



Self-Insurance Trust Fund

Board Report

Date: February 5, 2018
To: Self-Insurance Trust Fund Board
From: Jim Smith, City Attorney
Marc Steadman, Deputy City Attorney
Jason Reed, Assistant City Attorney
Candace Cannistraro, Office of Mgmt & Bdgt Director
Subject: The Property and Public Liability Trust Fund

I. Purpose.

This report addresses the financial status of the Property and Public Liability Trust Fund (the "PPL Trust Fund").

II. PPL Trust Fund Finances.

In accordance with state law, the City of Mesa established the PPL Trust Fund to cover the following costs:

1. Payouts and defense costs of third-party claims and lawsuits filed against the City and its employees;
2. Costs associated with staffing the litigation unit in the City Attorney's Office; and
3. The City's insurance premiums.

A.R.S. § 11-981(A)(2).

Per the City Council's direction, the PPL Trust Fund maintains a \$10 million balance through quarterly transfers from the City's general fund and various other City funds. Payouts from the PPL Trust Fund vary considerably based on the timing of verdicts or settlements in high exposure cases. In recent years, the City has contributed on average \$3 million to the Fund: \$1 million for claims; \$1 million for insurance; and \$1 million for the staffing costs of the litigation unit.

But, several Mesa and national developments are placing the PPL Trust Fund under
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increasing pressure for the future.

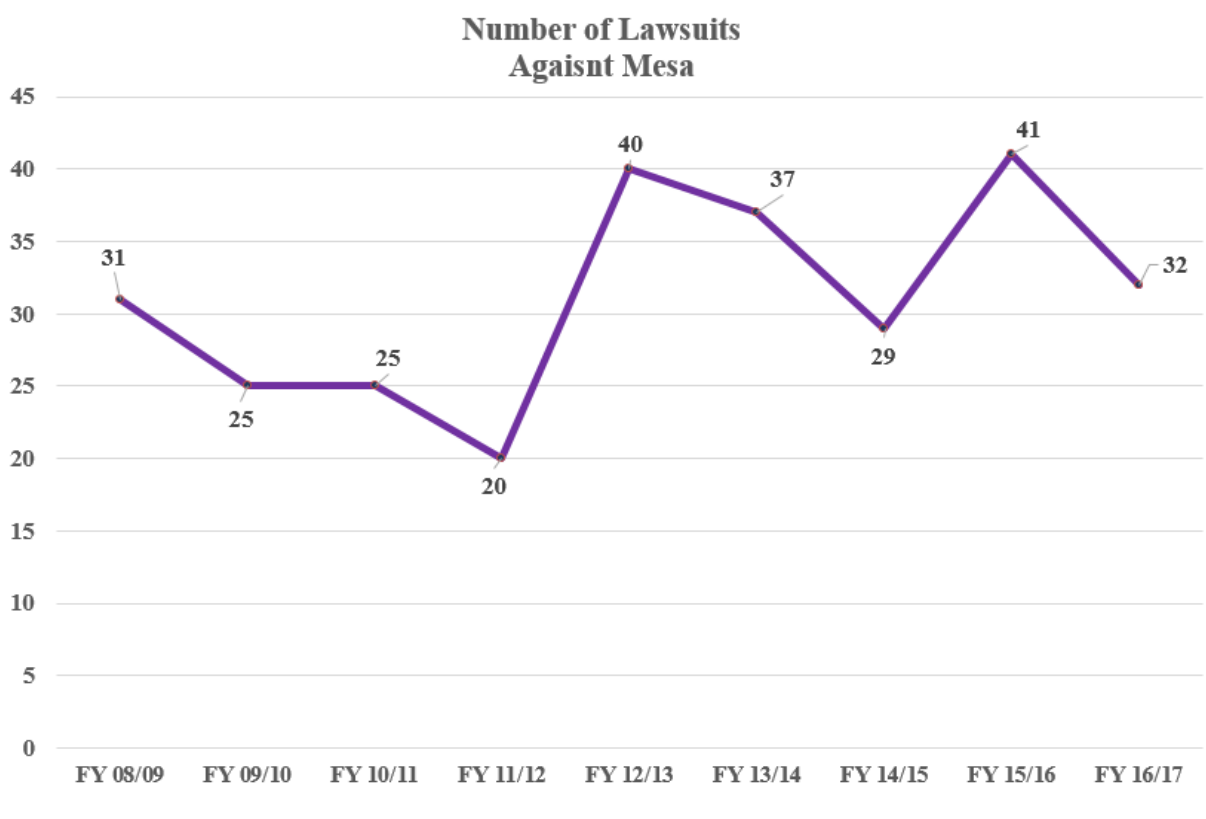
1. A number of high profile police shooting and flood damage lawsuits are pending against the City.
2. Insurance costs are increasing.
3. More lawsuits are being filed against governmental agencies, including the City of Mesa, and damage awards seem to be increasing.

These developments will influence the amount that the City should budget to replenish the PPL Trust Fund, and we share them with the Board to consider whether the PPL Trust Fund balance should be increased, and whether the level of the City's self-insurance retention should be increased.

III. Claims And Lawsuits.

A. More Lawsuits Are Being Filed Against The City Of Mesa.

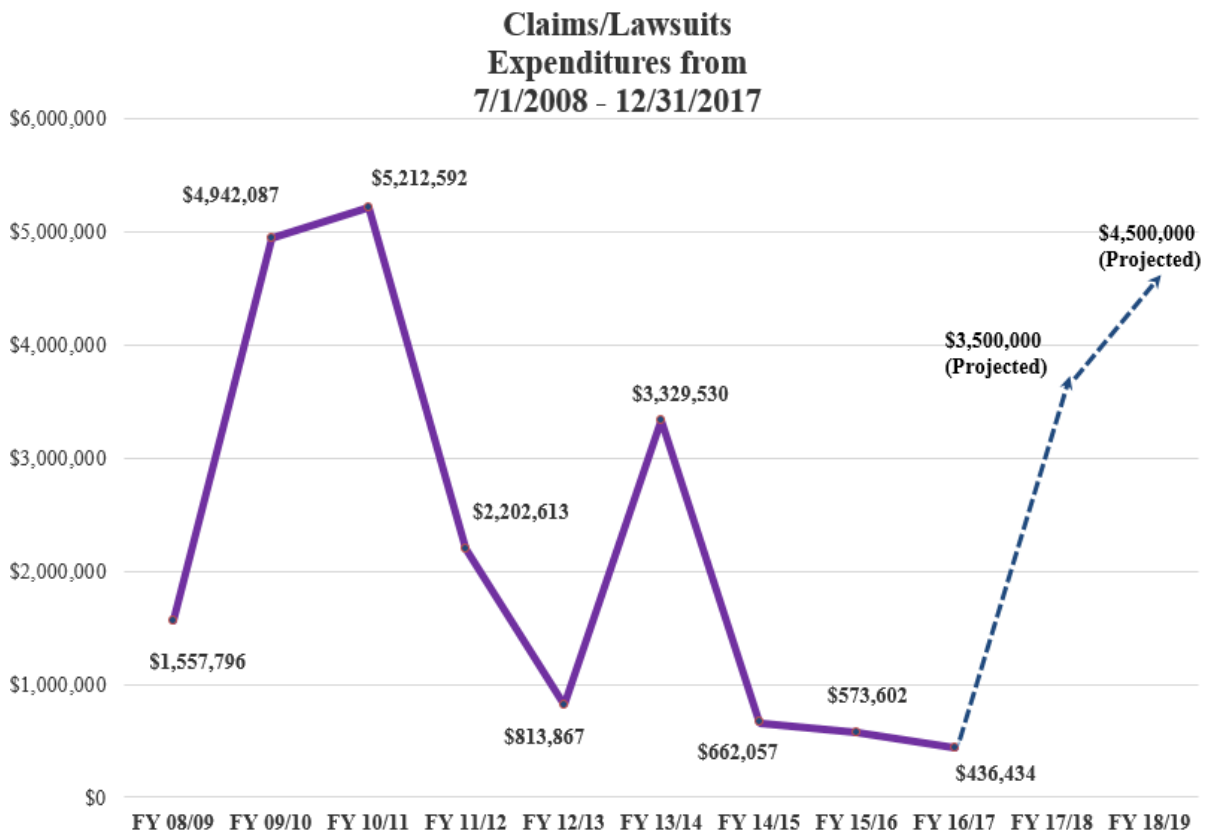
One of the most significant pressures on the PPL Trust Fund comes from payouts to resolve claims and lawsuits against the City. Historically, the City receives approximately 300 claims and 30 lawsuits each year. Consistent with national and local trends, claimants are filing more lawsuits against governmental entities like the City of Mesa. As shown here, the number of lawsuits filed against the City of Mesa has been increasing.



B. Payouts And Litigation Expenses Are Increasing.

The City also anticipates that payouts from the PPL Trust Fund will increase because, in addition to more lawsuits, juries are awarding higher damage awards.

For example, the following chart shows the annual payouts from the PPL Trust Fund for the last ten years. The variation in the annual payout depends primarily on whether high-exposure cases were resolved during a particular fiscal year.



Based on the high-exposure claims that are currently asserted against the City and that are anticipated in the future, the City anticipates that annual payouts to handle claims against the City will increase.

For example, claims based on Police shootings and wrongful death allegations are high-exposure cases. The City generally incurs greater costs to defend these cases as a result of the potential for larger damage awards, attorney fee shifting provisions, increased outside counsel fees, increased technology costs, and other litigation expenses.

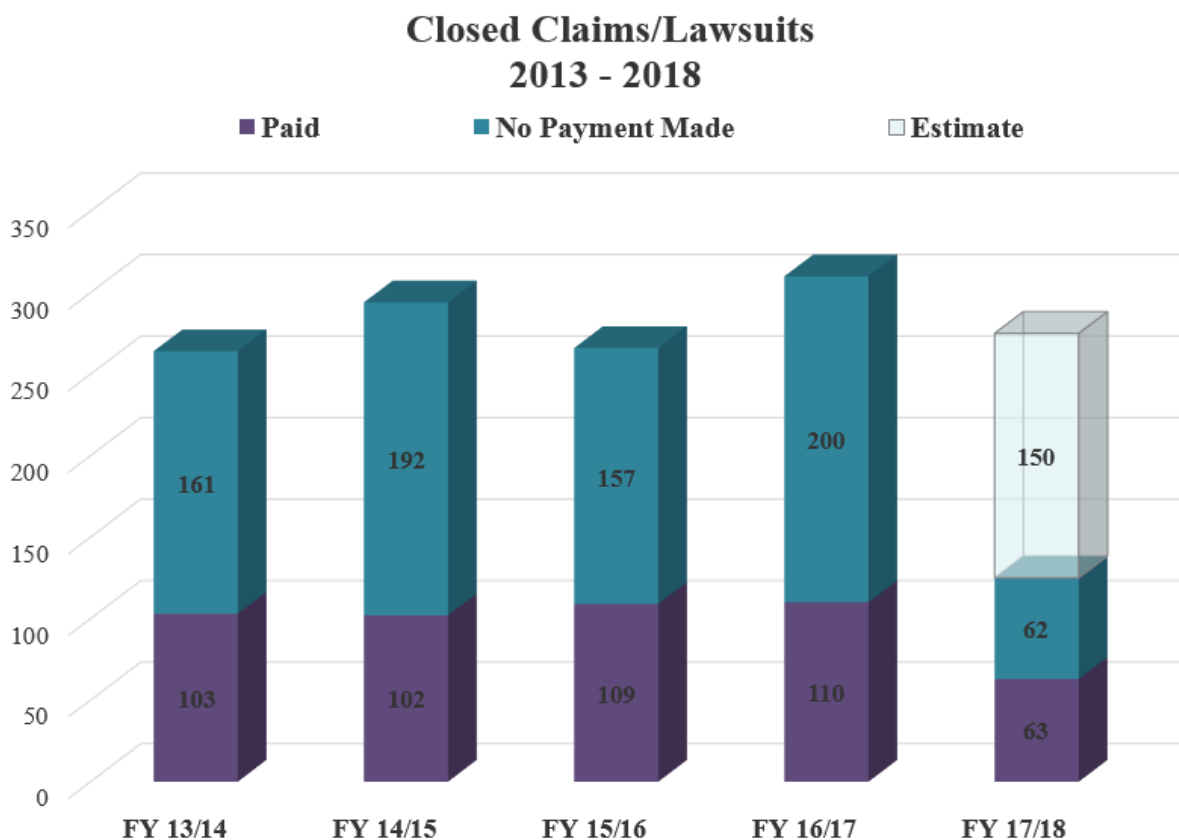
Indeed, the City is currently defending high-exposure lawsuits associated with four Officer involved shootings and a claim that between 100 and 150 residences were damaged during a flood in 2014. This year alone, the City identified 10 lawsuits that are considered high-exposure cases based on potential damage awards of more than \$100,000.

Considering the factors listed above (more lawsuits, higher damages, and increased litigation costs), significant pressure would be placed on the PPL Trust Fund if a jury awarded significant damages in one or more of the high-exposure cases.

IV. Litigation Staffing.

A. City's Litigation Unit.

To reduce the costs associated with the hiring of outside counsel, the City's litigation unit defends the City and its employees in nearly all third-party liability claims and lawsuits. As shown below, the City typically resolves more than half of the claims made against the City without making any payment to the claimant.

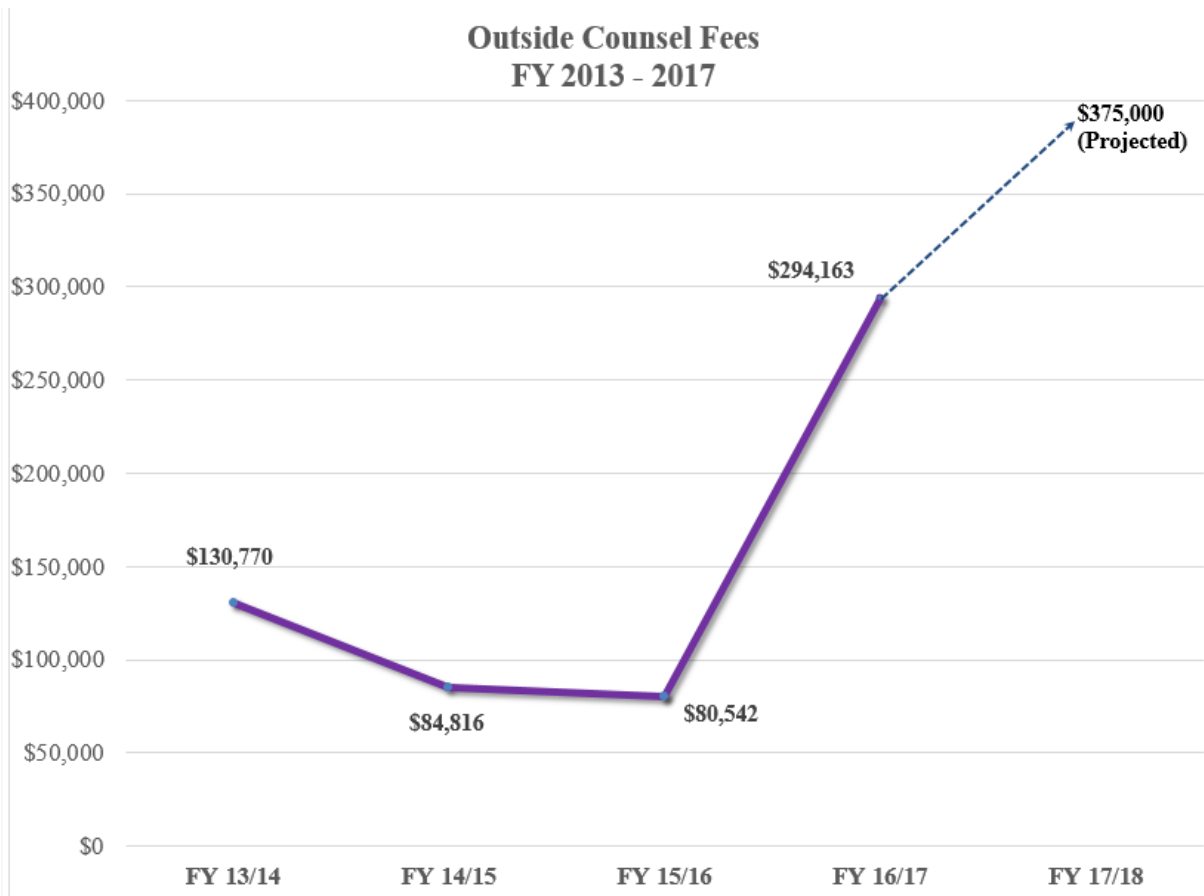


The City's litigation unit is comprised of three attorneys, two paralegals, two legal assistants, and one claims adjuster. The cost to operate the City's litigation unit in FY16/17 was \$1,021,075.

B. Outside Counsel.

The City retains outside counsel generally when a conflict of interest prevents the City's litigation unit from defending the lawsuit, when a particular expertise is needed to defend the lawsuit, and/or for certain high-exposure claims.¹

As shown below, last fiscal year, the City paid \$294,163 in outside council fees. We anticipate paying \$375,000 for the current fiscal year.



¹ Amounts that the City pays to outside counsel and to cover defense costs erodes the City's self-insured retention (the "SIR") for purposes of determining when insurance coverage may apply to pay the defense and resolution of a claim or lawsuit that exceeds the City's SIR.

V. Insurance.²

Based on the factors listed above (more lawsuits, higher damage awards, and increased litigation costs), insurance premiums are rising, and it is becoming more challenging for the City to obtain cost-effective insurance coverage.

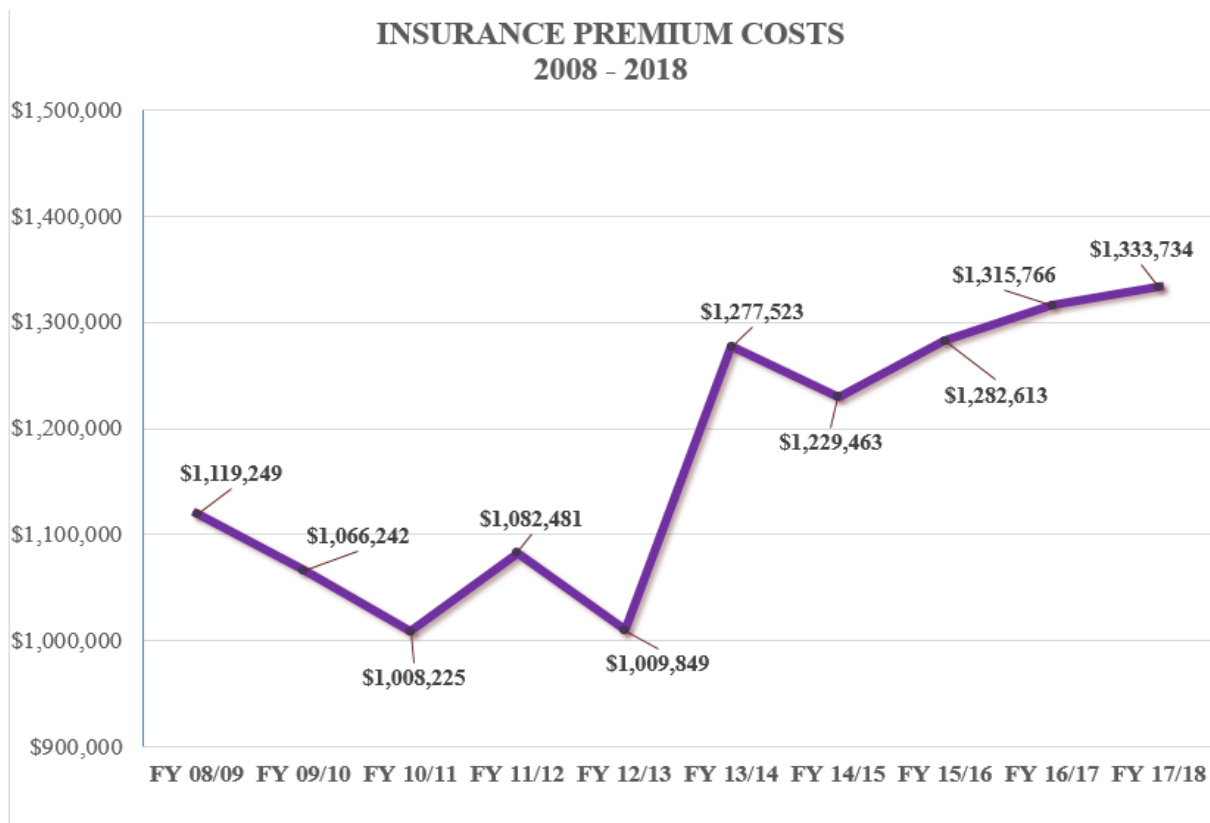
A. Rising Insurance Premiums.

Based on national and local trends, the City anticipates that the annual cost of insurance will continue to rise. Cities and other governmental entities are frequent targets for litigation particularly claims against the police department. As more claims are made against government agencies like the City of Mesa, insurers are required to pay larger amounts to defend and resolve those claims. The City anticipates that insurers will raise their premiums to reflect the increased number of claims and the increased payments associated with the resolution of those claims. If, for example, a verdict were entered against the City that was ultimately paid by the City's insurer pursuant to the City's insurance coverage, the insurer likely would raise its premiums, potentially significantly, to reflect that expenditure.

B. The Cost Of Mesa's Insurance Coverage.

The following chart show that it cost \$1,333,734 for the City's insurance last year. This is a 32% increase from 5 years ago, and as stated above, the City anticipates that premiums will continue to increase.

² Attached as Exhibit 1 is the certificate for the City's insurance brokers.



C. Agreement To Purchase Insurance Coverage.

To help manage rising insurance costs, the City previously obtained insurance coverage pursuant to an agreement that allowed the City to renew its insurance coverage with the same insurer if the annual increase in premiums did not exceed 2.5%. It was more cost effective to agree to these terms rather than going through a solicitation and procurement process on an annual basis.

That agreement, however, expires at the end of this current fiscal year. To continue managing the costs of its insurance premiums, the City anticipates entering into another multi-year agreement where, as long as the annual insurance premium does not increase above a negotiated amount, the City will be able to renew its insurance coverage annually without going through a solicitation and procurement process.

This type of agreement helps manage the cost of the City's insurance premiums (as those premiums increase) and continues to help the City attract and retain insurers that want a long-term relationship with the City.

D. The City's Self-Insured Retention.

In addition to raising premiums, insurers may put pressure on the City to raise its SIR. The City is currently self-insured for \$3 million per claim, and the City has purchased excess liability coverage that applies after the City has paid \$3 million on a claim. This excess insurance covers the next \$50 million in exposure.

As mentioned above, the amounts paid by the City towards items like litigation costs, outside counsel fees, and expert witness fees erode the SIR. Once the City's SIR is completely eroded, insurance is intended to cover the remaining expenses and costs associated with defending and resolving the claim or lawsuit.

VI. Summary.

The City has had a successful year in managing claims and lawsuits asserted against the City and its employees. Pressure exists on the PPL Trust Fund, however, based on, among other things, the rising number of claims filed against the City, the high-exposure claims filed against the City, and the rising cost of litigation and insurance. The City will continue to evaluate the PPL Trust Fund in order to provide recommendations about the amount that the City should budget to replenish the PPL Trust Fund, whether the PPL Trust Fund balance should be increased, and whether the level of the City's self-insurance retention should be increased.

VII. Recommendation.

To fund PPL Trust Fund expenses for FY18/19, staff recommends a FY17/18 City contribution of \$6.2 million to the PPL Trust Fund, resulting in a year-end balance of \$10.0 million. Staff recommends including a \$7.6 million City contribution in the FY18/19 budget to achieve a minimum forecasted ending reserve balance of \$10.0 million.



ARIZONA INSURANCE LICENSE

as of
October 8, 2015

BERNAL, PAULA SEARCY

Current Status: **ACTIVE**
 AZ License #: 1125716
 Residency: Resident
 Business Address: 16220 N. SCOTTSDALE ROAD
 SUITE 600
 City, State, ZIP: SCOTTSDALE, AZ 85254
 Business Phone: (602) 787-6026

Authority	First Issued	Renewal Effective	Expires
CASUALTY PRODUCER	Sep 30, 2015		Sep 30, 2019
PROPERTY PRODUCER	Sep 30, 2015		Sep 30, 2019

Alternate or Historical Names

SEARCY, PAULA MARIE

Recent Application Activity

Application Type	Received Date	Current Status
LNRI: NIPR LICENSE-INDIVIDUAL	Sep 28, 2015	Processing Completed

APPOINTMENT DATA IS NOT COLLECTED, TRACKED OR MAINTAINED IN ARIZONA.

Arizona Department of Insurance
 2910 N 44th Street, Suite 210, Phoenix, AZ 85018-7269
www.azinsurance.gov | (602) 364-4457

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Exhibit 1