

**MEETING OF THE AUDIT COMMITTEE
OF THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

RESOLUTION NO. 14-046

**ACCEPT THE RISK MANAGEMENT AUDIT PERFORMED BY
THE HILDER GROUP, INC.**

WHEREAS, the The Hilder Group, Inc., was engaged to provide an audit of the insurance and risk management activities of the Central Texas Regional Mobility Authority; and

WHEREAS, the Risk Management Audit prepared by The Hilder Group, Inc., has been presented to the Executive Director and to the Board of Directors.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors accepts the Risk Management Audit of the insurance and risk management activities of the Central Texas Regional Mobility Authority attached as Exhibit 1 to this resolution.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 25th day of June, 2014.

Submitted and reviewed by:



Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 14-046
Date Passed: 6/25/14

EXHIBIT 1 TO RESOLUTION NO. 14-046

Risk Management Audit

[on the following 11 pages]

The Hilder Group, Inc.

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Risk Management

Consulting

June 2013

**Central Texas Regional Mobility Authority
3300 N IH - 35
Austin, Texas 78705**

Re: Risk Management Audit

This report contains the results of an audit of the insurance and risk management activities of the Central Texas Regional Mobility Authority (CTRMA). The activities undertaken in the course of this audit include:

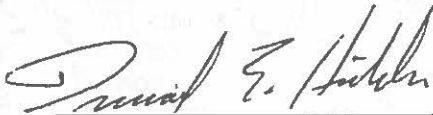
- 1) Interviews with CTRMA personnel**
- 2) Review of contract documents**
- 3) Analysis of existing insurance policies**
- 4) Discussion with current insurance carrier.**

Most of the ideas, comments and suggestions contained in this report have been discussed and reviewed with CTRMA's personnel. Many of the recommendations have been put into effect or are currently being considered or implemented.

We are grateful for the cooperation given to us by the staff of CTRMA, particularly Bill Chapman and Cindy Demers in providing the great amount of assistance and information necessary in this type of study.

The opportunity to develop this report for CTRMA is appreciated. Its value lies principally in the implementation of the recommendations and we stand ready to assist where needed.

The Hilder Group, Inc.

A handwritten signature in cursive script, appearing to read "Daniel E. Hilder", written in black ink.

by: Daniel E. Hilder

Overview

The Central Texas Regional Mobility Authority (CTRMA) is an independent local agency created in January 2003 to improve the transportation system in Williamson and Travis Counties Texas. CTRMA contracts with the private sector with specialized expertise to provide staffing support for individual projects. CTRMA does not have any commercial retail operations. In addition the CTRMA contracts with a separate municipality for police services.

CTRMA's insurance coverage is provided by the TML insurance pool which is the largest provider of insurance for governmental agencies in Texas. In addition to providing insurance coverage the TML also acts as a de facto risk management source for the CTRMA as it assists with loss prevention programs and is available for risk management consultation.

The purposes of this audit have been to determine:

- 1) Adequacy of existing insurance protection**
- 2) Identify exposures to loss arising from operations and activities**
- 3) Identify potential problems that may not be currently recognized.**

Our comments on each of these subjects are given below.

Although the overall risk management program is well maintained, with excellent communication between CTRMA and its insurance carrier TML, we have a few recommendations on the current insurance and risk management program at CTRMA. Many of the issues in this report have been discussed and are being addressed. We believe CTRMA's risk management program will be greatly improved through the consideration of the recommendations in this report.

Adequacy of Insurance Protection

The overall insurance program for CTRMA is an excellent well managed program, which provides appropriate coverage for the exposures. CTRMA updates its values annually to be certain that adequate property damage and business interruption coverage values are properly insured. We do have the following suggestions:

- 1) The pollution coverage provided by the general liability policy is extremely limited as it only covers sudden events and losses which occur within 45 days of the sudden event. A "Sudden Event" is defined as an accident where the pollution resulting therefrom and the injury resulting from such pollution all occur within 45 days following the accident. Any injury resulting from such pollution that occurs after 45 days following the accident would not be covered. We recognize that the exposure to pollution claims from sudden and accidental loss arising from the fuel storage tanks is limited.**

However there is an exposure to claims from the landscape maintenance contract where various chemicals and pesticides are in use. When we reviewed this contract we noted that the insurance required of the Maldonado Nursery is guided by the requirements in the Texas Department of Transportation specifications which does not address the need for any pollution insurance. The landscape maintenance exposure to pollution claims could be mitigated thru appropriate language in the contract. Our recommended language is shown in the section "Recommended Changes in Insurance Administration" below.

- 2) **The auto liability insurance limit is currently \$1,000,000. Although there are only two vehicles, we recommend the auto liability limit be increased to \$2,000,000. We have seen several substantial auto liability claim awards recently and believe the additional cost of this coverage would be minimal in relation to the risk.**

- 3) **The property insurance policy insures buildings and contents for a total value of \$204,308,108. These values are based on a specific listing of property provided by the CTRMA to its insurer. The policy also provides a blanket limit of \$6,000,000 of business interruption and extra expense coverage.**

The business interruption limit is not based on CTRMA's actual exposure. It is an extension of coverage provided by the TML and not based on any value calculated by the CTRMA. We recommend that the CTRMA review what its business interruption exposure would be in the event of a property loss to determine if the \$6,000,000 provided by the property insurance is adequate.

- 4) **We generally recommend that clients decline the uninsured/underinsured motorist option. Claims which arise from this type of loss will effect your loss experience and often affect premium costs. Before making a decision on accepting this coverage we recommend you discuss this coverage with the TML to determine what effect a loss would have on your premiums or dividends from the TML program.**

Recommended Changes in Insurance Administration

- 1) **The Interlocal Cooperation Agreement for 183-A Turnpike Law Enforcement Services does not contain any insurance or indemnification language. We recommend that language be added to the agreement which requires the City of Cedar Park to indemnify the CTRMA for claims arising out of the City's performance of the agreement. In addition, the City should be required to carry certain minimum insurance limits like any other contractor working for the CTRMA. Our recommendation for indemnity and insurance language for the City of Cedar Park agreement is shown below in Schedule 1.**

- 2) **The first step in risk management, as well as in any management, is to set goals, objectives and organizational procedures. CTRMA's overall program seems to have evolved in response to the organization's needs. In certain situations this can sometimes lead to misunderstandings about what coverages are in place, what coverages are necessary, and how the insurance programs should be coordinated.**

In reviewing various agreements as part of this audit we found a variety of different insurance and indemnification provisions. CTRMA enters into two types of agreements: engineering services and construction services. Each has different exposures.

The Manor Expressway contract has a very comprehensive insurance section which provides the CTRMA with a complete package of coverage.

These coverages include workers' compensation, general, auto and professional liability, builders risk, umbrella liability and pollution insurance. In addition, the language requires that all subcontractors carry certain insurances, and requires a waiver of subrogation for all coverages.

The same is true for the Mopac Improvement Project.

When we review the contract for engineering services for MoPac South, we find that the insurance language is not as comprehensive. While the language requires general liability and professional liability, it does not provide for workers' compensation or auto liability. In addition there is no provision for adding CTRMA as an additional insured or for a waiver of subrogation.

A third set of insurance terms exists in the 183A Toll Road and Manor Expressway Landscape Maintenance Contract and the Southbound Frontage Road (183-A Turnpike Project) contracts. These insurance requirements are based on Texas Department of Transportation Standard Specifications, which were promulgated in 2004 with very low limits.

We recommend that the CTRMA adopt a standard set of insurance specifications for all of its contracting activities. This will ensure consistence in all of the agreements and minimize the risk of being uninsured in any agreement. The use of standardized indemnification terms and minimum insurance limits are common for most construction activities.

We recommend the following language be adopted for all agreements. CTRMA can make the appropriate deviations from this language whenever appropriate but should be aware of any significant deviations from the overall policy.

The standard language we would use for all agreements is as follows:

Indemnification:

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless CTRMA for any claims, damages, losses and expenses, including attorney's fees, for bodily injury or property damage, arising out of Contractor's performance of the work.

Insurance:

Contractor shall purchase and maintain the following insurance coverages during the term of this contract:

- a) Workers Compensation, providing statutory benefits, and Employers Liability with limits of \$1,000,000.**
- b) Comprehensive General Liability, including products/completed operations liability and contractual liability, in the amount of \$1,000,000 per occurrence for bodily injury and property damage and shall name CTRMA as an additional insured.**
- c) Automobile Liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage.**
- d) Excess liability insurance in the amount of \$5,000,000 per occurrence and aggregate.**

Contractor will provide CTRMA with certificates of insurance evidencing coverage. The certificate shall state that Contractor waives all rights of subrogation against CTRMA and that coverage shall not be modified or cancelled without thirty (30) days notice to CTRMA.

In contracts where engineering services are being provided, we would add the following additional language:

Contractor shall provide and maintain or cause its lead design Subcontractor to provide professional liability coverage with limits not less than \$ 5,000,000 per negligent act, error or omission limit and \$ 5,000,000 aggregate. The professional liability coverage shall protect against any negligent act, error or omission arising out of design or engineering services performed by the Contractor or Subcontractor or its lower tier design subcontractors.

The policy shall have a retroactive date no later than the date on which the RFDP Documents are issued and shall have a three-year extended reporting period from the date of Final Acceptance.

In contracts that involve demolition, pesticides or hazardous materials, we would add the following additional coverage:

Contractor shall provide and maintain pollution liability coverage on an occurrence basis, with limits not less than \$5,000,000 per "pollution incident" and \$5,000,000 aggregate. The pollution liability coverage shall protect against any claims for bodily injury or property damage arising out of any related activities with respect to the Contract.

3) The Texas Municipal League is a valuable risk management resource to the CTRMA. We have the following recommendations for each annual renewal:

- Review the insurance language in your agreements with the TML**
- Discuss any loss possibilities with the TML to see if any loss avoidance techniques can be implemented**
- Discuss any claims or likely claims with TML to be proactive claim management**
- Continue to utilize the loss prevention programs of the TML**

4) Each of the CTRMA contracts required that the contractor provide certificates of insurance evidencing the coverage required under the contract. These certificates should be saved as a permanent record for period of 5 years in the event a claim is made after the project is finished. The certificates will be a source of identifying coverage in the contractor cannot be located. The certificates themselves are not insurance policies and do not contain all the terms and conditions of the policies. But they will be invaluable in identifying where the coverage can be found in the event of a loss.

Potential Problem Areas

- 1) The property policy does not insure any physical damage to the actual toll roads as roads are not normally covered by a property policy. This means that any loss or damage to the roadways, which results in the inability to use the road and the subsequent loss of toll revenue, would not be covered for either property damage or business interruption.**

In order to have a business interruption claim, there must be physical damage to covered property. Since the roads themselves are not covered property, there would not be any business interruption coverage.

While exposure to damage to the roads might be minimal, the CTRMA should understand this limitation in coverage.

- 2) The property policy contains a sublimit of \$20,000 for pollution cleanup. We see the primary exposure in the area to be a leak at the fuel storage tanks. In the event of a loss the \$20,000 limit may not be sufficient to cover the actual damages. We did inquire if a higher limit could be obtained under the current property program and were advised that it is not available.**

This brings up the question as to whether an overall pollution policy should be obtained for the benefit of all the CTRMA operations. It also brings into question whether the sovereign immunity would protect the CTRMA in the event of a loss. We recommend that you review this with appropriate legal counsel. If a decision is made that a pollution policy be obtained, we can assist in the procurement of this policy thru various broker contacts which we have in the marketplace.

Schedule 1

Recommended insurance language for Cedar Park agreement:

Indemnification:

To the fullest extent permitted by law, City shall indemnify and hold harmless CTRMA for any claims, damages, losses and expenses, including attorney's fees, for bodily injury or property damage, arising out of City's performance of the agreement.

Insurance:

City shall purchase and maintain the following insurance coverages during the term of this contract:

- a) Workers Compensation, providing statutory benefits, and Employers Liability with limits of \$1,000,000.**
- b) Comprehensive General Liability, including products/completed operations liability and contractual liability, in the amount of \$1,000,000 per occurrence for bodily injury and property damage and shall name CTRMA as an additional insured.**
- c) Automobile Liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage.**
- d) Excess liability insurance in the amount of \$5,000,000 per occurrence and aggregate.**

City will provide CTRMA with certificates of insurance evidencing coverage. The certificate shall state that City waives all rights of subrogation against CTRMA and that coverage shall not be modified or cancelled without thirty (30) days notice to CTRMA.