

**THE CORPORATION OF THE CITY OF WINDSOR
OFFICE OF THE CITY SOLICITOR
Purchasing & Risk Management Division**



MISSION STATEMENT:

"Our City is built on relationships – between citizens and their government, business and public institutions, city and region – all interconnected, mutually supportive, and focused on the brightest future we can create together."

LiveLink REPORT #: 17685 AL2915	Report Date: April 22, 2015
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To: Mayor and Members of City Council

Subject: 2014 Risk Management Report

1. RECOMMENDATION: City Wide: X Ward(s):

THAT Council **RECEIVES** the report titled 2014 Risk Management Report for information.

THAT Council **DIRECT** that the City's insurance policies with the Ontario Municipal Insurance Exchange be renewed for a fifth year, terminating no later than January 1, 2017, in accordance with CR392/2010.

2. BACKGROUND:

The primary role of the Risk Management Division is to administer the City's insurance portfolio, manage loss exposure associated with claims made against the City, and manage recovery of loss to City property. The Division achieves this by using risk management, legal, and insurance practices to:

- provide risk management advice to operating departments by addressing risk exposures and providing options to reduce and transfer that risk;
- administer claims efficiently and effectively by investigating each claim, determining liability, assessing damages, and resolving the claim;
- cost-effectively finance claim costs through:
 - risk transfer to third parties and insurers;

- o balancing the cost of insurance against the cost of self insurance;
- o managing claim and self-insurance reserve funds; and
- o pursuing recovery from at-fault third parties to compensate for loss to City property.

In 2014, there was an increase in the number of claims from 2013, but a reduction in the associated cost of claims. The increase in number of claims is primarily attributed to the harsh winter conditions of 2014 resulting in more slip and falls and road condition claims. The decrease in claims costs can be attributable to a few factors. First, many of the road condition claims were denied. Second, the more severe claims, such as slip and falls, generally take longer to resolve which means that potential settlements on those claims are still outstanding. While a savings in claim costs is positive, one year of savings is not indicative of a positive trend.

In contrast, insurance premium costs continue to escalate. Premiums are invoiced at the beginning of each calendar year and are a fixed cost, with the exception of property premiums which are adjusted quarterly to account for properties sold or purchased. 2014 premium increases were significant and untimely, considering the increases the City recently experienced in previous policy years. Both the City's primary insurer, OMEX, and the insurer of its Transit fleet, Travelers, point to claims experience and actuarial recommendations as the drivers behind their premium increases.

The purpose of this report is to give Council an overview of Risk Management costs and statistics for 2014 against prior years.

3. DISCUSSION:

Claims Review

A. Number of Claims

On average the City's Risk Management Division processes a total of approximately 455 claims per year. The majority of claims the City receives on an annual basis relate to slip and falls and trip and falls on City property, damage to vehicles from road conditions or debris, property damage from tree roots and fallen branches, and Transit passenger injuries. Significant storm events have also brought about an increase in sewer backup claims. All claims received are investigated and either paid or denied in accordance with the facts of each situation and the applicable law. Some claims that are denied eventually result in litigation.

Below are two tables showing the number of claims made against the City and by the City, respectively, by loss type per year since 2009.

Claims made against the City						
Loss Type	2009	2010	2011	2012	2013	2014
Slip and Falls	30	38	51	14	35	82
Trip and Falls	36	39	46	54	51	41
Claimant Property Damage	33	42	33	24	39	40
Road Conditions	51	23	37	19	36	62
Sewer Backup	15	314	110	24	80	26
Tree Liability	45	75	69	50	36	59
Police Liability	20	16	10	18	16	11
Independent Contractors	37	80	44	51	26	23
Error & Omissions	11	11	8	8	4	2
Auto Liability	28	18	29	8	13	13
Auto Liability - Transit Windsor	50	57	46	42	37	34
Bodily Injury-General	14	21	27	21	10	16
Total	370	734	510	333	383	409

Claims made by the City						
Loss Type	2009	2010	2011	2012	2013	2014
Auto Physical Damage - Transit Windsor	1	3	1	2	0	0
Property Claims	77	56	66	54	74	73
Total	78	59	67	56	74	73

Overall, 2014 claims were below the historical average.

In 2014 there were 409 claims against the City. Claims for slip and falls and road conditions saw an increase in 2014, with significantly more claims than had ever been received in the past. This increase is attributable to the harsh winter conditions present in the first quarter of 2014 which resulted in slippery roads and sidewalks, as well as increased potholes.

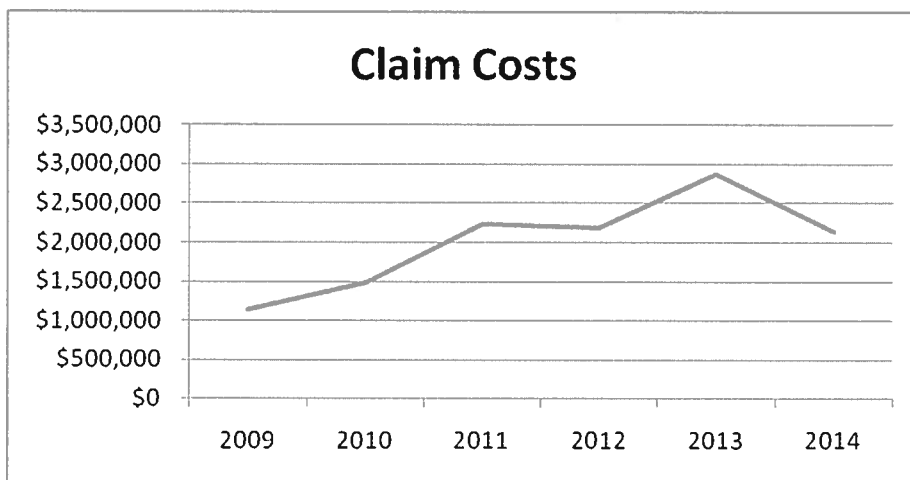
The category called “Independent Contractors” are claims that the City receives but transfers responsibility to the contractor that caused the loss. For example, if roadwork repairs are being done by a third party contractor and a claimant trips and falls, the City will transfer that claim to the contractor, pursuant to the indemnity provisions in the agreement with the Contractor and the insurance they are required to provide. The City is generally not required to make any payments on these types of claims unless the City was negligent beyond the scope of the Contractor’s indemnity.

In 2014 there were 73 instances where the City suffered a loss to its property either accidentally or because of a third party. One of the 73 claims was a property damage claim made under the City’s property policy for fire damage experienced at the former

Wickes facility. The remaining 72 claims involved property damage to City infrastructure where the City sought recovery directly from the at-fault party.

B. Claim Costs

Claim costs typically include third party claim settlements, external adjusting fees, external legal fees, and all other costs incurred as part of the investigation and defence of a claim. The City's claims budget is formulated with the expectation that in certain years, claims will come in under budget and savings will be transferred to the Reserve fund, while in other years a deficit will be experienced, to be funded by the Reserve fund. The chart below shows the claims costs paid by the City since 2009.



Total claim costs for 2014 were \$2,138,340. The decrease in claims costs in 2014 can be attributed to a few factors. In 2014, 62 claims related to road conditions. Given the harsh winter conditions and the City's Maintenance Crews making best efforts to maintain levels of service in 2014, many of the road condition claims were denied. The number of slip and fall claims also increased from 35 in 2013 to 82 in 2014. Given that these types of claims are generally more severe in nature, they generally take longer to resolve. Of the 82 slip and fall claims received in 2014, only 11 of them have been resolved. This means that potential settlements on 71 of those claims remained outstanding as of December 31, 2014. As is analyzed in the Financial section of this report, under the heading "Overall Cost of Risk", claims costs associated with 2014 are expected to be the highest in City history. So although payout in 2014 was low, it is unlikely indicative of any positive trend, and significant claim spikes are predicted for 2015 and/or 2016.

In 2010, the City moved from a \$25,000 deductible on its liability insurance policies to a \$250,000 deductible. This had and continues to have a significant impact on the City's claim costs, as the City is now responsible for funding up to a maximum \$250,000 for each independent claim. The tradeoff is a savings in insurance premiums, which outweighs the increase in claims costs. The higher the deductible, the less the City is paying for the insurer's overhead, administrative costs, and costs required to manage and

process claims submitted against the City, and the less it is paying to support potential losses incurred by other members of the insurer. Any reduction in the City's loss experience directly benefits the City rather than the insurer. Moving to a high deductible appears to be the new model and only viable standard for municipalities.

Aside from self-funding a larger proportion of claims, claims costs rise due to Court decisions holding municipalities to increasingly high standards and awarding increasingly high damage awards. The concept of joint and several liability means that the City can be responsible to pay an entire damage award, even if the City is only 1% liable. Previous consideration for reform in this area of the law has been halted. Until the law is changed, municipalities will continue to pay because they are perceived as having the ability to do so by increasing property taxes and/or relying on insurance. Unfortunately, the effect this has on ratepayers, whether by paying increased taxes to fund claims and insurance premiums or cutting services elsewhere, seems to be disregarded. In the interim, Risk Management and the City's Legal Department work together to vigorously defend claims and only pay where legally liable to do so. Risk Management also works within current resource levels to mitigate risk so that the likelihood and/or severity of claims are minimized.

Recoveries

Recoveries (also referred to as "subrogation") are carried out by Risk Management on behalf of other City departments. When City property is damaged by an at-fault third party, Risk Management attempts to recover the cost to repair or replace the damaged property from the third party or their insurer. The department that incurred the loss bears the cost of the repair. At the end of the year, any recoveries (net of Risk Management Administrative costs) are allocated back to the department that incurred the loss on a proportional basis.

Historically, recoveries were done on behalf of Public Works Operations, Traffic, and Forestry. However, in 2014, the program was expanded and recoveries were done on behalf of the Airport, Transit Windsor, and Parks and Facilities as well.

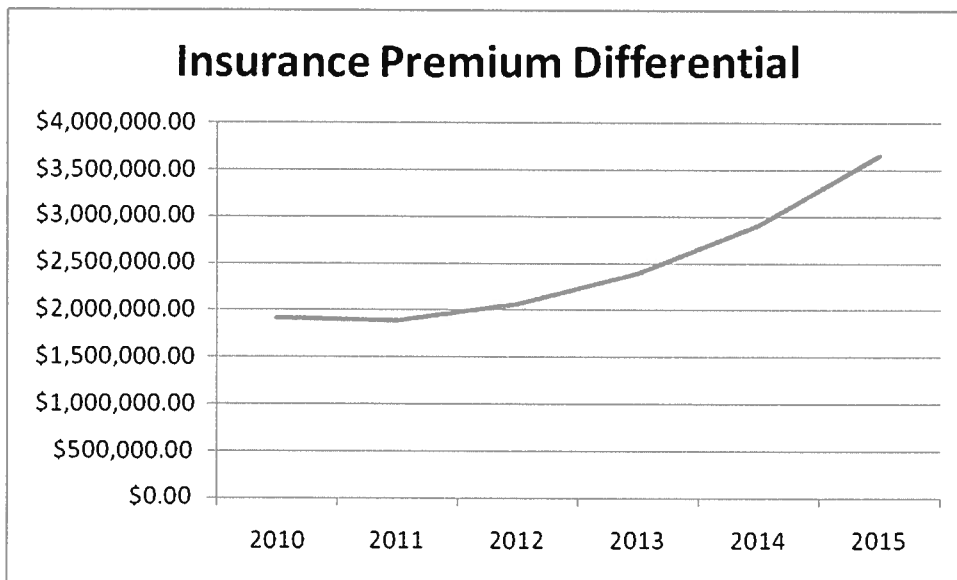
Below is a summary of funds recovered since 2009.

Year	Recovery
2009	\$162,601
2010	\$154,389
2011	\$136,503
2012	\$145,623
2013	\$42,977
2014	\$185,726

The funds recovered in 2014 were the highest the City has seen since the inception of the program. A few factors contributed to this. Part of the recoveries in 2014 related to incidents in 2013. Due to a technology change in 2013, not all relevant information could be received to commence the recovery process on various incidents until 2014. Another reason for the increase is due to the fact that a second full time Claims Administrator was hired in the last quarter of 2013. With the hiring of a second full time Claims Administrator, more time could be devoted to soliciting other departments to take advantage of the program, as well as more aggressively pursuing the recoveries from third parties. Lastly, as with any year, all recoveries depend on the frequency and severity of damage to City property where the identity of the at-fault party can be determined.

Insurance Premiums

Insurance costs have risen exponentially over the past few years. For the 2015 policy year, the premium increase was approximately 26% above the premium cost for the 2014 policy year. The chart below displays the total premium cost to the City since 2010.



The \$3.6M in 2015 premium cost does not include the cost payable to the insurer for past retro-assessments (as reported in Council Report 17255 – “Insurance Premium Supplemental Assessment”), nor does it include the cost borne by other City departments and/or organizing committees for event-specific insurance (ex. Ontario Summer Games, Ontario 55+ Games, etc.).

Insurance rates have been driven up over the past few years, partially as a result of claims experienced by the City’s insurers and reinsurers. The more insurers are required to pay out on a claim, the more money that needs to be collected from those it insures. OMEX is the City’s main insurer. It is an insurance reciprocal that only insures Ontario municipalities. Its board of directors is established by the municipalities it insures,

thereby giving member municipalities a level of control over its operations beyond what can be expected with a traditional insurer.

OMEX has historically funded its claims deficits by issuing insurance retro-assessments. By contrast, Travelers, the insurer of the City's transit fleet, has increased premiums to make up for historical losses.

In 2014, following the last retro-assessment that it issued, OMEX underwent new management and hired a consultant to review and make recommendations for financing, so to minimize the chance of future retro-assessments and ensure compliance with the requirements dictated by the Financial Services Commission of Ontario. OMEX also underwent changes at the board level, with some directors leaving and City Solicitor, Shelby Askin Hager, taking over as Board Chair.

OMEX premiums increased overall by 23% in 2015. OMEX attributes the 2015 premium increases to claims experience along with the recommendations of their actuary and reinsurers. Historically, OMEX was pricing to stay competitive in the insurance market, by pricing below cost. As a result, it has had to issue retro-assessments when premiums collected in a given year later turned out to be less than what was required to pay out on claims. Realizing that both the threat and reality of issuing a retro-assessment is not well received by municipalities, OMEX is changing their funding model by pricing for sustainability, rather than to market. In other words, OMEX is now collecting more in premiums to adequately fund anticipated expenses. In the event OMEX collects more than what is required to fund its expenses for any given year, that surplus is returned to the municipalities it insures.

For 2015, under its new leadership, OMEX has moved to a very conservative funding model. While this results in increased premiums, it makes the likelihood of a future retro-assessment for the 2015 year very unlikely.

Based on the advice of the consultant and under its new management and board leadership, there are other changes in the works at OMEX. Some of these changes include the following:

- Holding more frequent internal meetings to review losses and reserve funding
- Internal audits
- Reviewing underwriting methods to mirror what is generally used in the market
- Reviewing the way they respond to RFPs
- Exploring different methods of structuring their reinsurance program
- Increased transparency to members

Over the long term, it should be more economical to insure with a reciprocal, than with a traditional insurer, because there is no profit to be made by the reciprocal and every dollar collected is used to benefit the municipality. Based on a few different comparison methods, as reported to Council on June 30, 2014 in the report entitled "Insurance Premium Supplemental Assessment", insuring with OMEX has been more cost effective than insuring in the traditional marketplace.

The City is currently paying back the 2014 retro-assessment in the amount of \$1,022,518.00 plus PST on a five year interest free plan. The first payment was paid in January, 2015. If the City were to leave OMEX prior to January, 2016, the outstanding amount will be interest bearing and billed in two installments – January, 2016 and January, 2017. The interest rate is set at 2% above prime.

The last time the City issued an insurance RFP was in 2010. At that time, Council made the following resolution (CR392/2010):

That the proposal submitted by the Ontario Municipal Insurance Exchange (?OMEX?) for the provision of corporate and auto insurance and associated services to The Corporation of the City of Windsor and its affiliated agencies, boards, commissions and corporate entities for the period from January 1, 2011 to January 1, 2012 **BE ACCEPTED** at the premium \$1,220,776 plus applicable taxes, which policy may be renewed for up to **five (5)** successive one-year periods terminating no later than January 1, 2017;

While going to RFP can be an effective way to obtain competitive pricing, switching insurers is not a decision to be made lightly or frequently. Given the day to day dealings with City insurers and the complexity of the policies, policy familiarity and good working relationships with the insurer are important elements that are not readily quantifiable. Changing insurers can result in significant operating changes within the Risk Management Division.

Given the positive changes seen at OMEX since the last retro-assessment was issued, and for the reasons outlined in the accompanying Confidential Memo to this report, it is recommended that the City wait until 2016 to issue an RFP for the 2017 renewal.

Looking Forward

All costs incurred by the Risk Management Division stem from the rising cost of claims. Risk Management continues to work with operating departments to try to minimize the City's liability exposure. Risk mitigation strategies are implemented where they are cost effective to do so, and where staffing resources permit.

The Risk Management Division is working on the Levels of Service and Risk project initiated by the Asset Planning Division. This will provide a tool to prioritize capital projects and operational service levels. Establishing a methodical approach to the utilization of City resources can, in certain circumstances, be useful in establishing a defence to claims.

The Risk Management Division is also working with the Corporate Initiatives Division of the CAO's Office to establish a method of risk reporting in an effort to increase communication of liability and hazard risk between City departments, prevent repeat occurrences of similar incidents, and increase departmental accountability for losses.

This is not meant as a tool to report on all claims that give rise to liability, but it is meant to reduce those risks that can be mitigated with little to no financial impact to the Corporation. This will be phased in as part of the Enterprise Risk Management Framework.

5. FINANCIAL MATTERS:

Claims Costs

The table below provides a historical summary of the budget vs. actuals surplus (deficit) over the past 5 years relating to the claims cost account.

Claims Cost Summary			
Year	Budget	Actuals	Surplus(Deficit)
2010	\$1,598,369	\$1,486,047	\$112,322
2011	\$1,598,369	\$2,236,522	\$(638,153)
2012	\$3,346,899	\$2,185,453	\$1,161,446
2013	\$2,662,000	\$2,875,589	\$(213,589)
2014	\$2,662,000	\$2,139,904	\$522,096

At year end, any surplus/deficit balance in the claims budget account is to be transferred to/from the Self Insurance Reserve (SIR) fund. The balance in this reserve fund at December 31, 2014 was \$3,760,786.

It is too early to tell whether 2015 claim costs will come within budget.

Insurance Premiums

During the 2015 budget process, actual insurance premium rates for 2015 were known, and the budget was adjusted accordingly. Minor variances will be expected throughout the year as a result of property transfers that may take place.

Overall Cost of Risk

Examining the overall cost of risk is a way of looking at the total cost that insurance-type claims and litigation have on the City in any given year. Examining the cost based on the year it was incurred, rather than when it was paid, shows the true cost each given year had on the overall cost of risk. The cost of risk is made up of the following factors:

Claims costs and Reserves - these are the claim costs attributable to losses occurring in a given year. The cost may not have been expensed in the given year, but for this purpose, is considered incurred in the year the incident occurred. The “reserve” is a number assigned to a claim to estimate what the total cost of the claim will be.

Insurance Costs – this includes the premium invoiced in a given year as well as any retro-assessment and credit that is applicable to the given year.

Administrative Costs – this is the cost required to administer the City’s insurance and risk management efforts, and includes the salaries of the Risk Management Clerk, the Insurance and Risk Analyst, two Claims Administrators, and the Manager of Risk and Insurance, plus fringe benefits. Also included in these costs are the overhead costs associated with running the division, including computers, mileage, travel expenses, phones, external consultants, membership fees, training, etc.

ANNUAL COST OF RISK, 2009-2014

Year	2009	2010	2011	2012	2013	2014
Insurance Costs	\$3,331,632	\$2,068,671	\$2,006,193	\$2,097,483	\$2,391,388	\$2,915,334
Claim Costs*	\$1,864,895	\$2,795,822	\$2,905,509	\$1,401,508	\$642,103	\$326,818
Outstanding Claim Reserves**	\$193,612	\$382,986	\$1,138,900	\$1,121,052	\$1,944,962	\$3,932,344
Administrative Costs	\$591,939	\$638,474	\$633,158	\$694,261	\$729,361	\$650,904
TOTAL	\$5,982,077	\$5,885,953	\$6,683,759	\$5,314,305	\$5,707,814	\$7,825,400

*Based on current data as at March 17/2015

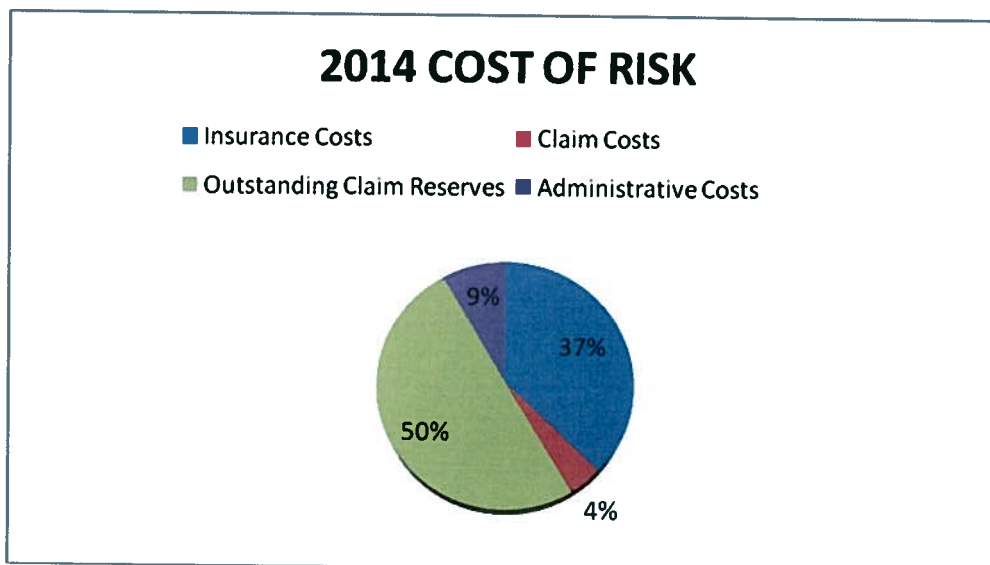
**Based on current data as at April 7/2015

Over the long-term, the cost of risk is generally increasing. However, from year to year, there are fluctuations, primarily due to claims experience. As expected, claim costs are generally lower in more recent years while reserves are generally higher. This is because the costs associated with more recent claims have not yet been expended, and accordingly, the reserves are set to account for these future costs. Adding the claim cost and the outstanding claim reserve for any given year gives the true claim cost for that year.

The true claim cost for 2014 is \$4,259,162. To compare, the true claim cost for 2013 was \$2,587,065. The true claim cost for 2014 far exceeds that from previous years. This is primarily attributable to the many slip and fall claims experienced in 2014 that have not yet resolved. The impact of resolving these will be seen in the next few years, as complex claims typically take a few years before reaching a final settlement or trial.

Administrative costs also vary due primarily to staffing vacancies and departmental restructuring. The figures above do not account for the revenues brought in to the City from the Risk Management recovery and subrogation efforts. Recovery and subrogation efforts are performed on a cost recovery basis to the extent possible, and any excess funds collected are distributed back to operating departments. The time and effort spent by the Claims Administrators in carrying out the recovery and subrogation efforts are in excess of a full claims load per administrator. Even if no subrogation and recovery took place, the cost of those Administrators would be incurred in carrying out the claims administration function. Accordingly, their full cost has been included.

For 2014, the cost of risk was \$7.83M, broken down as follows:



For 2014, 54% of risk associated costs are attributable to claim costs and reserves, with the majority of the costs to be incurred in future years. Insurance costs made up 37% of the costs, with only 9% attributable to administrative costs. The 9% in administrative costs is offset to an extent by any revenues received through the subrogation and recovery efforts. Expressed on a per property basis*, the 2014 cost of risk was \$93.19.

**2014 Number of Assessable Primary Roll Numbers = 83,974*

5. RISK ANALYSIS:

This report is for information purposes. Various risks and factors influencing the City's loss experience are outlined in this report and the accompanying confidential memo.

The risk of waiting until 2016 to issue the next insurance RFP is low. While going to RFP early may attract insurance rates that provide a moderate savings a year earlier than anticipated, there is a possible to likely probability that those savings would be short term. In other words, premium savings achieved in the first year could result in higher premiums for subsequent years.

Once the City issues an RFP for insurance, it is not recommended that another RFP be issued shortly thereafter for purposes of obtaining competitive pricing. This not only has a moderate reputational impact on the City amongst insurers and other municipalities, but can have a minor to moderate operational impact because of the associated actual and unquantifiable costs associated with a disruption in service.

6. CONSULTATIONS:

Chantelle Anson, Financial Planning Administrator

7. CONCLUSION:

2014 was a unique year with respect to claims activity. The number of claims received was driven up by the harsh winter conditions of 2014. However, in comparison to previous years, the claims received due to basement flooding were lower. Overall, the number of 2014 claims increased from 2013, but not significantly. Claim payouts were lower than expected, largely due to the types of claims being advanced.

Insurance costs continue to rise, but as they do, the more beneficial it is to have a high deductible. The higher the deductible, the less of an impact below-deductible losses can have on premiums, the less the City is paying to cover the insurer's costs, and the more the City can benefit from good claims experience. The increased cost of insurance and changes being implemented at OMEX should significantly decrease the chance of future retro-assessments and result in long-term cost savings.

The Risk Management recoveries in 2014 were higher than what had historically been collected. This is due to a backlog of 2013 incidents that resulted in recoveries in 2014, but also due to expansion of the City's recovery program. While it is difficult to predict with any level of certainty what amounts will be recovered in any given year, recoveries for 2015 are expected to decrease from 2014.



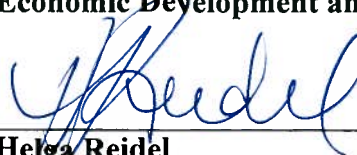
Dana Paladino
Manager of Risk Management



Shelby Askin Hagen
City Solicitor and Corporate Leader
Economic Development and Public Safety

For 

Onorio Colucci
City Treasurer and Corporate Leader
Finance and Technology



Helga Reidel
Chief Administrative Officer

APPENDICES:

P&C Memo dated April 22, 2015

DEPARTMENTS/OTHERS CONSULTED:

NOTIFICATION :				
Name	Address	Email Address	Telephone	FAX