



CITY ATTORNEY'S OFFICE:

Good practices in place; next steps include strategic plan, measures, and post-contract evaluations

March 2015

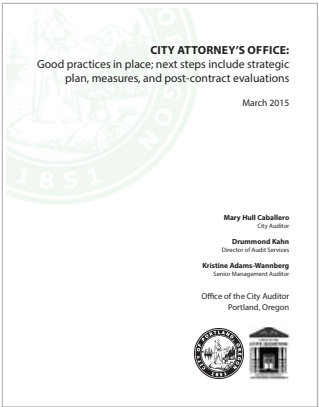
Mary Hull Caballero
City Auditor

Drummond Kahn
Director of Audit Services

Kristine Adams-Wannberg
Senior Management Auditor

Office of the City Auditor
Portland, Oregon





Production / Design
Robert Cowan
Public Information Coordinator



CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

Audit Services Division

Drummond Kahn, Director

1221 S.W. 4th Avenue, Room 310, Portland, Oregon 97204

phone: (503) 823-4005

web: www.portlandoregon.gov/auditor/auditservices



March 11, 2015

TO: Mayor Charlie Hales
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman
Tracy Reeve, City Attorney

SUBJECT: Audit Report: *City Attorney's Office: Good practices in place; next steps include strategic plan, measures, and post-contract evaluations* (Report #459)

The attached report contains the results of our audit work on the Portland City Attorney's Office. The joint response letter from the Mayor and the City Attorney is included.

We ask the City Attorney provide us with a status report in one year, through the Mayor's Office, detailing the steps taken to address our audit recommendations.

Mary Hull Caballero
City Auditor

Audit Team: Drummond Kahn
Kristine Adams-Wannberg
Ariana Denney

Attachment

CITY ATTORNEY'S OFFICE:

Good practices in place; next steps include strategic plan, measures, and post-contract evaluations

Summary

The City Attorney's Office is performing well in many areas, but can improve how it plans, measures, and analyzes the results of its work. While the success of legal services can be subjective, well-formed strategic plans, key measures, and evaluations can track the performance of a legal office. Good plans and accurate tracking help management measure progress and the quality of their services.

The objectives of this audit were to assess the Office's strategic plan and performance measurement systems and whether attorneys appropriately supervise contracts for outside legal services. We reviewed the Office's current strategic plan, performance measures, and data systems. We also reviewed the Office's supervision of a number of outside legal services contracts. We found:

- A comprehensive strategic plan is needed to identify and guide the Office's medium and long-term direction.
- Effectiveness measures should be developed and targets identified to provide external accountability for legal services, as well as internal decision-making information about the allocation of resources and strategic approach to legal matters.
- Post-contract evaluations should be conducted to improve information sharing and accountability.

We make specific recommendations for the Office to improve these areas. According to the Office, it has accepted the recommendations, and it is taking steps to implement them.

Background

The City Attorney's Office is responsible for the legal affairs of the City. It represents the City in litigation and a variety of other legal proceedings. The Office provides legal counsel and advice to City officials on a wide range of issues, including labor law, environmental issues, civil rights, tort claims, and code enforcement. In addition, the Office drafts and reviews legislation, contracts, leases, intergovernmental agreements, and other documents. The Office estimated that in FY 2013-14, it handled 1,450 litigation cases, reviewed and approved 7,400 contracts, and provided about 200 hours of training to City employees.

Figure 1 Gavel and scale



Source: U.S. Federal Courts

The Office has four goals, stated in the City's budget documents:

- To provide the highest level of customer services to its clients through preventative legal advice that is timely, accurate, and easy to access
- To effectively and vigorously advocate for the City's interests in state and federal courts and otherwise
- To support and advance the City's objectives in achieving equity in all its programs, services, and activities
- To ensure accountability for its professional performance and effective stewardship of public resources

The City Attorney leads the Office, and is appointed by and serves at the pleasure of the City Council. The Office is staffed by 35 lawyers and 26 support staff. In addition, the Office contracts with outside law firms (outside counsel) when they need special expertise, have a conflict of interest in a case, or if the workload of current attorneys is at capacity.

The Office has a positive internal culture overall, and there are a number of process improvement efforts underway or scheduled for the next year. The Office has experienced, competent managers, attorneys, and staff. Various client bureaus reported positive results with the services of the office. Although small in staffing and budget compared to other City Bureaus, the Office exerts a great deal of influence on the legal affairs and policy development of the City, as well as the financial outcomes.

Audit Results

Strategic planning will occur in 2015; effectiveness measures need attention

The City Attorney's Office lacks a strategic plan; Office efforts should identify specific strategies for accomplishing objectives

We reviewed the Office's mission, goals, and its performance measures and found that some areas need improvement. Although the Office has some elements of a strategic plan and a performance measurement system, these are not complete. The Office articulates its mission and four goals, but few objectives set measurable targets for specific actions, and there were no clearly documented strategies for the specific steps taken to achieve the four goals.

It is best practice for organizations to adopt formal strategic plans. Our 2002 audit, *Managing for Results: A Proposal for the City of Portland*, describes the essential elements of a strategic plan, which would integrate the organization's vision, mission, and goals with the strategies used to achieve those goals. Long-term goals, specific objectives and strategies should also be clearly linked to meaningful performance measures. The Managing for Results approach requires the following actions:

- Establishing clear long and short-term goals
- Considering goals when allocating resources
- Managing to accomplish goals
- Measuring performance and reporting results to the public

The lack of a comprehensive strategic plan can cause problems for an organization. It can hinder strategic thought and decision-making. The organization's people are less able to fulfill their roles and engage in teamwork due to uncertainties about organizational direction and priorities. This has the potential to cause inefficiency in using public resources.

The Office intends to complete a strategic planning process in 2015. Until those efforts are complete, however, the risk associated with the lack of a comprehensive strategic plan will remain.

Effectiveness measures would improve assessment and accountability for performing legal services

The Office lacks a complete performance measurement system clearly tied to goals and strategies and used to assess the Office's progress in achieving its goals. This deficit of information on the quality of services and outcomes could lead to misconceptions of the Office's performance, appropriate resource allocation, and evaluating approaches to legal matters.

The Office identifies four measures:

- Efficiency
 - Hourly Rate
- Workload
 - Number of litigation cases
 - Number of contracts reviewed and approved
 - Number of training hours provided by City Attorney staff to other City staff

The Office references one additional measure for its goal related to Customer Service:

- The City Attorney's Office commits to an initial response time goal of one business day on any client inquiry

We found that the Office also conducts a client survey periodically, though these results are used internally. They are not published in a public document. We discuss these results later in this report.

Performance measures provide a practical and reliable method for monitoring and reporting on an organization's progress toward achieving its goals and objectives. It is also critical that performance measures be used to help guide management's decision-making.

A system of performance measurement should have the following criteria:

- Be based on goals and objectives related to organization's mission, or purpose
- Measure both the efficiency and effectiveness of programs
- Be based on what is most useful, relevant, and valid to management and users of this information
- Be complete, but limited in number and complexity
- Be supported by data that is relevant, timely, and reliable
- Be comparable to other periods, targets, and similar programs
- Be reported both internally and publicly, and used both for decision-making and accountability

The Office's performance measures do not meet the criteria for a successful measurement system in that:

- The measures are not clearly tied to the written goals
- The measures demonstrate only workload and efficiency measures, and no effectiveness measures are identified
- Staff generally do not consider the measures useful or sufficiently reflective of their work
- Although some targets for the measures are included in public documents, some managers told us that the Office does not set targets

Because the Office is not systematically assessing or reporting on its progress in achieving its goals, this may hinder the Office's internal ability to address performance issues, or learn from successful approaches to their legal work. It also limits the amount of data decision-makers and the public see to piecemeal information, such as claims on the weekly Council Agenda and stories in the media. These fragments of information may not adequately give decision-makers and the public a full view of the performance of the Office's legal services which may be helpful in budget deliberations.

Figure 2 Federal Court



Source: United States courts

Managers told us that there were a number of challenges in developing performance measures, which was why the Office's measures were not comprehensive and generally not used in decision-making. They indicated that creating meaningful measures was difficult, especially in measuring the quality of attorneys' work and the Office's accomplishments for the City. Some managers explained that it is challenging to assess an attorney's work in litigation or contract negotiations objectively, because attorneys do not entirely control the outcome. According to the Office, these outcomes are influenced by external factors, such as the facts underlying the litigation or contract negotiations, the client's judgment as to tolerable levels of risk, and the competence of opposing attorneys. Some managers told us they did not have a way to measure aspects of attorney performance, such as an attorney's ability to litigate a case in a manner that resulted in the City paying less in a settlement than it otherwise would have or negotiating favorable contract language. One manager also conveyed the perception that the quality of attorneys' advice work could not be measured in a meaningful way.

Good effectiveness measures are uncommon in the field, but possible; defining success is critical

We researched other government attorneys’ offices and found limited use of strong effectiveness measures. Our review found a few effectiveness measures, however, that may be useful as examples as the City Attorney’s Office goes forward. We selected three measures from these jurisdictions, and applied them to the City Attorney’s Office’s services. These were:

- Percent of positive customer survey responses on service quality
- Percent of cases favorably resolved
- Percent of defensive cases in which a certain percentage of the claim is defeated

Percent of positive customer survey responses on service quality - We reviewed the last four client surveys and found the following information:

Figure 3 Customer Survey ratings of City Attorney’s Office

Service Area Question <i>(Percent of respondents giving positive ratings)</i>	2006	2008	2010	2013
Accessibility	83%	89%	85%	88%
Timeliness (Initial Response)	N/A	83%*	80%	83%
Timeliness (Overall)	71%	77%	78%	77%
Understanding client needs	93%	90%	91%	89%
Addressing client needs	93%	91%	88%	87%
Keeping the client informed on legal information	78%	79%	73%	64%
Clarity	79%	91%	91%	84%
Practicality	78%	84%	87%	83%
Assistance to clients in preventing legal problems	81%	84%	84%	73%

* New measure in 2008

Source: City Attorney’s Office Customer Surveys

Overall, the Attorney Office's clients who responded to the survey gave mostly positive ratings on the services they received. Understanding client needs and addressing client needs had the most respondents giving positive ratings, although both of these had slightly downward trends. Overall timeliness and keeping the clients informed had the least positive ratings. Ratings of client information also had a downward trend, particularly in the last two surveys.

This survey information is useful, because it identifies where there may be customer service issues, and where attention should be focused. This is important, because according to the Office, much of the City Attorney's work is providing legal advice, rather than litigation. The Office has used this information in the past to address bureau concerns.

We found that the survey could be improved in a number of ways, such as the wording of some questions and the response options provided. With a few revisions and fine-tuning, some survey questions and responses could be used as meaningful external measures of Office effectiveness.

Percent of cases favorably resolved - We reviewed data to determine the percentage of City tort cases that were favorably resolved. Tort cases involve a civil lawsuit, where an individual may recover monetary damages for injuries due to negligent or intentional behavior. Torts can represent large amounts of money and financial risk to the City.

We found that the Office does not have its quantitative data structured in a practical way for management to be able to review and monitor overall case outcome trends. The Office's main database, Practice Manager, has a data field that it used to identify some results of tort cases. The field options are "City", "Opposing Party", and "Split". "City" is used when the case result is a judgment in favor of the City and/or when no money was paid. "Opposing Party" is used when any money is paid out, such as a in a settlement, regardless of how much. "Split" is used when the judgment was in favor of both parties, or a similar circumstance.

In reviewing the data over the last five fiscal years, we found the City usually prevails outright in over half of cases:

Figure 4 Resolution of tort cases

Outcome in favor	2009	2010	2011	2012	2013
City	65%	56%	48%	53%	59%
Opposing Party	33%	39%	50%	37%	35%
Split	2%	5%	2%	10%	6%

Source: City Attorney's Office, Practice Manager

Based on the current way the "City" field is used, any case outcome shown in this field could be considered a "win," because the resolution was in favor of the City or no money was paid. Cases where the judgment was split were a small percentage of total cases. Almost all of the Opposing Party cases are settlements, and most of them (72 percent) were for under \$50,000.

The City Attorney's Office does not clearly define in Practice Manager whether outcomes for an "Opposing Party" are wins or losses. "Opposing Party" as a selection option was put in place to track the number of cases where the City was paying out, and it was not designed to track case wins or losses. The issue lies in whether settlements should be considered resolutions in favor of the City or not. In one extreme, any settlement is a loss, because it is a payout that takes monetary resources from the City, whether through higher rates for insurance or through City bureau payouts. Settling also may not be an advantageous resolution strategy if the City is facing similar suits and wants to establish a precedent in court. A more practical view, however, is that disregarding a reasonable settlement option and pursuing litigation could be risky, taking up attorney and bureau staff resources better invested elsewhere, as well as being financially costly.

We researched how the U.S. and Oregon Departments of Justice count settlements – whether as "wins" or "losses" -- and we found that approaches varied. The U.S. Department of Justice counted settlements as being resolutions in favor of the government. The Oregon Department of Justice counted settlements in the Trial Division as upholding the government's position. For cases that go to court, however, "wins" are considered on a case by case basis depending on whether the outcome more closely approximates the position asserted by the state versus the other party.

It would be appropriate for the City Attorney's Office to consider a range of these approaches when developing a set of effectiveness measures. For tort cases, it could define a "win" as the City winning the case, not paying any money, or a settlement that defeats a particular percentage of the opposing party's claim. For a non-monetary case, it may be appropriate for the attorney on a case to make that decision based on their professional judgment of whether the court ruling was more in favor of the City or the other party.

Figure 5 Legal Reference Materials



Source: Oregon Judicial Department

Percent of cases in which a certain percentage of the claim is defeated - There was only partial data for this measure in Practice Manager. While some original claim amounts were included in the database, this was not always the case. The Office told us this could be for several reasons, such as a data field being a later add-on or the amount not being identified in the original suit documents. In some cases, the dollar amount paid on the claim was included for settlements in Practice Manager, but attorneys' fees and other fees were not consistently broken out from the final amount paid. Without this detail, the information present is not sufficient or reliable enough to calculate this performance measure for the City Attorney's Office.

Despite the challenges in defining effectiveness measures, the City Attorney's Office should adopt them.

Contract supervision meets standards, but close-out evaluations would improve information sharing and accountability

We found that Attorney’s Office supervision practices follow the City’s Professional, Technical, & Expert Services Contracting Manual in nearly all cases.

We reviewed 13 legal services contracts in place from FY 2008 to FY 2013 with \$50,000 or more in expenses by the end of FY 2013. These 13 contracts represented about 76 percent of the total spending for outside counsel during this time period. We used the manual, which describes various responsibilities of the contract manager. We tested the Attorney’s Office practices in supervising the contracts against 12 requirements listed in the manual, as well as one best practice -- to perform an evaluation of the counsel’s performance, cost, communication, and advocacy after the contract was finished.

Our review found that the Office is meeting most of the responsibilities. As shown below, more effort by the Office to assess outside contracts once they are completed could be a useful addition to its current practices:

Figure 6 City Attorney’s Office supervision of outside counsel contacts compared to standards and best practices

Category	Responsibilities	Condition (% fulfilling criteria, where applicable)
Scope & quality	1) Review consultant’s work to ensure compliance w/ terms of contract	100% (13 of 13 “Yes”)
	2) Ensure scope of work is correctly applied	100% (13 of 13 “Yes”)
	3) Attend project meetings	100% (10 of 10 “Yes”)
	4) Perform Inspections (as necessary)	100% (1 of 1 “Yes”)
	5) Require deficiencies be corrected	100% (4 of 4 “Yes”)
	6) Review deliverables and reports from consultant	100% (7 of 7 “Yes”)
	7) Review all progress schedules	100% (10 of 10 “Yes”)
Communications	8) Maintain positive communications	100% (13 of 13 “Yes”)
	9) Resolve day-to-day matters	100% (13 of 13 “Yes”)
	10) Maintain files of correspondence, data, etc.	100% (13 of 13 “Yes”)
Amendments	11) Evaluate any contract amendments	100% (11 of 11 “Yes”)
Billing	12) Monitor invoices in relationship to work performed against invoiced amount	92% (12 of 13 “Yes”; 1 Partial)
Evaluations	13) End evaluation, when contract is complete	0% (5 of 13 “No”; 2 “Partial”; 6 “Unknown”)

Source: Audit Services analysis of contract documents

Responsibility #12 had one contract that was given a "Partial" rating. This was because one of that contract's three invoices provided by the City Attorney's Office as evidence was not initialed by either the project manager attorney or by the City Attorney. This may have been an oversight, considering that all of the other contract invoices provided by the City Attorney's office showed evidence of approval by the project manager, the City Attorney, or both.

The comparison of practice to Responsibility #13 was mixed. Six of the 13 were "unknown" during review. This was for a couple of reasons. The project manager attorney was on medical leave from work and was unavailable to be interviewed. Managers in the Attorney's Office obtained documents to show the project manager met the other criteria, but they were not able to find any post-contract evaluations. They could not determine with assurance, however, that evaluations were not done. The two contracts listed as "partials" had evidence that some type of evaluation or assessment was done, but the evidence was incomplete and/or not included as a note to the file.

Formally evaluating outside legal services after a contract is complete is not a current practice in the Attorney's Office, and it is not required in the manual. Attorneys generally have informal discussions with other attorneys in the office when deciding which firm to use. One attorney noted that that they might not include some information about outside legal services in a written evaluation.

The lack of evaluations has two effects. First, the Attorney's Office is relying on verbal communications to share information about the cost and quality of services it received from contractors. This is not optimal, because it relies on staff remaining employed at the City Attorney's Office long-term. When attorneys leave the knowledge goes with them and may no longer be available. If a long time has passed since the contract was complete, some of the details of the services may have been forgotten by attorneys familiar with them at the time.

A second problem with not conducting evaluations is a potential lack of accountability. Since the City Attorney's Office is not required to follow the standard selection process for contracts, there is less public scrutiny of the contractors chosen. This limited public scrutiny creates an obligation that once a contract is complete, the Attorney's Office should account for the quality of the services received and their cost-effectiveness. This information should be used, at least internally, in future contract considerations.

Recommendations

We found that while the City Attorney's Office had many good management practices, improvements are needed. We recommend the Commissioner-in-Charge, through the City Attorney's Office, take the following steps:

- 1. Develop and adopt a comprehensive strategic plan to address the Office's medium and long-term direction.**
- 2. Develop a limited number of useful effectiveness measures that are publicly reported.**
- 3. The City Attorney's Office should develop and evaluate the performance of the outside legal services selected at the conclusion of each contract.**

Objectives, scope and methodology

The objectives of this audit were to assess the Office's strategic plan and performance measures and whether attorneys exercise appropriate supervision for contracts of outside legal services. We reviewed Office revenues, expenditures, and staffing trends. We also reviewed the Office's mission, goals, performance measures, and customer survey results.

We reviewed best practices for strategic planning and performance measurement systems. We also reviewed other jurisdictions' strategic plans and performance measures. For local governments, this included the City of Sacramento, CA; the City of Seattle, WA; the City of Denver, CO; the City of Cincinnati, OH; the City of Charlotte, NC; and the City of Kansas City, MO. We also reviewed information from the U.S. Department of Justice's Civil Division as well as the Oregon Department of Justice.

We assessed the current contract management approach of the outside legal service contracts by project manager attorneys in the City Attorney's Office. This involved reviewing communications and documents regarding the contract and the legal matter. This was done in comparison to the City's Professional, Technical, and Expert Services Contracting manual requirements and best practices in the field. The City Attorney's Office reviewed all documents we requested and redacted information for attorney-client privilege where it decided it was appropriate.

We interviewed management and staff in the City Attorney's Office, as well as various client bureaus to gain an understanding of the work of the City Attorney. We also reviewed the Office's Practice Manager and Summation databases.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESPONSE TO THE AUDIT



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

Tracy Reeve, City Attorney
1221 S.W. 4th Avenue, Suite 430
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax: (503) 823-3089

March 6, 2015

AUDITOR MARY HULL CABALLERO
OFFICE OF THE CITY AUDITOR
AUDIT SERVICES DIVISION
1221 SW 4TH AVENUE, ROOM 310
PORTLAND OR 97204

Dear Auditor Hull Caballero:

Thank you for the opportunity to respond to the performance audit of the Portland City Attorney's Office. We appreciate the audit's finding that the City Attorney's Office is performing well overall, with a positive internal culture, experienced and competent attorneys and staff, and clients who report positive results with our legal services. As the audit recognizes, the City Attorney's Office is responsible for all of the City's legal work and exerts a great deal of influence not only on legal affairs but also on policy development and financial outcomes for the City. Accordingly, it is imperative that the Office functions at the highest possible level. To that end, we are grateful for the audit's thoughtful recommendations on how we can better plan, measure and analyze the results of our work. We accept all three recommendations. In fact, we have already either fully implemented them or are in the process of doing so.

As the audit noted, the Office already had a number of process improvements underway or scheduled for the next year. Those included the adoption in 2014 of a new mission statement and strategic goals to guide the performance of the office, the development of new forms and procedures for the management of outside counsel contracts to ensure greater accountability and oversight and the implementation of additional data collection and tracking requirements to enable us to better measure and analyze our work. With the adoption and implementation of the three audit recommendations, we continue these process improvements.

Discussion of Audit Recommendations

- 1. Develop and adopt a comprehensive strategic plan to address the Office's medium and long-term direction.**

As noted, we had already begun the strategic planning process with the adoption in 2014 of our office mission and four office strategic goals.

Our mission is:

To provide excellent, objective, timely and cost-effective legal advice and advocacy in support of the City's policy goals and to ensure that the official actions of the City, its elected officials and employees comply with the law.

Our four strategic goals are:

- To provide the highest level of customer service to our clients through preventative legal advice that is timely, accurate and easy to access;
- To effectively and vigorously advocate for the City's interests in state and federal courts;
- To support and advance the City's objective of achieving equity in all of its programs, services and activities; and
- To ensure accountability for our professional performance and our effective stewardship of public resources.

The audit correctly found that, although the Office had begun a strategic planning process with these foundational elements, our strategic plan was not complete. As recommended in the audit, we are *now in the process of completing our strategic plan to incorporate specific objectives and strategies for achieving our mission and goals and to link them to meaningful performance measures.* We expect to adopt our strategic plan by the end of the 2014-15 fiscal year.

2. Develop a limited number of useful effectiveness measures that are publicly reported.

As noted in the audit, the Office has faced a number of hurdles in developing useful performance measures. It is challenging to objectively assess the quality of an attorney's work in litigation or contract negotiations because attorneys do not control many of the factors that affect outcomes. The quality of advice work can also be difficult to measure. The audit observed that "research into other government attorneys' offices reveals limited use of strong effectiveness measures." We fully concur with the audit's conclusion that "[d]espite the challenges in adopting effectiveness measures, the City Attorney's Office should adopt them." In fact, we have already adopted performance measures for our handling of litigation and other contested proceedings. As part of our strategic planning process, we are developing and will be adopting non-litigation performance metrics as well. In doing so, we will be guided by the criteria set forth on page 5 of the audit report. We look forward to implementing this recommendation by adopting performance measures, reporting our results, monitoring their effectiveness and revising them as needed to ensure meaningful assessment of and accountability for our legal services.

3. Evaluate the performance of outside legal services at the conclusion of each contract.

We are gratified that the audit “found that the Attorney’s Office supervision practices [for outside counsel contracts] follow the City’s Professional, Technical, & Expert Services Contracting Manual in nearly all cases.” We fully concur with the recommendation that assessing outside counsel contracts once they are completed is useful. We have accordingly developed and implemented a process for a written performance evaluation of all outside counsel contracts at the completion of the contract.

We appreciate the work of the Auditor’s Office and the three excellent recommendations in the audit report. We particularly want to thank Senior Management Auditor Kristine Adams-Wannberg and Director of Audit Services Drummond Kahn for their thoughtful work, professionalism, in depth research and excellent communication.

Sincerely,



Charlie Hales
Mayor



Tracy Reeve
City Attorney

**Audit Services Division
Office of the City Auditor
1221 SW 4th Avenue, Room 310
Portland, Oregon 97204
503-823-4005
www.portlandoregon.gov/auditor/auditservices**

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post-contract evaluations*

Report #459, March 2015

Audit Team: Kristine Adams-Wannberg
Ariana Denney

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Mary Hull Caballero, City Auditor
Drummond Kahn, Director of Audit Services

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