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COMMITTEE MEMORANDUM

TO: Finance and City Wide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: November 12, 2014

SUBJECT: **RISK MANAGEMENT ACTUARIAL DETERMINED LIABILITY**

Background

The City has a self-insurance program for workers' compensation, law enforcement liability, general liability, automobile liability and public official liability (which includes employment liability). Law enforcement liability includes coverage for false arrest, excessive force and invasion of privacy. Common exclusions are criminal/intentional acts. Public official's liability provides coverage for errors and omissions of public officials and employees of the public entity. (Exclusions for this coverage are losses due to fraud or dishonesty, bodily injury or property damage, assault and battery.) Employment liability includes claims such as wrongful termination, sexual harassment, and discrimination. Claims are paid from the Risk Management Fund and financial reporting is in accordance with GASB Statement No. 10 definitions. This Statement establishes accounting and financial reporting standards for risk financing and insurance-related activities of state and local governmental entities that are required to report an estimated loss from a claim as an expenditure/expense.

During the FY2013/14, the Risk Management budget was negatively affected due to excessive and unanticipated litigation of Workers' Compensation claims, and resolution of outstanding liability claims.

In June 2013, the City was successful in getting a notice of voluntary dismissal granted on a class action complaint filed by the former police chief Carlos Noriega, FOP Union President Alejandro Bello and other retired police officers, related to the Heart/Lung Bill (Section 112.18, F.S.). The statute provides that any condition or impairment of health of law enforcement officers, firefighters or correctional officers caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. The suit alleged that the City and others engaged in fraud, conspiracy and racketeering to deprive the officers of Workers' Compensation disability benefits. After the complaint was dismissed, other active and retired police and firefighters retained the same counsel to represent them in their claims for impairment benefits.

In March 2014, the City was ordered to conduct mediations with the growing number of litigants. In an effort to streamline the process, the City held several mass mediation sessions, significantly reducing costs associated with hearing the cases individually. (The City uses the services of outside counsel to defend us in these cases, which is also a cost driver of the Risk

Management budget. It should be noted that while the matter at hand was resolved in the 28 cases so far, the City is still liable for the claimant's medical care. Therefore, the reserves were adjusted to reflect the future medical payments for these cases. Legal expenditures associated with employment, police and general liability cases were taken into account by the actuary for the first time this year. Case reserves were adjusted to reflect the handling of these claims.

Analysis

Each year, the City engages an actuarial firm to prepare a study of the self-insurance program. The purpose of the study is to estimate the outstanding losses for financial reporting purposes and to provide reasonable guidance for future funding of the City's exposure to loss. Attached is a summary of the City's liabilities and fund balance deficit based on the Risk Management Actuarial Study, as of September 30, 2014. The increase in liability as a result of the September 30, 2014 actuarial study is \$4.5 million, of which approximately \$2 million is due to the reasons stated above. The remaining \$2.5 million increase is broken down as follows:

Law Enforcement	\$1.1 million which is a 30% increase over last year
General Liability	\$0.9 million which is a 32% increase over last year
Automobile Liability	\$0.3 million which is a 33% increase over last year
Public Official Liability (including Employment)	\$0.2 million which is a 33% increase over last year

Our current fund deficit is \$1.5 million and the City had a five-year plan to reduce that deficit to \$0. At the end of FY 2013/14, had the actuarial study not resulted in any changes, the deficit would have been reduced to \$201,000, better than the five-year plan. However, in the recent actuarial report the liability increased by \$4.5 million bringing the adjusted deficit to \$4.7 million. In order not to allow the deficit to exceed \$1.5 million, the fund requires an additional, unbudgeted allocation of \$3.1 million.

Perspective

Over the past several years the deficit in the Risk Management fund decreased from \$8.984 million on September 30, 2009, to \$1.5 million on September 30, 2013. Nonetheless, the deficit remains an external auditor management letter comment.

The Joint Legislative Auditing Committee of the Florida Legislature requires the City to explain the reason for any audit findings outstanding for three consecutive years. As a result, on July 13, 2013, the City sent such an explanation and how the deficit was going to be funded.

The City's Risk Management Self Insurance fund is accounted for and reported as a separate fund in the City's Comprehensive Annual Financial Report (CAFR). For at least the last five years this fund has reported a deficit balance which requires additional disclosure in the CAFR highlighting the reasons for the deficit as well as disclosing the City's plan to fund the deficit. The Self Insurance fund deficit is also included in the external auditor's management letter as a recommendation to improve financial management for multiple years.

In light of the bonds the City will be issuing this year, it is clearly important that the City continue reducing the deficit as previously planned. As of the bond issuance process, the rating agencies review the City's financial report in its entirety before giving the City a rating.

Risk Management Fund Deficit

Page 2

November 12, 2014

To improve the City's ability to forecast trends throughout the year, rather than relying in a year-end actuarial report, the City is in the process of engaging an actuary to assist in providing quarterly reports.

Attachment


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