



## **CITY OF NEW BEDFORD**

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## **MEMORANDUM**

**TO:** New Bedford City Council

**FROM:** Mikaela A. McDermott, City Solicitor

**DATE:** January 27, 2017

**SUBJECT:** FY17 Judgments/Claims/Settlements Update

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The purposes of this memorandum are to: (1) provide an overview of how the funds in the Judgments/Claims/Settlements line item in the General Government Unclassified account have been spent thus far in FY17; (2) provide an overview of the claims and litigation pending against the City at the end of FY17 for which the City could have to pay insurance deductibles, judgments, and/or settlements from the Judgments/Claims/Settlements line item in the General Government Unclassified account; and (3) inform the City Council that we will be seeking a transfer in March or April of approximately \$380,000 into the Judgments/Claims/Settlements line item.

### **I. FY17 Expenditures in Judgments/Claims/Settlements Line Item**

The City Council allocated \$150,000.00 to the Judgments/Claims/Settlements line item in the FY17 budget. This was a reduction of \$150,000 from the \$300,000 originally proposed by the Solicitor's Office. As of December 31, 2016, \$126,173.39 of the total \$150,000.00 in the Judgments/Claims/Settlements line had been expended in the following manner:

- \$53,769.62 was paid in deductibles to Trident Insurance Company for 25 matters that are covered by the City's insurance policies. The nature of those 25 insurance matters was as follows:
  - 16 matters were under the Employment Practices liability policy and involved the following departments: School (9), Police (2), Traffic (1), COA (1), Personnel (1), Health (1), Community Services (1)

- 1 matter was under the Educators Liability policy and involved the following department: School (1)
- 8 matters were under the Law Enforcement liability policy and involved the following departments: Police (7), School (1)
- \$45,271.22 was paid to settle 27 bodily injury and property damage claims pending against the city. The nature of these 27 bodily injury and property damage claims was as follows:
  - One claim was for bodily injury and involved the Police Department. The total payment on this claim was \$9,000.
  - The remaining 26 claims were for property damage and involved the following departments: DPI (15), DF&FM (3), Fire (5), Police (2), and Traffic (1). The total payment for these property damage claims was \$36,271.22.
- \$27,132.55 was paid to settle three pending lawsuits against the city. The nature of these three lawsuits was as follows:
  - One lawsuit was for bodily injury and involved EMS. The total payment for this lawsuit was \$7,200.
  - One lawsuit was for property damage and involved the Police Department. The total payment for this lawsuit was \$4,747.
  - One lawsuit was for bodily injury and property damage and involved the Fire Department. The total payment for this lawsuit was \$15,185.55

In addition, a \$265,080.82 workers compensation settlement was paid from the judgments/claims/settlements line item. This settlement involved a former school department employee, who died in May 2016 and had been in a nursing home for nine years. His nursing home and medical expenses had been paid by the state and federal government, but he filed suit in 2013, alleging that they should have been covered by the city through workers compensation and that he should be reimbursed for the amount he personally paid for his care. The city negotiated down its potential exposure with the former employee's estate by approximately \$120,000. The total \$265,080.82 settlement payment included payments to the Commonwealth of Massachusetts (\$107,391.80), which also later sought reimbursement from the City, the former employee's estate (\$150,295.75), and the former employee's attorneys (\$7,393.27). As mentioned in section II below, the city might owe additional funds to the federal government (Medicare) in connection with this matter. Previous updates to the City Council did not include this matter because we had anticipated that any settlement payment would come out of former active employees line item.

Because of the \$265,080.82 workers compensation settlement, there is currently a deficit of approximately \$241,254.21 in the judgments/claims/settlements line item.

## **II. Overview of Claims and Litigation Currently Pending against the City**

Below is an overview of the outstanding claims and litigation that might need to be paid from the judgments/claims/settlements line item.

### Outstanding Claims

As of December 31, 2016, there were 53 claims pending against the City that were being handled *in-house*.

- Of these 53 claims, 44 were for property damage and involved the following departments: DF&FM (3), DPI (26), Fire (8), EMS (1), Police (6). Another eight claims were for personal injury and involved the following departments: DF&FM (1), DPI (4), Fire (1), and Police (2). An additional claim contained insufficient information to ascertain the department at which it is directed and is currently being investigated.

As of December 31, 2016, there were 24 claims pending against the City that were being handled through the City's *insurance policies*.

- Of these 24 claims, six were for property damage and involved the following departments: Council on Aging (1), DPI (4), and Traffic (1). Another 17 claims were for personal injury and involved the following departments: DF&FM (2), DPI (8), School (3), Traffic (2) and Zoo (2). The remaining insurance claim involved an alleged civil rights violation by the Police Department.

### Outstanding Litigation

As of December 31, 2016, there were 39 litigation matters in which the City is a defendant and could have to pay insurance deductibles, judgments, and/or settlements from the Judgments/Claims/Settlements line item.

Of these 39 matters, 22 are covered by *insurance* and the total maximum amount the City could have to pay in deductibles on them is \$373,944.35. The nature of these 22 matters is as follows:

- One matter is under the Auto policy and involves EMS.
- 15 matters are under the Employment Practices liability policy and involve the following departments: Council on Aging (1), School (8), Personnel (1), Traffic (1), Police (1), Health (1), Fire (1), Community Services (1)
- Two matters are under the General Liability policy and involve the School Department.
- Four matters are under the Law Enforcement policy and involve the Police Department.

The remaining 17 matters are *not covered by insurance* and break down as follows:

- One matter alleges discriminatory enforcement by Animal Control.
- One matter involves the potential payment to the federal government for Medicare costs paid for a former School Department employee

- Six matters allege personal injury and involve the following departments: Police (3), DPI (2), and Fire (1).
- Nine matters allege property damage and involve the following departments: Fire (3), DPI (1), School (1), Police (3), and Inspectional Services (1).

### **III. Proposed Transfer**

In the next couple of months, the Solicitor's Office will propose a transfer of approximately \$380,000 to the judgments/claims/settlements line item. This amount was calculated as follows:

- Approximately \$241,254.21 is needed to fill the existing deficit in the judgments/claims/settlements line item.
- We estimate, based on past history, that we will need approximately \$80,000 to pay Trident Insurance Company's bills for the remainder of FY17.
- We estimate that we will need approximately \$20,000 to pay existing litigation matters and approximately \$5,000 to pay existing in-house claims in the remainder of FY17.
- We estimate that we will need \$13,000 to pay a judgment in a wrongful demolition case that was tried in 2015.
- We estimate that we will need approximately \$20,000 to resolve future claims and litigation filed in the remainder of FY2017.