

City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: FEBRUARY 6, 2024

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: REQUEST TO APPROVE EXPENDITURE OF \$1,078,205 TO RETAIN OUTSIDE COUNSEL JENNIFER ROSNER AT LIBERTY CASSIDY WHITMORE TO HANDLE *MENDONCA V. CITY*; OR IN THE ALTERNATIVE TO APPROVE REALLOCATION OF \$220,855 IN THE LIABILITY TRUST FUND FOR 5.0 ADDITIONAL FTE FOR THE CITY ATTORNEY'S OFFICE TO HANDLE THIS MATTER IN-HOUSE AND OTHER MATTERS CURRENTLY BEING HANDLED BY OUTSIDE COUNSEL

ISSUE:

Requesting approval of either:

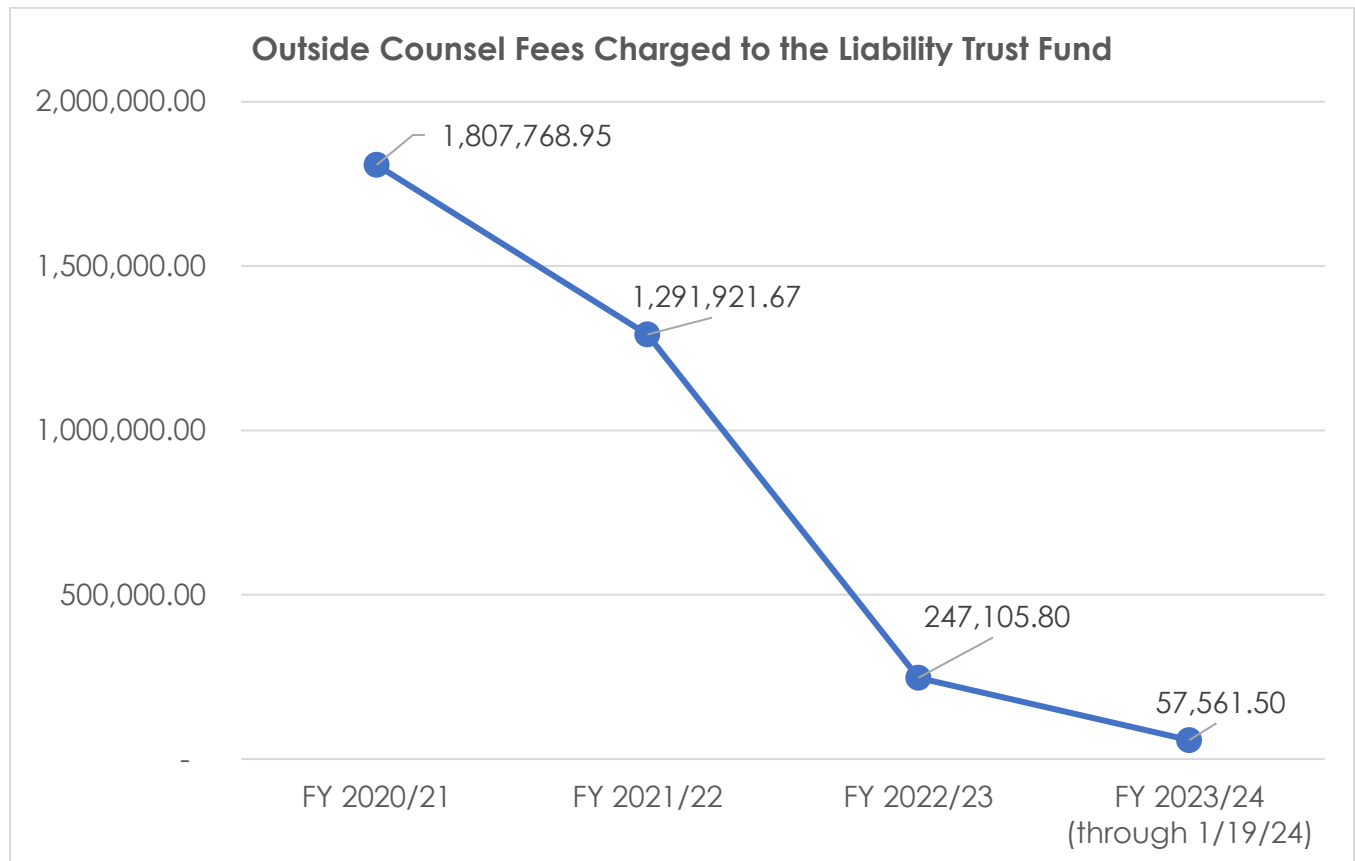
1. A \$1,078,205 budget for the City Attorney's Office to retain Jennifer Rosner Partner at Liberty Cassidy Whitmore to handle the case of *Mendonca et al. v. City of Riverside* (Riverside Superior Court Case No. CVRI2305672) through trial and to authorize the City Attorney to execute an Outside Counsel Engagement Letter for this amount; or
2. Reallocate \$220,855 in the Liability Trust Fund Budget, Outside Legal Services Account to the Liability Trust Fund Salary and Benefit accounts and increase 5.0 Full Time Equivalent (FTE) positions to hire two additional Senior Deputy City Attorneys, one Paralegal, and two Legal Secretaries.

RECOMMENDATION:

1. That the City Council: approve the \$1,078,205 budget to retain Jennifer Rosner Partner at Liberty Cassidy Whitmore, who is already on the City's panel of approved outside counsel; and authorize the City Attorney to execute the Outside Counsel Engagement Letter for their proposed budget; or
2. With at least five affirmative votes, authorize an increase in 5.0 Full Time Equivalent (FTE) positions in the Liability Trust Fund, City Attorney's Office, and approve re-allocation of \$220,855 from the Liability Trust Fund, Outside Legal Services account to the Liability Trust Fund, Salary and Benefits accounts to hire 2 additional Sr. Deputy City Attorneys, 1 Paralegal, and 2 Legal Secretaries to handle this matter and other matters currently being handled by outside counsel.

DISCUSSION:

The City Attorney's Office has developed an in-house Litigation Division that handles all civil cases filed against the City or any City employee acting in the course and scope of their employment. Per the City Council's direction, the City Attorney's Office has been working diligently to keep litigated cases in-house to reduce the cost of outside counsel. Below is a chart depicting how much the City Attorney's Office has saved in outside counsel costs since 2020. Although the Liability Trust Fund Budget – Outside Legal Services Account 1310000-421100 was budgeted at \$1,600,000 in FY 2022/23 and \$1,648,000 in FY 2023/24, the City Attorney's Office only incurred \$247,105.80 in outside counsel costs in FY 2022/23 and \$57,561.50 to date in FY 2023/24. The City Attorney's Office was only able to achieve these accomplishments through the hard work and dedication of its staff.



However, the Litigation Division of the City Attorney's Office is currently handling 74 civil litigation cases (which excludes all of the workers' compensation cases that the Workers Compensation Team handles and excludes the contamination and utility rates cases that are overseen by the Municipal Services Division). The 74 civil litigation cases consist of:

- 32 alleged dangerous conditions of public property resulting in personal injuries
- 10 traffic collisions involving City employees
- 5 property damage/trespass cases
- 8 employment cases
- 9 police/civil rights cases
- 4 breach of contract
- 2 injunction cases
- 3 subrogation cases
- 1 consumer protection

Of the 74 cases handled by the Litigation Division, 32 are high exposure/complex cases, which means they have a potential exposure that exceeds \$3,000,000. Each of these cases is document and deposition intensive and require a significant amount of law and motion in an attempt to mitigate the City's exposure.

In addition to these high exposure/complex cases, the City was served with 20 new lawsuits in the last three months (4 of which are high exposure cases) and was also served with 7 pre-litigation claims that have been reported to the City's excess insurance that will likely proceed to litigation in the next six months. As a result, the City Attorney's Office has inadequate office resources to handle the current and projected caseload.

The case of *Mendoca et al. v. City of Riverside* ("Mendoca") was filed by five (5) City employees who claim: (1) Harassment, (2) Discrimination, (3) FEHA Retaliation, (4) Disability Discrimination, (5) Failure to Provide Reasonable Accommodations, and (6) Failure to Take Corrective Action. This case will be complex as each Plaintiff worked in a separate work group, which will require dozens of percipient witness depositions.

Given the current workload of all in-house attorneys, it is requested that City Council either approve \$1,078,205 to retain outside counsel to handle this case or approve reallocation of \$220,855 that has and continues to be allocated in the Liability Trust Fund for outside counsel to instead be used for personnel costs to hire additional staffing to handle this case in-house and bring back the two complex cases that were recently sent to outside counsel.

With respect to Option #1: Jennifer Rosner is a partner at Liberty Cassidy Whitmore and is already on the City's pre-approved panel of outside counsel. Ms. Rosner is an experienced litigator, labor negotiator, and trial attorney representing public and private entities in labor and employment matters. Ms. Rosner has submitted a total proposed budget of \$1,078,205, which includes \$971,105.00 for attorneys' fees and \$107,100.00 for costs such as court reporters, experts, jury consultants, etc.

With respect to Option #2: in November 2023, the City Attorney's Office sent two (2) other high exposure cases to outside counsel to handle: *Tonkovich v. City* (employment) and *Griffith v. City* (construction contract dispute). Because the Litigation Division of the City Attorney's Office has reached maximum capacity, *Tonkovich* was sent to Atkinson, Andelson, Loya, Ruud & Romo to handle with a projected budget of \$550,500 and *Griffith* was sent to Gibbs Giden to handle with projected budget of \$450,500.

Sending high exposure cases to outside counsel is expensive. When the over \$1,000,000 in outside counsel costs approved by Council to send these two cases out is added with the over \$1,000,000 in projected attorney's fees and costs to send out *Mendonca* as well, that represents over \$2,000,000 in outside counsel costs that could be saved by hiring additional staffing for the City Attorney's Office.

The most cost-effective way to handle these cases is to do so in-house with a dedicated team who specialize in public entity defense work and have a vested interest in the City. If the City Council approves Option #2 to re-allocate funds for additional staffing, the City Attorney's Office would bring back *Tonkovich* and *Griffith* to handle in-house once the appropriate staffing has been hired, which would disencumber the funds for the projected budget of \$550,500 for *Tonkovich* and the funds for the projected budget of \$450,500 for *Griffith*.

STRATEGIC PLAN ALIGNMENT:

The retention of experienced outside counsel and the reallocation of funds to increase staffing levels to handle litigated matters in-house supports all priorities of the City of Riverside's Envision Riverside 2025 Strategic Plan, as such services are provided to all departments of the City, the City Council, Boards and Commissions.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside is transparent and makes decisions based on sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Use of outside counsel and/or hiring staff to handle litigated matters in-house supports and aids the making of such decisions.
2. **Equity** – Use of outside counsel that specializes in specific areas of the law and/or hiring staff to handle litigated matters in-house benefits the entire community by ensuring that such efforts comply with all aspects of the law.
3. **Fiscal Responsibility** – The most cost-effective way to address the current workload is to hire additional staffing in the City Attorney's Office. If the City Council approves re-allocation of funds in the Liability Trust Fund, it would enable the City Attorney's Office to utilize existing budgeted funds for in-house and negate the use of outside counsel in the three cases identified above.
4. **Innovation** – Use of outside counsel that specializes in specific areas of the law and/or hiring additional staff to handle litigated matters in-house supports City innovation efforts by ensuring that such efforts comply with all aspects of the law.
5. **Sustainability & Resiliency** – Use of outside counsel that specializes in specific areas of the law and/or hiring staff to handle litigated matters in-house supports City goals of sustainability and resiliency by ensuring that such efforts comply with all aspects of the law.

FISCAL IMPACT:

If option 1 is approved, the total fiscal impact will be up to \$1,078,205 to retain Jennifer Rosner at Liberty Cassidy Whitmore to handle this case through trial. The funds to cover attorneys' fees in the amount of \$971,105 are currently budgeted in the Liability Trust Fund, Outside Legal Services account 1310000-421100. The funds to cover legal costs in the amount of \$107,100 are currently budgeted in the Liability Trust Fund account 1310000-428200.

If option 2 is approved, the total fiscal impact for Fiscal Year 2023/24 is approximately \$220,855 and for Fiscal Year 2024/25 \$662,564. The breakdown of the total position costs are included in Table 1 below. Approving re-allocation of funds for additional staffing for the City Attorney's Office would save over \$2,000,000 in outside counsel costs (which would disencumber \$1,001,000 for *Tonkovich* and *Griffith*) and would fully fund the additional positions for at least three years. The budgetary breakdown of costs are included in Table 2 below.

Table 1.

Position	Quantity	Cost Per Fiscal Year	Cost for Remainder of FY 2023/24
Legal Secretary	2	\$76,754	\$51,169
Paralegal	1	\$96,810	\$32,270
Sr. Deputy City Attorney	2	\$206,123	\$137,415
Total for Remainder of FY 2023/24			\$220,855
Total for FY 2024/25			\$662,564

Table 2.

Fund	Program	Account	Amount
Liability Trust Fund	Claims Management, Outside Counsel	1310000-421100	(\$220,855)
	Claims Management, Salaries and Benefits	1310000-41xxxx	\$220,855
Total Liability Trust Fund			\$0

Prepared by: Rebecca McKee-Reimbold, Assistant City Attorney
 Certified as to availability of funds: Kristie Thomas, Finance Director/Assistant Chief Financial Officer
 Approved by: Mike Futrell, City Manager
 Approved as to form: Phaedra A. Norton, City Attorney

- Attachment:
1. Proposed Budget *Mendonca v City of Riverside*
 2. Outside Counsel Engagement Letter