



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1819-123

File ID: R-1819-123

Type: Resolution

Status: Consent Item

Version: 1

Reference: Item 37

In Control: City Council

Department: Legal Department

Cost:

File Created: 06/20/2019

File Name: Appropriation - Outside legal

Final Action:

Title: RESOLUTION R-1819-123: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, APPROPRIATING \$101,360 FROM THE GENERAL FUND BALANCE TO PAY PENDING OUTSIDE LEGAL FEES ACCRUED THROUGH FYE 2019.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1819-123.

ACTION TAKEN: _____

Agenda Date: 06/25/2019

Agenda Number: 37

Attachments: R-1819-123 Outside Legal App FYE19

Project Manager: Kathryn Walker, Interim City Attorney

Entered by: kathryn.walker@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
---------------	--------------	-------	---------	----------	-----------	-----------------	---------

Text of Legislative File R-1819-123

Body

BACKGROUND: The Fiscal Year Ending June 30, 2019 (FYE 19) Budget appropriated \$125,000 for outside legal fees. That funding has now been depleted. Additional expense for outside legal work for the remainder of FYE 19 is estimated to be \$101,360.

DISCUSSION: The Legal Services account (010-2220-412.40-11) was allocated \$125,000 for FYE 19 for litigation expenses incurred for cases processed through the legal system during the fiscal year. This account pays all litigation costs, including outside legal counsel, trial preparation, expert and general witness fees, subpoenas, discovery, union contract arbitration and employment related issues, costs of appeals when necessary, and various other litigation expenses.

Because the filing of new lawsuits and litigation costs are somewhat unpredictable, additional

funding is normally requested as a supplemental appropriation on an “as-needed” basis. In FYE 19, the primary draws on this account have come from employee grievance arbitrations, litigation related to appeals of two zoning decisions to District Court, an appeal of a Board of Adjustment decision regarding the City’s oil and gas ordinance, and outside legal counsel services related to the separation of the former City Attorney.

Grievance Arbitrations

The City Attorney’s Office provides advice concerning the employee disciplinary process and grievance filing. If grievances are not resolved in the grievance process, then an arbitration process can be requested resulting in a hearing before a neutral arbitrator; outside legal counsel has been utilized for arbitration processes for the last several years. The current unpaid balance for grievance arbitrations and other labor matters is approximately \$23,750. It is anticipated an additional \$5,000 will be billed through services provided through the end of FYE19.

Appeals of Zoning Denials

A second major draw on the Outside Legal Services account has come from litigation regarding two zoning applications that were rejected by Council. Williams, Box, Forshee & Bullard are representing the City in both cases. *Golden Tribe, LLC. v. City of Norman* (CV-2018-1142) is an appeal of a denial of a rezoning request for property located at 410, 414, and 416 North Park Avenue. This case was filed in June of 2018 for injunctive relief and attorneys fees and costs. Some discovery has been conducted and depositions began this week. So far, approximately \$32,215 has been billed and approximately \$17,610 remains unpaid. It is anticipated an additional \$5,000 will be billed through services provided through the end of FYE19.

Fleske Holding Company, LLC v. City of Norman (CV-2018-956) is an appeal of a denial of a rezoning request for property located at 801 36th Avenue, NW. This case was filed in May of 2018 for injunctive relief and attorneys fees and costs. Some discovery has been conducted and depositions began this week. So far, approximately \$31,642 has been billed and approximately \$21,710 remains unpaid. It is anticipated an additional \$5,000 will be billed through services provided through the end of FYE19.

Appeal of Board of Adjustment denial

On January 24, 2018, the Board of Adjustment denied Magnum Energy, Inc.’s Application for Variance from the City of Norman insurance requirements related to oil, gas and mineral production. Magnum filed an appeal of the Board of Adjustment decision in District Court on February 2, 2018. Phillips Murrah was hired to represent the Board of Adjustment. Magnum was granted a Motion for Summary Judgment and the Board of Adjustment appealed. Although the appeal is being handled in house per Council direction, approximately \$13,220 remains to be paid to Phillips Murrah for its representation.

OG&E Franchise Negotiations

On August 27, 2017, Council was asked to consider adopting Ordinance O-1718-1, which would send to the voters the question of renewing the franchise that gives OG&E the right to access our rights-of-way to provide electricity in Norman. Council adopted several floor amendments to the Ordinance, and the question of granting the franchise, as amended, was set for a November 14, 2017 election. Prior to the election, OG&E representatives reached out to the City and after several meetings with Staff, sent a letter committing to working with the City to achieve a number of its goals. On September 26, 2017, Council adopted Resolution R-1718-49 giving the Cleveland County Election Board notice of the City's rescission of the previously provided Notice of Special Election seeking an election related to Ordinance O-1718-1, as amended. Staff was initially directed to seek outside legal counsel to handle a potential lawsuit with OG&E as a result of the amended franchise language; after it was determined the election would not go forward, Staff was directed to seek outside legal counsel to handle franchise negotiations.

At the direction of Council, Jim Roth, Marc Edwards, Heather Hintz, and Eric Davis with Phillips Murrah were hired to represent the City. Recent discussions with Council indicated a desire by Council that Staff finish the negotiations in-house. To date, \$25,000 has been paid for this work. An appropriation would authorize the payment of \$10,070 to pay the outstanding invoices related to their work on the franchise agreement.

RECOMMENDATION: It is recommended that \$101,360 be appropriated into the Legal Services account (010-2220-412.40-11) from the General Fund Balance (010-0000-253.20-00).