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## **LEGAL SERVICES DEPARTMENT**

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**TO:** James P. Walsh, City Attorney  
Members of the Finance Committee

**FROM:** Christopher R. Behrens, Deputy City Attorney 

**DATE:** June 23, 2017

**RE:** Pending Worker's Compensation Related Matters in which Outside Counsel has been Retained

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At present the City has three worker's compensation related claims that it is either defending or preparing to defend. Each of these claims are unique from past matters that have been handled internally. Because these are pending claims I am only describing the same in very broad terms in order to support the continued use of outside counsel in these matters.

#### Matter #1

The first matter involves a potential worker's compensation-occupational disease claim in which, according to outside counsel, the City would potentially face significant exposure. The matter is more complex than usual because the claimant has a significant history of work and non-work related issues that may play into the defense of the matter. Due to the potential significant exposure as well as the underlying complexities of the matter, we have solicited of services of Attorney James Nowakowski from the Zilske Law Firm out of Milwaukee. Attorney Nowakowski has worked with this office in the past and also has a long-standing close working relationship with the City's third party worker's compensation administrator. Total legal fees for this matter are likely to be under \$10,000 but it is difficult to estimate because the amount will vary depending on the amount of litigation that ultimately results.

#### Matter #2

Our office has also enlisted Attorney Jim Nowakowski's assistance with regard to a potential appeal of a denial of a duty disability claim. The underlying matter in this case extends back almost 10 years with a former employee. Attorney Nowakowski has provided legal assistance to this office with regard to this former employee's worker's compensation related matters in the past. There are a number of unique factors in this case including its age and the underlying basis for the duty disability denial. Given these factors, Attorney Nowakowski's experience in the administrative law realm as well as his past experience with this matter, it made sense to bring him in to defend this likely appeal. Again, I would anticipate Attorney Nowakowski's fees in this matter not exceeding \$5,000.

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James P. Walsh  
City Attorney

Christopher R. Behrens  
Deputy City Attorney

Amanda Abshire  
Assistant City Attorney

Matter #3

The third matter involves a worker's compensation/hearing loss claim and our office would like to continue working with Attorney Eric Lengell of the Zilske Law Firm (a partner to Attorney Jim Nowakowski). Attorney Lengell specializes, among other things, in hearing loss claims. The original hearing loss claim in this matter was handled internally nearly 15 years ago. The claimant continues to need hearing aid batteries and maintenance on an annual basis as well as periodic replacement of the hearing aids. The City has taken the position that based upon provisions in the statutes, and with the passage of time, the liability to pay for these replacement batteries and hearing aids has now shifted away from the City to the Wisconsin Work Injury Supplemental Benefit Fund (a state fund). The fund however is taking the position that liability should remain with the City indefinitely. Given Attorney Lengell's experience with hearing loss claims as well as the administrative process, he is well positioned to defend the City's interests in this matter. This matter also involves legal issues and statutory interpretations that I don't think the Courts have yet addressed. Accordingly, Attorney Lengell's expertise regarding the administration of hearing loss claims will be important for the City's defense especially if this matter goes through various levels of appeal. The extent to which we will require his services will depend largely on the extent of the hearing and appellate process. At this point I can only estimate his fees not exceeding \$7,500 through one hearing and one level of appeal.

In each of the above matters, it is the intent of our office to work very closely with outside counsel and assist them wherever possible in each of the matters not only so that our staff can gain experience that may be beneficial in the future but also help to ultimately control the litigation costs. As always, I am happy to discuss these matters in more detail so please do not hesitate to contact me with any questions.

CRB;jlg