation to the RMTF. Effective immediately.

Observation 4:

- A. Develop controls to ensure City Council is provided with the annual report in a timely manner.

Response: Concur. The Risk Manager will develop controls to ensure City Council is provided with the RMTF annual report in a timely manner. Effective immediately.

- B. Provide periodic reports to the RMTF Trustees for discussion.

Response: Concur. The Risk Manager will provide reports at least bi-annually to the RMTF Trustees. Effective September 2012.

- C. Consider meeting with the RMTF Trustees on a more frequent basis than annually.

Response: Concur. The Risk Manager will schedule RMTF meetings at least bi-annually. The next RMTF meeting will be scheduled in September 2012.

Observation 5:

- A. Develop controls to ensure the Risk Manager is properly licensed at all times.

Response: Concur. The Risk Manager will develop controls to ensure he is properly licensed at all times. Effective September 2012.

- B. Submit the Risk Manager's license to City Council for verification, as appropriate.

Response: Concur. The Risk Manager will consult with the City Attorney's office regarding this requirement. The Risk Manager will then provide his license to the City Council as recommended.

Observation 6:

- A. Meet with the City Attorney's Office and Materials Management and review all agreements and processes followed for claims repair services to ensure compliance with City Code.

Response: Concur. The Risk Manager will meet with City Attorney's Office and Materials Management and review all agreements and processes followed for claims repair services to ensure compliance with City Code. Effective November 2012.

- B. Meet with Materials Management to re-solicit the RFQ for residential and commercial claims repair services to a formal solicitation and obtain City Council approval on the new contract, as required.

Response: Concur. The Risk Manager will meet with Materials Management to re-solicit the RFQ for residential and commercial claims repair services to a formal solicitation and obtain City Council approval on the new contract, as required. Effective December 2012.

- C. Ensure claims agreement terms and conditions are monitored for compliance.

Response: Concur. The Risk Manager and Risk Management Claims Analyst will ensure claims agreement terms and conditions are monitored for compliance. The Risk Manager and Risk Management Claims Analyst already met with the primary vendor on August 15, 2012 to review claims agreement terms and conditions. Effective immediately.

- D. Develop adequate controls over the review and payment of vendor invoices to ensure they are accurate, complete and paid in an efficient and cost-effective manner.

Response: Concur. The Risk Manager and Risk Management Claims Analyst will develop adequate controls over the review and payment of vendor invoices to ensure they are accurate, complete and paid in an efficient and cost-effective manner. Effective September 2012.

Observation 7:

- A. Ensure only qualifying expenses are paid out of the RMTF.

Response: Concur. The Risk Manager will ensure only qualifying expenses are paid out of the RMTF by making revisions to city ordinance. Effective January 2013.

Observation 8:

- A. Ensure that all insurance contracts are forwarded to the City Attorney's Office, City Council, and the City Clerk, as appropriate.

Response: Concur. The Risk Manager will ensure that all insurance contracts as appropriate are forwarded to the City Attorney's Office, City Council, and the City Clerk. Effective September 2012.

Observation 9:

- A. Consult with the City Attorney's Office and City Council regarding the requirements for an annual external audit.

Response: Concur. The Risk Manager will consult with the Finance department to determine if the RMTF annual external audit can be done along with the annual city audit. The Risk Manager will then notify the RMTF Trustees regarding how the annual external audit will be completed. Effective November 2012.

Observation 10:

- A. Follow up with the City Attorney's Office regarding bonding of RMTF Trustees.

Response: Concur. The Risk Manager will follow up with the City Attorney's Office regarding bonding of RMTF Trustees. Effective September 2012.

Observation 11:

- A. Ensure the corrections to the term provisions in the agreement for insurance broker services are executed in consultation with the City Attorney's Office.

Response: Concur. The Risk Manager in conjunction with the City Attorney's Office has already completed this item on August 10, 2012.

Observation 12:

- A. Require claimants to sign a general release when a claim is settled.

Response: Neither Concur Nor Disagree. The Risk Manager will review this recommendation with the City Attorney's Office to clarify its applicability. Effective October 2012.

Observation 13:

- A. Ensure city procurement procedures are followed to obtain actuarial services and enter into a professional services contract with the successful provider.

Response: Concur. The Risk Manager will ensure city procurement procedures are followed to obtain actuarial services and enter into a professional services contract with the successful provider. Effective January 2013.

Observation 14:

- A. Review, document and update RMTF procedures and train staff.

Response: Concur. The Risk Manager will review, document and update RMTF procedures and train staff. Effective May 2013.

Observation 15:

- A. Request and review supporting documentation for stadium security fees from the Police Department on an ongoing basis to ensure fees charged are accurate and complete.

Response: Concur. The Risk Manager will request and review supporting documentation for stadium security fees from the Police Department on an ongoing basis to ensure fees charged are accurate and complete. Effective June 2013.

- B. Review existing rates and agreements to ensure they are accurate and complete.

Response: Concur. The Risk Manager will review existing rates and agreements to ensure they are accurate and complete. Effective June 2013.

Observation 16:

- A. Turn in any underutilized vehicles to Equipment Management.

Response: Concur. The Risk Manager will make the determination which Risk Management vehicle will be turned in. Effective December 2012.

Observation 17:

- A. Ensure that procurement card guidelines are complied with and monthly cardholder activity is adequately monitored.

Response: Concur. The Human Resources Procard Liaison will ensure that procurement card guidelines are complied with and monthly cardholder activity is adequately monitored. Effective immediately.

Observation 18:

- A. Ensure Docman passwords are changed in accordance with IT policies.

Response: Concur. The Risk Manager will ensure Docman passwords are changed in accordance with IT policies. Effective October 2012.

- B. Ensure user access lists are updated when an employee terminates or changes job duties.

Response: Concur. The Risk Manager will ensure user access lists are updated when an employee terminates or changes job duties. Effective September 2012.

- C. Continue to work with Information Technology to ensure RM data is protected.

Response: Concur. The Risk Manager will continue to work with Information Technology to ensure RM data is protected. Effective September 2012.

- D. Explore other systems to record and track claims data for increased efficiency.

Response: Do Not Concur. Not enough funding is available to switch to another claims database system. When appropriate financially this recommendation will be revisited.

Observation 19:

- A. Ensure staff is adequately cross-trained and licensed, as appropriate, to perform the functions of the Risk Manager.

Response: Concur. The Risk Manager will ensure staff is adequately cross-trained and licensed, as appropriate, to perform the functions of the Risk Manager. Effective June 2013.

Observation 20:

- A. Review and update the signature authorization for Risk Management, as appropriate.

Response: Concur. The Risk Manager will review and update the signature authorization for Risk Management, as appropriate. Effective September 2012.

Observation 21:

- A. Review Risk Management records to ensure compliance with approved retentions schedules.

Response: Concur. The Risk Manager will review risk management records to ensure compliance with approved retentions schedules. Effective February 2013.

cc: Horatio Skeete, Acting City Manager