

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 \$525,000 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. These matters required expenditures earlier in 2015 that have reduced the funds available to address other claims and litigation costs which are expected to accrue in the last 3 months of the 2015 Budget year. The appropriations requested are to be made to the following accounts:

\$385,000	Damages & Claims Fund SPA	0001 1490 0001 S118 006300
\$ 90,000	Outside Counsel/Expert Witness Fund SPA	0001 1490 0001 S157 006300
\$ 50,000	Operating Expenditures	0001 1490 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, tax assessment cases scheduled for trial in the last quarter of 2015, and routine claims against the City including auto accident liabilities.

3. Describe the circumstances which prompt the request.

The current unencumbered balances available for expenditure (September 29, 2015) in these respective funds are:

\$ 42,869.17	Damages & Claims Fund SPA	0001 1490 0001 S118 006300
\$245,344.69	Outside Counsel/Expert Witness Fund SPA	0001 1490 0001 S157 006300
\$ 26,443.42	Operating and Equipment	0001 1490 0001 R999 006300/ 006800

1) Two resolution files are currently pending, Common Council File Number 150649 (\$52,500) and Number 150745 (\$35,000). Routine small claims averaging a total of \$65,000 to \$75,000 per month are anticipated to accrue over the final months of 2015 amounting to an additional \$200,000 (of these claims, approximately \$50,000 are awaiting payment). The Office also faces larger claims arising from vehicle accidents and injuries: one for \$120,000 which will require expenditure before year-end. Total anticipated expenditures required in damages and claims are anticipated to

exceed \$420,000 in the final months of 2015. It should be noted that small claims paid in the first 6 months of 2015 totaled nearly \$200,000 more than paid in the comparable period of 2014 .

Therefore, the Office will require, at minimum, an additional \$385,000 to be expended from the Damages & Claims (SPA 118) Fund to meet 2015 obligations.

2) The original budgeted amount for the 2015 Outside Counsel/Expert Witness SPA was \$850,000. An additional \$850,000 has been appropriated to this account due to costs incurred in police litigation. Expenditures have totaled \$1,019,388.89, with further encumbrances of \$435,266.69.

The retention of Crivello Carlson has required expenditures of up to \$120,000 monthly. Caps on these costs, increased reliance on in-house personnel following the hiring of two paralegals (filling vacant positions) and other measures have significantly reduced these monthly costs over the summer.

Additional funds will be required in several matters including the “Oil Terminals” tax assessment matters scheduled for trial in November.

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. Expenditures for pretrial discovery continue at more than 3 times the amounts expended annually prior to 2014. The total expended for transcripts and court reporter costs in 2013 was approximately \$35,000. More than \$81,000 has been expended for such costs in 2015 prior to October 1.

Additionally, the Office has contracted with temporary services due to vacancies and leaves of absence among support staff. These amounts may be partially offset later in 2015 by fund transfers.

However, the total current expenditure over budget required for Professional Services is \$57,511 and for Other Operating Expenditures is \$30,747. If an estimated \$40,000 is obtained through fund transfer, the deficit in Operations will still likely exceed \$50,000.

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 the constitutional claims in police litigation and the costs and damages associated with tax assessment appeals 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 expended or are encumbered.

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, but may not continue through 2016. Litigation costs and needs related to police litigation, tax assessment appeals and other matters remain speculative.

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

No similar request has been made in recent years. However, earlier in 2015 a contingent fund request was made to assure sufficient resources to operate and to pay for obligations expected to accrue through September of 2015.

Common Council File Number 150071, adopted 5/12/2015, provided the following:

1. \$250,000 to the Damages & Claims Fund SPA.
2. \$850,000 to the Outside Counsel/Expert Witness SPA.
3. \$75,000 to the Operating Expenditures Account of the City Attorney's Office.

The additional funds appropriated for Damages and Claims and for Operations have been expended or encumbered, and the funds remaining available for Outside Counsel and Expert Witnesses will not be sufficient to meet needs in November and December of 2015.

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

*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 litigation 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?

