

October 31, 2001

The Honorable Common Council
Of the City of Milwaukee
City Hall, Room 205

Re:

Resolution to approve the expenditure of \$50,000 from the Outside Counsel-Expert Witness Fund for additional expenses for expert witnesses to defend the selection procedures, pursuant to current litigation in the case captioned United States of America, et al., v. City of Milwaukee, et al., United States Court Civil Action No. 74-C-480.

Dear Council Members:

Enclosed for your consideration, please find a resolution to approve the expenditure of \$50,000 from the Outside Counsel-Expert Witness Fund for additional expenses for expert witnesses to defend the selection procedures which are the subject of current litigation in the case captioned United States of American, et al., v. City of Milwaukee, et al., United States Court Civil Action No. 74-C-480.

On October 10, 2000, the Common Council passed a resolution in File No. 000788 authorizing the appropriation of \$85,000 from the Contingent Fund to the Outside Counsel-Expert Witness Fund for purposes of compensating expert witnesses from SHL/Landy Jacobs & Associates in connection with dispute which were anticipated to arise in the course of the foregoing litigation. Since that time, the amount appropriated as been expended, and upon payment of existing, outstanding invoices, there would be a deficit of \$811.95 relative to amounts approved as expenditures for these purposes.

When the \$85,000 appropriation was approved, the City Attorney advised that the amount would not be sufficient for the expenses anticipated for the year 2001, and that further

funds from the year 2001 Outside Counsel-Expert Witness Fund would be needed for these purposes.

The Outside Counsel-Expert Witness Fund has sufficient funds available for the amount requested. Further a sufficient balance will be left in that fund to cover expenses reasonably anticipated in other matters through the end of 2001.

Prior appropriations have been made with reference to the on-going litigation expenses. These are expressly noted in the enclosed resolution. In consideration of the costs involved, the City Attorney has been working with its expert witnesses, SHL/Landy Jacobs, to cap and control the litigation expenses. In September 2000, SHL agreed to perform certain specified work under a not to exceed agreement. That work has been largely completed, and the existing, outstanding invoices are in payment for some of the same. In addition, the sum of \$2,443 remains outstanding for the remainder of the work covered by that not-to-exceed agreement. It has become apparent, however, that further litigation expenses will be needed over and beyond the work covered by the September, 2000 not-to-exceed agreement. Therefore, in order to again reduce and control such costs, the City Attorney and SHL have agreed to a further not-to-exceed arrangement designed to cover additional specified work for no more than \$45,000. The resolution seeks approval for \$50,000 in order to cover all of the foregoing, and miscellaneous expenses which may be incurred for express mailings, photocopies and the like.

Litigation expenses are usually incurred on an hourly fee basis. They are extremely difficult to predict or contain. A not-to-exceed arrangement is to the City's advantage in controlling these costs. While we cannot state that the additional not-to-exceed arrangement will foreclose any additional litigation expenses, it is our current best estimate of what will be needed as expert witness expenses at this time.

Very truly yours,

GRANT F. LANGLEY
City Attorney

MIRIAM R. HORWITZ
Assistant City Attorney

MRH/MRH

74C018221
46571

cc: Joseph Czarnecki, FPC Executive Director
Marianne Walsh, Legislative Reference Bureau
Thomas E. Hayes, Sp. Dep. City Attorney
Laura Engan, ent

??Patrick??Hartmann??Budget??Analyst

