

FINANCE & PERSONNEL COMMITTEE CONTINGENT FUND REQUEST INFORMATION FORM

DEPT.: CITY ATTORNEY CONTACT PERSON & PHONE NO: Richard Withers Ext. 8822

A. REASON FOR REQUEST (Refer to File 921360 for definitions)

CHECK ONE: EMERGENCY CIRCUMSTANCES
 OBLIGATORY CIRCUMSTANCES
 FISCAL ADVANTAGE/COMPLIANCE WITH FISCAL MANAGEMENT PRINCIPALS

B. SUPPORTING INFORMATION

1. State the action requested, including the dollar amount and specific departmental accounts(s) to which the Contingent Fund appropriation would be made.

The Office of the City Attorney requests a Contingent Fund Appropriation in the amount of \$675,000 to address the unanticipated obligations associated with defense of claims related to law enforcement activities and, particularly, associated with allegations of unlawful stops, searches and seizures. The appropriations to be made to the following accounts:

\$425,000	Damages & Claims Fund SPA	0001 1490 0001 S118 006300
\$210,000	Outside Counsel/Expert Witness Fund SPA	0001 1490 0001 S157 006300
\$ 40,000	Operating Expenditures	0001 1499 0001 R999 006300

2. State the purpose of the action requested which includes the program, service or activity to be supported by the funding, as well as the objective(s) to be accomplished.

The proposed transfer will permit the Office to meet necessary obligations incurred in the defense of the City in litigation of claims arising from law enforcement activities.

3. Describe the circumstances which prompt the request.

The current unencumbered balances available for expenditure (November 13, 2014) in these respective funds are:

\$ 54,301.28	Damages & Claims Fund SPA	0001 1490 0001 S118 006300
\$138,593.03	Outside Counsel/Expert Witness Fund SPA	0001 1490 0001 S157 006300
\$ 26,857.87	Operating Expenditures	0001 1499 0001 R999 006300

1) Amounts totaling \$300,000 have previously been transferred from the 2014 Damages & Claims Fund to the Outside Counsel/Expert Witness Fund as a temporary measure to meet the increased costs associated with retention of Outside Counsel in the Ashford and other cases in which more than 60 plaintiffs have brought claims of unconstitutional stop and search activities. These cases have increased the litigation caseload of the Office by more than 40% since the beginning of 2013 (CC File #140779).

The Office anticipates receiving a Circuit Court judgment within the next 30 days for \$196,000 in the ‘Yankee Hill’ tax overpayment following an adverse decision in the Court of Appeals. Amounts of pre- and post-judgment interest and other costs may also be included in the Order. In addition, there are 2 pending resolutions authorizing settlement of

cases brought in connection with law enforcement activities. The Venable settlement has been recommended for Common Council approval in the amount of \$90,000 (CC File #141018). A resolution settling the Bohannon matter will be heard by the Judiciary & Legislation Committee on Monday, November 17 (CC File # 141162); the Office is recommending settlement in Bohannon in the amount of \$95,500. A review of pending cases and claims across the office suggests that up to \$140,000 in expenditures from the Fund may be needed to settle as many as 15 to 20 smaller cases before the end of the year. This amount may be reduced by as much as \$40,000 to \$45,000 if particular claims are not settled but are instead sent to litigation in 2015.

Total anticipated judgments and settlements:	\$481,500
Fund balance:	54,301
Anticipated deficit:	\$427,199

Therefore, the Office will need a minimum of \$425,000 additional funds for the Damages & Claims (SPA 118) to meet 2014 obligations.

2) The original budgeted amount for the 2014 Outside Counsel/Expert Witness SPA was \$430,000. Amounts totaling \$300,000 have been transferred in for a total appropriation in 2014 of \$730,000. Expenditures have totaled \$384,988.90 and an additional amount of \$206,418.07 remains encumbering. The balance available for expenditure is currently \$138,593.03. This remaining amount includes the most recent \$100,000 transfer from Damages & Claims anticipated to be needed to help cover October legal services by the Crivello Carlson law firm which has been retained to defend the City in matters involving claims of unconstitutional stop and search activities by law enforcement.

The retention of Crivello Carlson will continue to cost an average of \$100,000 or more monthly.

The initial contract with Crivello Carlson (August 18) provided for an encumbrance of \$50,000 of which \$47,710.90 was paid for services rendered in August of 2014. An amendment to the contract provided for an additional \$150,000. Billing for September services and costs totaled \$171,915.82 of which \$152,000 has been authorized for payment leaving a balance of \$18,094.18 owed for September.

The itemized billings for August and September have been made available to the Budget Office for review, but contain confidential information and attorney work product and are not a public record subject to disclosure. These billings are reviewed by a Deputy City Attorney for accuracy and reasonableness prior to submission to the Special Assistant to the City Attorney for further review and payment processing.

The Office has been provided an estimate of up to \$110,000 for October services and costs under a proposed amended contract. Given an expected reduction in the scope and scheduling of legal services for November and December, it is anticipated that the total additional billing for November and December will be approximately \$175,000.

The unpaid amount of \$18,094.18 for September, the anticipated billing of \$110,000 for October, and the estimated projection of an additional \$175,000 for services to be provided under a proposed extension of the Crivello Carlson retainer for November and December bring the total additional amount for this retainer yet to be paid for 2014 to approximately \$303,100.

Additional amounts to be paid from the Fund include several amendments to current retainers and at least one anticipated contract for an expert witness related to the MPD District 3 Parking Facility litigation will exhaust the Outside Counsel/ Expert Witness are expected to total another \$46,000.

Total anticipated contractual obligations:	\$349,100
Fund balance:	138,593
Anticipated deficit:	\$210,507

3) Operating Expenditures have been exhausted due to the cost of pretrial depositions and transcripts related to the defense of claims arising from law enforcement activities. Current expenditures in 2014 are approaching four times the approximately \$35,000 expended in 2013 for pretrial discovery costs. This increase of approximately \$105,000 by year end has been offset by a transfer of \$65,000 in October, 2014, but will require a minimum of \$40,000 additional funds to meet obligations prior to year-end.

4. What are the consequences of not providing the program, service, or activity which is funded by this request?

Potential default on future judgments, and a lack of capacity to adequately defend the City's financial interests to minimize exposure and avoid significant future claims and judgments.

5. Explain why funds authorized in the Budget are insufficient to provide for the program, service, or activity in question.

The costs associated with defending these constitutional claims were unanticipated in budget development.

5a. Are there any unexpended funds in the departmental control account for which this appropriation is requested, that could be used to fund this request?

All available funds from other departmental accounts have been transferred or expended.

5b. What are the consequences of using budgeted operating funds for this request?

Other departmental operating funds are not available,

6. State why funding was not included in the Budget.

The Budget was prepared using generally available assumptions for average annual demands upon the applicable accounts.

7. Will the conditions prompting the request be limited to the current year, or will they continue into the following year?

These conditions are expected to continue through 2015.

8. Has your department made a similar Contingent Fund request in previous years? YES NO

*If yes, what is the most recent year the request was made?

No similar request has been made in recent years, though contingent fund requests have been made involving the "terra cotta" litigation and sewer overflow cases.

9. Will this funding be used to implement provisions of a collective bargaining agreement? YES NO

10. Will the funding being requested provide a level of service authorized by the Budget? YES NO

*If yes, why can't your department accomplish the authorized service level with the authorized funding level?

Exposure to large litigation risks is unpredictable and involves historical fluctuations when large potential liabilities arise beyond the annual norm.

11. Will the requested funding provide a level of service higher than that authorized by the Budget? YES NO

*If yes, why is a higher service level necessary?

The fluctuation in need for attorney support does not justify an increase in permanent staff, but can be considered a higher level of service.

*What is the estimated amount of additional service units to be provided if the entire Contingent Fund request is approved?

The request will allow the Office to continue to manage a 40% increase in caseload.

12. What performance measures and sub-measures are affected by this request, and what are the anticipated changes if the entire Contingent Fund request is approved?

The Office will continue to protect the City's legal and financial interests and reduce risk exposure.

13. What reductions to performance measures are expected if the request is not approved?

The Office will not be in a position to adequately represent and defend the City's financial and other interests in current and anticipated litigation.

14. Is any grant funding associated with the program service, or activity pertaining to the request? YES NO

*If yes, name the grant and current year amount.

15. Will the program, service, or activity affect any electronic data processing system? YES NO

**If you have any questions about the completion of this form, you may call the
Director of the Legislative Reference Bureau (x2267)**

**C. THANK YOU FOR YOUR COOPERATION. PLEASE SEND A COPY OF YOUR RESPONSE
TO:**

Staff Assistant, Finance & Personnel Committee, Room 205, City Hall
Manager, Legislative Reference Bureau, Room 307, City Hall
Budget & Management Director, DOA, Room 603, City Hall