TO: Chair and Members
   Audit and Administration Committee
WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: February 3, 2010

SUBJECT/REPORT NO:
Update Regarding Liability Claims Related to Heavy Rain Flood Events 2005-2009
(FCS10001) (City Wide)

SUBMITTED BY:
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City Treasurer
905-546-2424, ext. 4549

PREPARED BY:
John McLennan, 905-546-2424, ext. 5735

SIGNATURE:

RECOMMENDATION:

(a) That Report FCS10001 “Update Regarding Claims Related to Heavy Rain Flood Events 2005-2009” be received for information; and

(b) That Outstanding Business Items “E” and “F” be removed.

EXECUTIVE SUMMARY

Beginning in the summer of 2005, the City experienced 11 heavy rain events where the volume and rate of rainfall has created multi-property flood situations across the City. As a result, 2589 liability claims have been made against the City, both from insurers and individual property owners, for a total of over $39 Million in estimated damages.
The majority of claims (approximately 1800) have been submitted by insurance companies looking to recover their payments to their clients. With the exception of claims from 2009, all claims from insurers have been denied by Risk Management Services (RMS). To date, no insurer has provided any credible evidence regarding City negligence nor have any pursued the matter further in the form of litigation. With the exception of the 2009 claims, all insurer claims have been closed.

A total of 339 claims remain open from the 2005-2008 floods. These claims have been submitted by property owners who either:

- did not have insurance coverage for some or all of their damages
- who chose not to make an insurance claim for their damages

RMS has yet to formally adopt a liability position for the majority of these claims, given that there is still one outstanding consultant report (Lower East End Study – McCormick Rankin Corporation) addressing storm water infrastructure in the City. Out of an abundance of caution, RMS has chosen to wait until this report is complete before notifying this category of claimants with a liability position.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

Financial: N/A

Staffing: N/A

Legal: N/A

**HISTORICAL BACKGROUND** (Chronology of events)

A number of Flooding events over the period 2005-2009 have lead to numerous liability claims. As a result of these claims, significant actions have taken place in the investigation and handling of these files including various compassionate grant programs and studies. Council has requested an update on all claims to date through Outstanding Business Items “E” and “F”. This report is being written in response to these requests.

**POLICY IMPLICATIONS**

N/A.
Beginning in the summer of 2005, the City experienced 11 heavy rain events where the volume and rate of rainfall has created multi-property flood situations across the City. As a result, a significant amount of liability claims have been made against the City, both from insurers and individual property owners. The following Table illustrates the date of the event, corresponding liability claims and corresponding estimate of total damages:

<table>
<thead>
<tr>
<th>Event Date</th>
<th>Event Type</th>
<th>Location</th>
<th>Total Liability Claims</th>
<th>Total Liability Claims Closed</th>
<th>Total Damages (Est.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>26-Jul-2005</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>117</td>
<td>84</td>
<td>1,000,000</td>
</tr>
<tr>
<td>19-Aug-2005</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>561</td>
<td>437</td>
<td>11,000,000</td>
</tr>
<tr>
<td>10-Jul-2006</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>144</td>
<td>118</td>
<td>2,000,000</td>
</tr>
<tr>
<td>27-Jul-2006</td>
<td>Heavy Rain</td>
<td>Waterdown</td>
<td>8</td>
<td>8</td>
<td>200,000</td>
</tr>
<tr>
<td>1-Dec-2006</td>
<td>Heavy Rain</td>
<td>Greenhill</td>
<td>34</td>
<td>9</td>
<td>500,000</td>
</tr>
<tr>
<td>25-May-2007</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>90</td>
<td>62</td>
<td>1,300,000</td>
</tr>
<tr>
<td>June 13-30, 2008</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>28</td>
<td>12</td>
<td>400,000</td>
</tr>
<tr>
<td>July 1-31, 2008</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>60</td>
<td>26</td>
<td>1,000,000</td>
</tr>
<tr>
<td>August 1-14, 2008</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>84</td>
<td>31</td>
<td>1,200,000</td>
</tr>
<tr>
<td>26-Jul-2009</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>1422</td>
<td>0</td>
<td>20,000,000</td>
</tr>
<tr>
<td>29-Aug-2009</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>41</td>
<td>0</td>
<td>615,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>2589</td>
<td>787</td>
<td>39,215,000</td>
</tr>
</tbody>
</table>

The majority of claims (approximately 1800) have been submitted by insurance companies looking to recover their payments to their clients. With the exception of claims from 2009, all claims from insurers have been denied by RMS. The following wording was provided within the denial correspondence to the insurers:

“Our investigation has not indicated any negligence on the part of the City for this claim. The subject rainfall event appears to have been of a level, in our opinion, which certainly exceeded any reasonable design standards, particularly in terms of rate (volume over time) in localized areas.
We note that you have not provided any documentation in support of your allegations of negligence. We would be glad to review and provide comment to anything you might submit in this regard.”

To date, no insurer has provided any credible evidence regarding City negligence nor have any pursued the matter further in the form of litigation.

With the exception of the 2009 claims, all insurer claims have been closed.

A total of 339 claims remain open from the 2005-2008 floods. These claims have been submitted by property owners who either:

- did not have insurance coverage for some or all of their damages
- who chose not to make an insurance claim for their damages

RMS has yet to formally adopt a liability position for the majority of these claims, given that there is still one outstanding consultant report (Lower East End Study – McCormick Rankin Corporation) addressing storm water infrastructure in the City. Out of an abundance of caution, RMS has chosen to wait until this report is complete before notifying this category of claimants with a liability position.

Certain individual claims have been denied when damages have been totally unrelated to the performance of the City’s storm water infrastructure. Claims submitted for leaking roofs and windows, or for porous foundation walls and basement floors, fall into this category.

Also, claims submitted relative to the Greenhill neighbourhood flood of December 1, 2006, have all been denied. While the event was related to a heavy rain occurrence, the circumstances of the localized Greenhill flooding were addressed by an internal investigation and an independent engineering report from SNC Lavalin.

To briefly summarize the Greenhill incident, the primary factor and proximate cause of the flooding was the obstruction of a large box culvert in Battlefield Creek under Centennial Parkway at the base of the escarpment. The obstruction was caused by the inordinate amount of debris (garbage, tree limbs, silt, rocks, etc.) carried to the culvert by the increased flow in Battlefield Creek during the prolonged rainfall. Eventually the culvert crested and the water found its way to the Greenhill subdivision, pooling in sag locations on National Drive, Ellen Avenue, Chert Avenue and Derek Drive.

Other factors to the situation were:

- A localized “super squall” episode in the general area of the Greenhill subdivision further taxing east end storm water systems
- Saturated ground from previous rains
- Erosion in Battlefield Creek caused by increased flows
• Delay in accessing the Battlefield Creek culvert to clear it due to safety considerations
• Decreased capacity of CPR ditches
• The introduction of storm water from outside the Greenhill subdivision drainage area into the subdivision drainage system
• No option to divert overland flow
• Pumping of settlement pools could not safely begin until flows had stabilized.

The final draft of the Lower East End Study is expected in the very near future. The report represents the final step in the examination of the City’s storm water management infrastructure as it pertains to claims for flooding. Once this document is reviewed with pertinent staff, RMS will then proceed to contact all remaining claimants with an explanation of the City’s liability position.

RMS also oversees the Municipal Disaster Relief Assistance Program. The following Table represents the grant experience of each incident for which the grant program was enacted:

<table>
<thead>
<tr>
<th>Event Date</th>
<th>Event Type</th>
<th>Location</th>
<th>Status</th>
<th>Total Liability Claims</th>
<th>Grant Apps Requested</th>
<th>Approved Grants</th>
<th>Total Grant Payments $</th>
</tr>
</thead>
<tbody>
<tr>
<td>26-Jul-2005</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>117</td>
<td>756</td>
<td>601</td>
<td>403,854.00</td>
</tr>
<tr>
<td>19-Aug-2005</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>561</td>
<td>958</td>
<td>794</td>
<td>512,334.46</td>
</tr>
<tr>
<td>10-Jul-2006</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>144</td>
<td>785</td>
<td>672</td>
<td>434,005.00</td>
</tr>
<tr>
<td>27-Jul-2006</td>
<td>Heavy Rain</td>
<td>Waterdown</td>
<td>Closed</td>
<td>8</td>
<td>56</td>
<td>28</td>
<td>17,700.00</td>
</tr>
<tr>
<td>1-Dec-2006</td>
<td>Heavy Rain</td>
<td>Greenhill</td>
<td>Closed</td>
<td>34</td>
<td>163</td>
<td>75</td>
<td>47,857.68</td>
</tr>
<tr>
<td>25-May-2007</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>90</td>
<td>118</td>
<td>45</td>
<td>30,199.19</td>
</tr>
<tr>
<td>Jun 13-30, 2008</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>28</td>
<td>188</td>
<td>89</td>
<td>38,153.00</td>
</tr>
<tr>
<td>Jul 1-31, 2008</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>60</td>
<td>442</td>
<td>198</td>
<td>70,858.00</td>
</tr>
<tr>
<td>Aug 1-14, 2008</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Closed</td>
<td>84</td>
<td>688</td>
<td>309</td>
<td>110,784.00</td>
</tr>
<tr>
<td>26-Jul-2009</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Open</td>
<td>1422</td>
<td>7683</td>
<td>3843</td>
<td>2,859,252.10</td>
</tr>
<tr>
<td>29-Aug-2009</td>
<td>Heavy Rain</td>
<td>City Wide</td>
<td>Open</td>
<td>41</td>
<td>375</td>
<td>86</td>
<td>58,385.69</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>2589</strong></td>
<td><strong>12212</strong></td>
<td><strong>6740</strong></td>
<td><strong>$4,583,383.12</strong></td>
</tr>
</tbody>
</table>

The administration expense for the grant program for all heavy rain incidents stands at $628,357.64.

In addition to the Regional Municipal Disaster Relief Assistance Program, Risk Management oversees the Supplemental Relief plan to assist those homeowners and tenants of residential properties who suffered basement flooding who do not have “Sewer Back-up” insurance coverage because they have been unable to purchase such coverage but whose losses would otherwise have qualified for such coverage.
To date, 95 applications for Supplemental Relief have been sent out and 2 have been approved, both for a full grant of $5,000.00. Many of the applications are still in the process of review by the administrator.

**ALTERNATIVES FOR CONSIDERATION:**
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)


*Skilled, Innovative & Respectful Organization*
- A culture of excellence

*Financial Sustainability*
- Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost-effective manner

**APPENDICES / SCHEDULES**

N/A.