



**THOMAS P. DiNAPOLI**  
COMPTROLLER

STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**  
110 STATE STREET  
ALBANY, NEW YORK 12236

**GABRIEL F DEYO**  
DEPUTY COMPTROLLER  
DIVISION OF LOCAL GOVERNMENT  
AND SCHOOL ACCOUNTABILITY  
Tel: (518) 474-4037 Fax: (518) 486-6479

January 2018

Lovely A. Warren, Mayor  
Members of the City Council  
City of Rochester  
City Hall, Room 307  
30 Church Street  
Rochester, New York 14614

Directors of the Rochester Firefighters Two Percent Committee Inc.  
1425 Mt. Read Boulevard, Suite 245  
Rochester, New York 14606

Report Number: S9-17-9

Dear Mayor Warren, Members of the City Council, and Directors of the Rochester Firefighters Two Percent Committee:

The Office of the State Comptroller's goals include enabling and encouraging entities that receive and disburse foreign fire insurance (FFI) tax money to properly account for, use and protect this money.

In accordance with these goals, we conducted an audit of FFI tax money in six entities throughout New York State. The objectives of our audit were to determine whether FFI tax money was spent in accordance with special act legislation, city charters and other applicable laws. Our objectives also included determining whether those disbursements were properly supported and accounted for separately and whether the Treasurer, or if there is none, the chief fiscal officer of the entity receiving and disbursing FFI tax money, prepared an annual report on revenues and expenditures of FFI tax money and filed it with the New York State Office of the State Comptroller (OSC), in accordance with General Municipal Law (GML). We included the City of Rochester (City) and the Rochester Firefighters Two Percent Committee (TPC) in this audit. Within the scope of this audit, we examined FFI tax money received and used for the period January 1, 2014 through October 5, 2016. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article 3, Section 33-a<sup>1</sup> of the GML.

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<sup>1</sup> This section generally authorizes the Comptroller to inspect and examine the records and accounts of any entity receiving and disbursing foreign fire insurance tax money, with respect to funds received after January 1, 1976.

This report of examination letter contains our findings and recommendations specific to the City and the TPC. We discussed the findings and recommendations with officials and considered their comments, which appear in Appendix A, in preparing this report. Except as indicated in Appendix A, officials generally agreed with our recommendations. Appendix B includes our comments on issues raised in the TPC's response. At the completion of our audit of the FFI tax money in the six entities, we prepared a global report that summarizes the significant issues we identified at all of the entities audited.

## **Summary of Findings**

The City appears to have properly used and administered its 30 percent allocation of FFI tax money. We tested the City's FFI tax money disbursements totaling \$510,413 and found all disbursements appeared to be used in accordance with the settlement agreement between the City and the local firefighters' union, and were properly supported and accounted for separately. In addition, the City's Treasurer annually reported timely to the State Comptroller outlining FFI receipts, expenditures and balances. With one minor exception, all 14 "Building Fund" transactions, totaling \$295,990, were building-related expenditures.

The TPC did not always maintain adequate disbursement records to show that the expenditure was approved by the membership.<sup>2</sup> We tested a sample of 82 TPC disbursements for House items (such as coffee, spices, tea, food, condiments, small utensils, kitchen supplies, water, cable, Internet and newspapers) and Demand items (such as televisions, exercise equipment and furniture) totaling \$304,468, and found 77 disbursements (94 percent of our sample) totaling \$218,088 did not have membership approval. Unless inconsistent with the settlement agreement, the TPC should get membership approval for expenditures paid with FFI tax money.

Further, the TPC did not always maintain adequate documentation for expenditures of FFI tax money. Twenty-eight disbursements totaling \$56,790 did not have adequate documentation to support the expenditure, and one disbursement totaling \$774 did not have any documentation. In addition, the TPC, as a separate entity that receives and disburses FFI tax money, did not file its 2014 and 2015 calendar year reports of FFI tax money activity to the Office of the State Comptroller as required by GML.

## **Background and Methodology**

The City of Rochester covers approximately 36 square miles and serves approximately 210,000 residents. The City's fire department is comprised of 20 fire stations and employs over 400 firefighters. The City received FFI tax money from the State Department of Financial Services (DFS) and the Town of Brighton,<sup>3</sup> a total of \$1.8 million, in the years 2014 through 2016.<sup>4</sup>

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<sup>2</sup> Officials told us that the unwritten intent of the settlement agreement was to create the TPC to approve expenditures on behalf of the membership. Therefore, not all records will show expenditures approved by membership.

<sup>3</sup> The Town of Brighton contracts with the City for fire protection services. The distribution of FFI tax money received by the Town of Brighton and subsequently distributed to the City is outside the scope of this audit.

<sup>4</sup> In 2014, the City of Rochester received \$623,230 from DFS and \$28,468 from the Town of Brighton. In 2015, the City received \$604,344 from DFS and \$25,471 from the Town of Brighton. In 2016 (through August 31, 2017 deposits), the City received \$534,685 from DFS.

Unless a special law enacted by the State Legislature or a pre-1989 local law (e.g., City Charter) provides otherwise, the distribution and use of FFI tax money is governed by Insurance Law Sections 9104 and 9105.<sup>5</sup> In general, the Insurance Law provides that the treasurer or other fiscal officer of the fire department affording fire protection to the insured property receives the FFI tax distribution. If the fire department does not have a treasurer or other fiscal officer, then the FFI tax money is to be paid to the fiscal officer of the authorities having jurisdiction or control of the fire department.<sup>6</sup> Except as otherwise provided by a special act, the FFI tax money may be used for any purpose that the membership of the fire department or company determine to be for the benefit of the department or company, provided the expenditure is not illegal or contrary to public policy.

In the case of the City of Rochester, the Rochester Firefighters Association Local 1071 union (Local 1071), in May 2002, commenced an action against the City seeking, among other things, a declaration by the court that Insurance Law Sections 9104 and 9105 supersede and preempt certain provisions of the City Charter relating to the receipt and use of foreign fire insurance received by the City.<sup>7</sup> After 10 years of various court proceedings, we were told, in August 2012, a settlement agreement (Agreement) between the City and Local 1071 was approved by the court to settle all matters surrounding litigation regarding to the City's "Two Percent Fund."

The Agreement generally provides for the two percent FFI money to be distributed between the City and the TPC.<sup>8</sup> The Agreement also distinguishes between two percent FFI money received by the City before and after the date of the Agreement. For example, the Agreement generally provides that 30 percent of future FFI tax money (i.e. FFI money received after the date of the Agreement) be allocated to the City for the benefit of all active firefighters, and 70 percent of future FFI tax money to be allocated to the TPC for the distribution and benefit of all active firefighters. The City is to establish and maintain a separate bank account for the City's 30 percent share of the two percent FFI money and a separate bank account for the firefighters' 70 percent share. The City maintains custody of the FFI tax money in these separate accounts, pending disbursement.

In addition, the Agreement provides, among other things, that the City allocate \$3 million, held in a separate trust account in the name of the City Treasurer, for the purchase, lease or construction,

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<sup>5</sup> Insurance Law Sections 9104 and 9105 impose a tax at the rate of two percent on the premiums of fire insurance policies written by certain out-of-State insurers. Insurance Law Section 9104 provides that the FFI tax imposed "be paid by every foreign and alien fire insurance corporation, association or individuals which insure property against loss or damage by fire, except foreign mutual fire insurance companies...." Insurance Law Section 9105 provides that the FFI tax imposed be paid by every foreign mutual fire insurance company or association authorized to do business in this State. In general, the FFI taxes imposed by the Insurance Law are paid by the Insurer to the New York State Department of Financial Services, which, in turn, distributes the proceeds to the proper local recipients. According to the Department of Financial Services website, recipients of FFI money include fire departments, fire companies, benevolent associations and the Firemen's Association of the State of New York (FASNY).

<sup>6</sup> In a multi-company fire department, the treasurer or fiscal officer receiving the FFI tax money must, in turn, distribute the amount received to the companies constituting the fire department, proportionate to the number of active members in each fire company.

<sup>7</sup> See, Montesano v Madison, 12 Misc 3d 1197(A), aff'd 45 AD3d 1352, lv dismissed 10 NY3d 782. See also, Sections 8B-11 of the Rochester City Charter, establishing a "Firefighters' Insurance Fund" for the receipt of two percent funds. The City Treasurer maintains the two percent money received by the City in an account referred to as the "Two Percent Fund."

<sup>8</sup> According to the Agreement, the TPC is to be "organized under the Not-For-Profit Corporation Law of the State of New York with the legal capacity to own property and execute contracts related to the management and disbursement of Two Percent Funds."

furnishing and maintenance of a building (Building Fund) for the benefit of active firefighters and the TPC (see next section). The City Treasurer disburses money from the fund to the TPC after the City Council approves the “real estate agreement” for the construction, purchase or lease of a building. Other building-related disbursements are paid upon the City Treasurer’s review and approval.

Two Percent Committee (Rochester Firefighters) – A Rochester Firefighters Two Percent Committee (TPC) was organized as a not-for-profit corporation. The TPC has a five-member Board of Directors responsible for the administration and disbursement of the FFI tax money approved by the City Council, specifically for the use by the active firefighters.<sup>9</sup> Further, the TPC has a nine-member Building Committee that is responsible for the review and approval of Building Fund expenses, prior to submitting them to the City for review, approval and payment.

To achieve our audit objectives, we conducted interviews with officials and staff from the City and the TPC and reviewed policies/procedures and agreements, if available. We also reviewed documentation to support disbursements for the records we sampled. We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS).

More information on the standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

## **Audit Results**

### **Cash Disbursements**

Each year the City Treasurer receives FFI tax money, which is deposited into a City bank account designated for FFI. In accordance with the Agreement, thirty percent of all future FFI tax money (i.e., two percent money received after the date of the Agreement) is to remain in the account for the City to be used for the benefit of all active firefighters, and 70 percent of the total future FFI tax received to be placed in a separate bank account for the TPC for the distribution and benefit of all active firefighters. The City, pending approval of proposed expenditures, maintains control of these bank accounts.

Annually, the City and the TPC (on behalf of the active firefighters) each establish a request of anticipated expenditures to be used for the benefit of all active firefighters. The City’s requested and approved funds are disbursed from the 30 percent account to its general fund for the reimbursement of these expenditures. Similarly, the City Treasurer will disburse the TPC requested and City Council-approved funds from the 70 percent account to the TPC Treasurer for deposit into the TPC bank accounts for further use at the request of the active members of the TPC. In addition, the Agreement allocates \$3 million for the purchase, lease or construction, furnishing and maintenance of a building (Building Fund) for the benefit of all active firefighters and the

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<sup>9</sup> According to the TPC’s by-laws, all active members of the City’s fire department are members of the TPC, and any member of the TPC may be elected to its Board of Directors.

TPC. The City Treasurer, as custodian, holds these building funds in a separate account until the TPC submits payment requests, which are then reviewed, approved and paid from the Building Fund money. Unless an expenditure is inconsistent with the Agreement, the TPC should document membership approval on all expenditures of FFI tax money.

City Use of 30 Percent FFI Tax Money Received – Annually, the City’s Fire Chief submits a list of expenditure categories for use of FFI tax money to the TPC (which, according to the Agreement, must approve the request unless illegal or against public policy), which includes two to five items that will benefit all active firefighters. The City is required to use the FFI tax money in accordance with the terms of the Agreement.<sup>10</sup> After the list of expenditure categories requested is approved, the City Treasurer distributes the FFI tax money to the general fund for reimbursement of documented expenditures in the categories approved by the Council, not exceeding the budgeted amount requested. Any money that the City does not request for use that year is held by the City in the designated bank account that represents 30 percent of funds received.<sup>11</sup>

The City’s FFI tax money expenditure types reported during the three-year period are shown in Figure 1.

<b>Figure 1: City FFI Disbursements <sup>a</sup></b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
Linen/Laundry Services	\$80,286	\$80,000	\$80,000
Firehouse Repairs	\$139,595	\$63,082	-
Firehouse Small Equipment	\$75,000	-	\$50,310
Snowplow Services	-	\$50,000	\$50,303
Uniforms	\$69,113	-	-
<b>Subtotal</b> (paid from FFI tax money to the general fund for reimbursements)	<b>\$363,994</b>	<b>\$193,082</b>	<b>\$180,613</b>
Audit Services	-	\$5,500	\$ 895
Bank Service Charges	\$300	\$383	(\$1,081)
<b>Subtotal</b> (paid directly from FFI bank accounts)	<b>\$300</b>	<b>\$5,883</b>	<b>(\$186)</b>
<b>Totals</b>	<b>\$364,294</b>	<b>\$198,965</b>	<b>\$180,427</b>
<sup>a</sup> Disbursements for 2014 were reported to OSC. Disbursements for 2015 and 2016 are from City records and not yet filed with OSC. The 2015 expenses were not submitted and approved by the Council until 2016. The City also reported to OSC annual disbursements of \$310,000 to the TPC for firefighter-nominated items that are not included in this figure for 2014 and 2015.			

The disbursements made by the City Treasurer, averaging about \$248,000 per year, were related to linen services, firehouse repairs, small equipment, snowplow services and uniforms. The disbursements were reimbursement to the general fund for the expenditures already made during

<sup>10</sup> According to the Agreement, the 30 percent allocated to the City for the benefit of all active firefighters may be spent “in accordance with statutory law, case law, administrative rules and regulations, and the New York State Comptroller’s Opinions.”

<sup>11</sup> As of August 31, 2016, the 30 percent bank account balance was \$185,825.

the year. The audit services were paid directly from the FFI tax money bank accounts per the Agreement.

We selected 51 FFI disbursements<sup>12</sup> totaling \$510,413 from the City to determine whether the FFI tax money was appropriately used, disbursements properly supported and accounted for separately, and expenditure classifications accurately reported annually. We found that the City's disbursement of FFI tax money appeared to be in accordance with the settlement agreement for years 2014 through 2016<sup>13</sup> that all the disbursements were properly supported and accounted for separately, and that expenditure classifications were accurately reported.

Building Fund – The Agreement allocated \$3 million for the purchase, lease or construction, furnishing and maintenance of a building (Building Fund), with the funds held in a separate trust account in the name of the City Treasurer. According to the Agreement, certain expenditures related to the Building are eligible for funding by the TPC, including but not limited to renovation and/or construction costs, operating expenses, insurance premiums and utility charges. The TPC has a nine-member Building Committee responsible for the review and submission of Building Fund expenses to the City Treasurer. The Agreement provides, in part that the agreement, lease, sales contract and/or purchase offer is to be approved by the City Council prior to disbursement of funds to the TPC. The City Treasurer reviews and approves the other Building-related requests for payment and makes payments from the Building Fund.

We tested all 14 disbursements from the Building Fund totaling \$295,990 and found that all were Building-related expenditures, except for \$1,805 that were TPC legal fees incurred for general business purposes. The Building-related expenditures included the purchase of vacant land from the City, professional engineering and design services and legal fees.

TPC Use of 70 Percent of FFI Tax Money Received – The TPC is funded by FFI tax money received annually.<sup>14</sup> Each year, the TPC submits a list of categories to the City for its expected use of FFI tax money that will benefit the active firefighters.<sup>15</sup> The FFI tax funds, once approved by the Council, are distributed by the City Treasurer to the TPC Treasurer. The TPC Treasurer deposits the funds from the City into the TPC bank accounts. The TPC has custody of these bank accounts. Any remaining FFI tax funds that the TPC did not request are held by the City in a designated bank account segregating and representing 70 percent of funds received.<sup>16</sup>

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<sup>12</sup> See Appendix C for sampling methodology.

<sup>13</sup> January 2014 through September 2016

<sup>14</sup> From \$310,000 request, the TPC received FFI tax money based on its budgeted request of \$20,000 for legal expenses, \$200,000 for Fire House Demand Items (such as television sets, exercise equipment and furniture) and \$90,000 for Fire House Items (such as coffee, spices, tea, food, condiments, small utensils, kitchen supplies, water, cable, internet, land lines, and newspapers) each year.

<sup>15</sup> A four-step process is set forth in the Agreement for distribution of the 70 percent allocation of two percent tax money allocated to the TPC. The process includes the following: (1) the TPC submits a request to the City Treasurer which is neither “illegal nor against public policy”; (2) the City Treasurer presents the request to the City Council; (3) the City Council approves the request within 120 days unless the expenditure is “illegal or against public policy”; and (4) the amount of money appropriated by the City Council is to be distributed by the City Treasurer “to the Fire Chief for proper administration of the funds.”

<sup>16</sup> As of August 31, 2016, the 70 percent bank account balance was \$1,225,305. In addition, any funds the TPC requested and received into its custody, but did not use during the year, were held and rolled over to the next year to be used as originally approved, per the TPC's letter submitted to the City Council. As of August 31, 2016, the TPC bank account balances totaled \$353,795.

The TPC budgets FFI tax money received from the City to each firehouse to reimburse or pay for items and/or services requested by the firehouse members. Legal and accounting expenditures not specific to the firehouses are not budgeted, but paid directly by the TPC Treasurer. The TPC provides guidance through a “How to Submit for Reimbursement” document when FFI tax money is used and reimbursement is requested.

- A firehouse representative documents the House purchases made and forwards the receipts to the TPC for review of appropriateness and reimbursement. House items preapproved for purchase and reimbursement include coffee, spices, tea, condiments, small utensils, kitchen supplies and water.
- A Demand item (i.e., not ordinarily purchased with House funds, including but not limited to items such as televisions, exercise equipment and furniture) begins with a TPC member providing written approval of the desired item. However, an approval by a TPC member may not be necessary if there is past precedent for a particular purchase. A vote is held within the firehouse with all members given an opportunity to participate. According to the “Submit for Reimbursement” document, a majority vote is needed for any items to be purchased. The documentation supporting the vote, receipts and reimbursement request cover sheet are submitted to the TPC for reimbursement.

For requested FFI tax money disbursement prior to purchase, members communicate their desires to the firehouse representative for posting a voting sheet in a common area. If two-thirds of the membership have approved the purchase, the firehouse captain signs the voting sheet and forwards it to the TPC for disbursement. The TPC does not require membership approval for any replacement item requests or for legal and accounting expenditures.

We selected a total of 82 disbursements for review, separated by House items and Demand items, to determine whether FFI tax money was appropriately used, properly supported and separately accounted for, and expenditures accurately classified (Figure 2).

Expense Type	Test		No Documented Membership Approval		Inadequate Supporting Documentation		No Supporting Documentation	
	Qty	Amount	Qty	Amount	Qty	Amount	Qty	Amount
House	50	\$77,968	50	\$77,968	24	\$43,482	1	\$774
Demand	32	\$226,500	27	\$140,120	4	\$13,308	0	0
<b>Totals</b>	<b>82</b>	<b>\$304,468</b>	<b>77</b>	<b>\$218,088</b>	<b>28</b>	<b>\$56,790</b>	<b>1</b>	<b>\$774</b>

Of the 50 tested disbursements<sup>17</sup> totaling \$77,968 from the House items, none had documentation showing approval of membership for the expenditure of FFI tax money. Twenty-four disbursements totaling \$43,482 made by the TPC did not have adequate documentation to support the expenditures such as 14 reimbursement requests (58 percent) that included reference to

<sup>17</sup> See Appendix C for sampling methodology.

cable/Internet service supported by a bank statement line item, a reimbursement request form, first page of cable invoice or a vendor payment confirmation document. In addition, one disbursement, of \$774 payable to a firehouse, had no documentation at all.<sup>18</sup>

Of the 32 tested disbursements<sup>19</sup> totaling \$226,500 from the Demand items, 27 disbursements totaling \$140,120 had no documentation to show that membership approved of the items purchased. Voting sheets were available for two disbursements totaling \$6,210. Three disbursements were transfers to another TPC bank account, since this money was unused and therefore did not need membership approval. Also, four of the disbursements had inadequate documentation to support the expenditures, totaling \$13,308 (two payments to a cable company totaling \$11,886, one payment of \$122 to the TPC secretary, and a firehouse payment of \$1,300 on account to a cable company).<sup>20</sup> Inadequate documentation included statements or summary sheets without an invoice or receipt to show the reason for purchase or detail of service or goods.

In addition, of the \$20,000 FFI tax money requested and received by the TPC from the City annually for legal and accounting expenses, the TPC does not track related expenditures to specific disbursements. As a result, we were unable to identify the total amount spent or how many payments were made for this expenditure type. TPC officials said they did not have adequate documentation because they were not aware of the need to obtain and keep documentation of FFI tax money disbursements.

We also conducted a physical asset verification test of 13 items purchased with City and TPC FFI tax money and located all of them in the firehouses that purchased the items.

### **Annual Financial Report**

GML requires the treasurers of organizations that receive and disburse FFI tax money to file with OSC an annual report of the receipts, expenditures and balances related to such money.

The City Treasurer submitted timely reports to OSC for the calendar years 2014 and 2015, on February 27, 2015 and February 29, 2016, respectively. However, as a separate entity that receives and disburses FFI tax money, we believe the TPC should have filed its own report with OSC of FFI activity and balances in its custody. The TPC did not submit a report for the 2014 and 2015 calendar year; however, a report for the 2016 calendar year was filed with our office subsequent to our audit period. This filing helps ensure the transparency of TPC's use of FFI tax money.

### **Recommendations**

The TPC Board should:

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<sup>18</sup> Nine disbursements (\$11,130) initially had no supporting documentation in the TPC records. The Treasurer later provided adequate supporting documentation for three of these disbursements and partial supporting documentation for five, and could not provide any for the remaining one.

<sup>19</sup> See Appendix C for sampling methodology.

<sup>20</sup> During testing, we were unable to find supporting documentation in TPC records for six of the 32 disbursements, totaling \$51,979; however, within a week the TPC provided documentation for all six, which showed that FFI tax money was used to purchase furniture, a rowing machine, kitchen items and shoes.



1. Unless inconsistent with the settlement agreement, get membership approval for FFI tax money expenditures.
2. Receive, review and maintain adequate documentation to support disbursements of FFI tax money.

The TPC Treasurer should:

3. Continue to file with OSC an annual report of the receipts, expenditures and balances related to the TPC's use of FFI tax money.

The Board of the Rochester Firefighters Two Percent Committee has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days. We encourage the TPC Board to make this plan available for public review in the Secretary's office.

We thank the officials and staff of the City of Rochester and the Rochester Firefighters Two Percent Committee for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## **APPENDIX A**

### **RESPONSE FROM COMMITTEE OFFICIALS**

The Rochester Firefighters Two Percent Committee officials' response to this audit can be found on the following pages. City of Rochester officials chose not to respond.

Culley, Marks, Tanenbaum & Pezzulo, LLP  
Attorneys and Counselors at Law

Amy L. DiFranco  
[adifranco@culleymarks.com](mailto:adifranco@culleymarks.com)

December 10, 2017

State of New York  
Office of the State Comptroller  
Attn: Gabriel F. Deyo, Deputy Comptroller  
110 State Street  
Albany, New York 12236

**Re: Report Number S9-17-9  
City of Rochester and Rochester Firefighters Two Percent Committee**

Dear Mr. Deyo:

We represent the Rochester Firefighters Two Percent Committee, Inc. ("TPC") with regard to the above matter. The following submission is our response to your Draft Audit Report.

1. Membership Approval of Expenditures

One of the conclusions your office ("OSC") reached in its draft report is that the TPC did not always maintain adequate disbursement records to show that expenditures were approved "by the membership." During our Exit Conference on November 15, 2017 with [REDACTED] and [REDACTED] from OSC, they explained that it is the OSC's position that individual expenditures must be approved by the entire membership of Local 1071.

See Note 1 Page 16
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Please allow us to take this opportunity to explain the structure of the TPC. For that purpose, enclosed is the Bylaws of the TPC. The TPC was incorporated in 2013 as a result of the settlement of litigation between Local 1071 and the City of Rochester regarding the distribution and proper use of the FFI tax monies paid by the State to the City annually. As explained in the enclosed Settlement Agreement, the TPC was formed for the purpose of managing and disbursing FFI tax monies (referred to in the Settlement Agreement as Two Percent Funds).

The TPC is governed by its Bylaws, which defines the term "Membership" as the Board of Directors of the TPC and "all active firefighters employed by the City of Rochester Fire Department." (p.1). The Membership elects the Board of Directors annually. The election process is described in Article III of the enclosed Bylaws. Elections take place annually. Any active uniform member of the union is eligible for a Board position by submitting a petition with at least 20 signatures. The Board members are elected by majority vote through secret ballot at the offices of Local 1071. Two members are elected each year. See Article III, Subsection (1).

The Board of Directors is responsible for receiving Two Percent Funds and distributing those funds within the confines of New York Insurance Law and the Settlement Agreement. The directors of the TPC also serve as the officers (president, two vice-presidents, secretary and treasurer). In their capacities, they have a fiduciary duty to manage the FFI tax monies.

The Directors/Officers of the TPC are elected by the membership for the purpose of acting on behalf of the Membership to distribute Two Percent Funds. The TPC was intentionally structured to disburse FFI tax monies on the Membership's behalf in order to avoid the burdensome process of holding a Membership vote on individual disbursements.

See  
Note 1  
Page 16

Contrary to the conclusions reached in your report, a direct Membership vote is not required for individual expenditures because of the existence and powers of the TPC to act on the Membership's behalf in that regard. Requiring a Membership vote for every individual expenditure of every fire station/unit would constitute a waste of time, money and resources.

Rather, the process followed for disbursements is that each fire station/unit has a House Fund Manager, who is one of the members of the fire station/unit and is elected by those members (20-40 per station/unit) as their representative to the TPC. The House Fund Manager is responsible for submitting disbursement requests to the TPC. In turn, the Directors/Officers of the TPC are authorized to approve and deny disbursement requests.

See  
Note 1  
Page 16

Each disbursement request is placed into one of two categories: House Items and Demand Items. The House Items include kitchen items such as condiments and utensils as well as television cable/internet bills. Demand Items include things each fire station/unit may need or desire, such as televisions and workout equipment. House Items are disbursed when the House Fund Manager submits a request for an expenditure and the TPC approves the request. Demand Items are disbursed when the members of the individual fire station/unit obtain a majority vote in favor of an expenditure. The House Fund Manager then submits the request to the TPC and the TPC approves the request.

The Demand Items consist mainly of appliances and workout equipment in each fire station/unit. Prior to 2016, replacement of Demand Items was handled in the same way that replacement of House Items is currently handled, with no vote being required. In January of 2016, the TPC began a new procedure requiring a majority vote on the purchase of such items. Since then, the votes are obtained by a written vote; the attached form is currently used.

## 2. Annual Reports to Office of State Comptroller

Page 2 of the draft report states that the TPC did not file its annual reports of FFI tax money activity with the OSC as required by General Municipal Law. It is our position that the TPC is not required to file annual reports because it does not have receivership of the FFI tax monies. Rather, the Comptroller's office disburses the funds directly to the City Treasurer, which in turn approves distribution of a portion of the funds to the TPC. The TPC provides the City with all required reporting documentation, which the City uses to generate its annual reports.

See  
Note 2  
Page 16

Although it is true that the TPC did not file an annual report for 2015, we did file a report for 2016 and will do so annually going forward, despite our position that we are not required to do so under the law. We request that the statement in your draft report be amended accordingly.

3. Adequate Documentation of Expenditures

The draft report states that the TPC did not always maintain adequate documentation for expenditures of FFI tax money. We believe that a portion of the inadequate documentation is due to the fact that the TPC did not initially require a member vote to purchase items. As discussed above, prior to 2016 the TPC did not require a written vote for expenditures to purchase replacement items paid out of the Demand account. The voting process has been in place for two years and will continue to be used.

See  
Note 1  
Page 16

As we discussed during the Exit Conference, it appears that a large percentage of the unaccounted-for expenditures were television cable/internet bills. Although the stubs from those bills were kept in the TPC's files as proof of the expenditures, the OSC apparently takes the position that the stubs alone, without further documentation, are insufficient. We understand that position but request that the draft report include the explanation that the cable/internet bills constitute a large percentage of the unaccounted-for expenditures and that the stubs from the television cable/internet bills were maintained but do not constitute adequate proof of the expenditures.

See  
Note 3  
Page 16

Finally, we would like to clarify that cable/internet bills are paid from the House Item funds.

See  
Note 4  
Page 17

4. Edits to Draft Report

During our Exit Conference and subsequent phone conversations between [REDACTED] and TPC President Eddie Santiago, [REDACTED] advised that the following changes would be made to the Draft Report, with which we agree:

See  
Note 5  
Page 17

- A. Page 2: Twenty-eight disbursements totaling \$56,790 did not have adequate documentation to support the expenditure, and one disbursement totaling \$774 did not have any documentation.

B. Page 7:

<b>Figure 2: Disbursement Test Results</b>								
<b>Expense Type</b>	<b>Test</b>		<b>No Documented Membership Approval</b>		<b>Inadequate Supporting Documentation</b>		<b>No Supporting Documentation</b>	
	Qty	Amount	Qty	Amount	Qty	Amount	Qty	Amount
House	50	\$77,968	50	\$77,968	24	\$43,482	1	\$774
Demand	32	226,500	27	140,120	4	13,308	0	0
<b>Totals</b>	<b>82</b>	<b>\$304,468</b>	<b>77</b>	<b>\$218,088</b>	<b>28</b>	<b>\$56,790</b>	<b>1</b>	<b>\$774</b>

C. Page 8: Also, four of the disbursements had inadequate documentation to support the expenditures, totaling \$13,308, (two payments to a cable company totaling \$11,886, one payment of \$122 to the TPC secretary, and a firehouse payment of \$1,300 on account to a cable company).

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Thank you for your attention to this matter. Please contact me if you require anything further.

Sincerely,

Amy L. DiFranco

Encl.

cc:

[REDACTED]

[REDACTED]

Eddie Santiago, Two Percent Committee (via email)

## **APPENDIX B**

### **OSC COMMENTS ON THE COMMITTEE'S RESPONSE**

#### Note 1

We reported that unless inconsistent with the settlement agreement, the TPC should get membership approval for expenditures paid with FFI tax money.

At the exit conference, officials told us that the unwritten intent of the settlement agreement was to create the TPC to approve expenditures on behalf of the membership. However, this is not included in the settlement agreement. We encourage the TPC to clarify the intent of the agreement so membership has a clear understanding of how FFI is expended on the membership's behalf.

#### Note 2

GML requires the treasurer of organizations that receive and disburse FFI tax money to file with OSC an annual report of the receipts, expenditures and balances related to such money. We believe you meant to indicate that the New York State Department of Financial Services, not the Comptroller's Office, disburses the FFI tax money to the City Treasurer. Moreover, it is our understanding that the TPC is funded by FFI tax money received annually by the City. Each year, the TPC submits a list of categories to the City for its expected use of FFI tax money that will benefit the active firefighters. The FFI tax money, once approved by the City Council, are distributed by the City Treasurer to the TPC Treasurer. The TPC Treasurer deposits the FFI tax money from the City into the TPC bank accounts. The TPC has custody of these bank accounts. It is also our understanding that the TPC is responsible for the disbursement of such funds.

The reports submitted by the City to OSC for calendar years 2014 and 2015 only included details of the receipts, expenditures and balances related to FFI tax money in the City's custody. We still believe that the TPC, as a separate entity that receives and disburses FFI tax money, should file its own report with OSC of FFI activity and balances in its custody. We amended our report to note that a calendar year 2016 report was filed with our office.

#### Note 3

The lack of detailed support for a disbursement increases the risk that unauthorized purchases or services will be paid for without detection. Further, records used to support disbursements should contain enough information to ensure the expenditure is not illegal or contrary to public policy.

We have updated the report to include the percentage of the total inadequate supporting documentation findings that referenced cable/Internet service. While the TPC's response indicated they maintained cable/Internet service stubs in the TPC files as proof of the expenditure, we found that, for the test exceptions that included reference to cable/Internet services, the TPC disbursements were supported by a line item on a bank statement, a reimbursement request form, a page of cable invoice, or a vendor payment confirmation document. We have updated the report with these descriptions.



Note 4

During testing, we found cable/Internet disbursements were made from the both “House” and “Demand” bank account/funds.

Note 5

As discussed at the exit conference, the edits to the draft report referenced were made.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

We performed the following audit procedures to complete our audit objective:

- We reviewed the Settlement Agreement to determine authority to receive and use FFI tax money.
- We reviewed Board meeting minutes from the TPC, the Building Committee and the City for any approvals or discussions on FFI tax money disbursements.
- We interviewed the officials and staff involved in the administration, receipt and use of FFI tax money for general background information and policies/procedures.
- We reviewed records including bylaws, receipts and other available documentation and correspondence related to FFI and addressing financial activity. In addition, we reviewed bank statements, account detail reports and check information when appropriate.
- We reviewed the available documentation concerning approvals on FFI expenditures.
- We determined reliability of reported FFI tax disbursements and accounting for the FFI tax money to ensure it was deposited into the bank account.
- We reviewed canceled checks and supporting documentation, such as invoices for individual FFI tax disbursements, to determine compliance with the Settlement Agreement, City Council resolutions and other applicable laws.
- We reconciled 192 FFI tax money disbursements made by the City to annual reported amounts. The audit sample consisted of one disbursement per type of account classification per vendor for each year, for 51 disbursements totaling \$510,413. We traced the disbursements to bank statements, including canceled check images, to determine whether they were in accordance with the Agreement and applicable laws. We reviewed supporting documentation to determine whether the classification per the City's books and as reported annually were accurate, and appropriate according to applicable laws.
- We reconciled all 14 FFI tax money disbursements from the Building Fund account to bank statements and backup documentation, and confirmed that all related expenditures were accounted for and expenditure classifications were appropriate according to the Agreement.
- We created a list of receipts and disbursements from bank account activity, due to the lack of accounting records. Disbursements of House items totaled 246 and disbursements of Demand items totaled 168. We traced TPC disbursements by account classification to City Council resolutions and, selected a judgmental sample of expenditures from 2014 through August 2016 to obtain an audit sample of 50 disbursements for House items and 32

disbursements for Demand items, totaling 82 disbursements. We traced the disbursements to bank statements including canceled check images to determine whether they were in accordance with the Agreement and applicable laws, and reviewed supporting documentation to ascertain that the expenditure classifications per the TPC books and as reported to OSC were appropriate.

- We selected 14 assets from the six fire company locations used in disbursement testing, based on the most recently purchased and identifiable items, to verify that the asset was in the possession of the fire company that purchased it. If necessary, we reconciled our observations to fire department records.
- We verified the date the City of Rochester's annual report was filed by comparing it with the Comptroller's Office copy on file.

We conducted this performance audit in accordance with GAGAS. 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.