

September 17, 2002

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

Re:

Resolution to approve the expenditure of \$9,000 from the Outside Counsel-Expert Witness Fund for expenses for expert witnesses to conduct a study relative to defending the passing point for background investigations for the position of police officers and police aides for the Milwaukee Police Department, and other expenses in connection with 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 Member:

Enclosed for your consideration, please find a resolution to approve the expenditure of \$9,000 from the Outside Counsel-Expert Witness Fund for expert witnesses to conduct a study relative to defending the passing point for background investigations for the position of police officers and police aides for the Milwaukee Police Department, and other expenses in connection with 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.

On November 27, 2001, the Common Council passed a resolution in File No. 010970 approving the expenditure of \$50,000 from the Outside counsel-Expert Witness Fund, for the purpose of paying consultants in conjunction with defending the selection procedures as developed by SHL/Landy Jacobs & Associates in the foregoing civil action. Those funds were needed to pay the consultants for work under a not to exceed agreement that was then anticipated as necessary to defend the selection procedures. After the payment of current outstanding invoices, the sum of \$1,405 will remain from that resolution. However, the additional sum of \$2,500 is needed for work not yet completed in connection with the agreement, so that an additional \$1,095 will be needed in order to complete payment for work in progress.

Since the adoption of the resolution in File No. 010970, disputes have arisen over the appropriate passing point for background investigations for the positions of police officer and police aide. A further study is required to address those disputes. In view of the expenses already incurred in connection with this on-going litigation, as noted in File No. 010970 and those other prior resolutions recited therein, the City Attorney and SHL have agreed to a fixed price agreement to reduce the expenses otherwise associated with such a study. The fixed price agreement calls for payment of \$7,500. The resolution seeks approval for \$9,000 in order to cover the foregoing, the remaining work in progress, and miscellaneous expenses which may be incurred for express mailings, photocopies and the like.

The process of developing and defending new selection procedures for the positions of police officer and police aide has been on going for several years. That process is now near conclusion. However, establishing the proper basis for the background investigations' passing point has become a significant impediment to final resolution. The City Attorney recommends that this additional study be conducted as it will either resolve this issue concerning the background investigation procedure, or it will allow the City to better defend its position in court in the event no agreement is obtained.

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 other expenses reasonably anticipated for that fund in other matters through the end of 2002.

Litigation expenses are usually incurred on an hourly fee basis. They are extremely difficult to predict or contain. The fixed price agreement is to the City's advantage in controlling these costs. While we cannot state that foregoing will foreclose additional litigation expenses, it is our current best estimate of what will be needed at this time.

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If the Council wishes further discussion on this matter, the City Attorney is also requesting that the Judiciary and Legislation Committee convene in executive session of purposes of discussing strategy and advice pertaining to on-going litigation.

Very truly yours,

GRANT F. LANGLEY

City Attorney

Miriam R. Horwitz

Assistant City Attorney

MRH/MRH

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