



Date: February 25, 2020
To: Self-Insurance Trust Fund Board
From: Jim Smith, City Attorney
Jason Reed, Deputy City Attorney
Lisa Lorts, Risk Management Claims Analyst
Subject: The City of Mesa's Property and Public Liability Trust Fund

I. Purpose.

This report addresses the financial status of and a budget recommendation for the City's Property and Public Liability Trust Fund (the "PPL Trust Fund").

II. PPL Trust Fund Finances.

In accordance with state law, the PPL Trust Fund covers the following costs and expenses:

1. Costs associated with staffing the litigation unit in the City Attorney's Office;
2. Payouts and defense costs of third-party claims and lawsuits filed against the City and its employees; and
3. The City's insurance premiums.

In FY 18/19, the PPL Trust Fund incurred \$4.1 million in costs: \$1.7 million for claims and lawsuits; \$1.4 million for insurance; and \$1.0 million for the staffing costs of the litigation unit. For FY 19/20, the City estimates that it may have between \$6.2 and 6.7 million in costs: \$3.5 to \$4.0 million estimated for claims and lawsuits; \$1.7 million for insurance; and \$950,000 for the staffing costs of the litigation unit.

III. Litigation Expenses.

A. The City's Litigation Unit.

The City's litigation unit defends the City and its employees in nearly all third-party liability claims and lawsuits. In contrast, many cities hire outside counsel to handle their claims and lawsuits. By handling most of the City's litigation matters internally, the City recognizes significant cost savings for the PPL Trust Fund.

For example, in FY 18/19, the staffing cost for the litigation unit was \$1.0 million. During that fiscal year, the litigation unit managed approximately 300 claims and 45 lawsuits. During that same year, the City retained outside counsel to defend the lawsuits associated with seven different incidents. The cost of outside counsel for those incidents was approximately \$725,000.

Moreover, by handling litigation matters internally, the City's litigation unit develops a strong working knowledge of City's operations and reinforces strong working relationships with City employees. This also helps the City recognize significant cost savings for the PPL Trust Fund. For example, when the City hires outside counsel, outside counsel incurs costs and fees associated with getting up to speed regarding the City's operations and identifying possible witnesses and evidence. In contrast, the litigation unit's knowledge and experience with the City's operations and employees readily transfer to newly-filed cases without spending the time and money that is typically incurred by outside counsel at the beginning of a case.

The City Attorney's Office also works with City departments to help reduce the City's financial exposure and explore areas of improvement. This collaborative effort typically results in identifying better practices, implementing additional training, and increased liability sensitivity.

In the past year, the litigation unit has also achieved some significant successes. For example, in December 2019, the City reached a settlement agreement where it agreed to pay \$1.6 million to over 140 claimants who alleged that the City's response to a 2014 flooding event was negligent. The case itself was based on unprecedented facts and presented unique legal issues regarding, among other things, the City's responsibility in responding to a historic flooding event. That settlement not only allowed the City to help its citizens recover a portion of their loss, but it ensured that the City fully resolved its liability and exposure as to the plaintiffs' claims, and it saved significant costs that would have been incurred with protracted litigation.

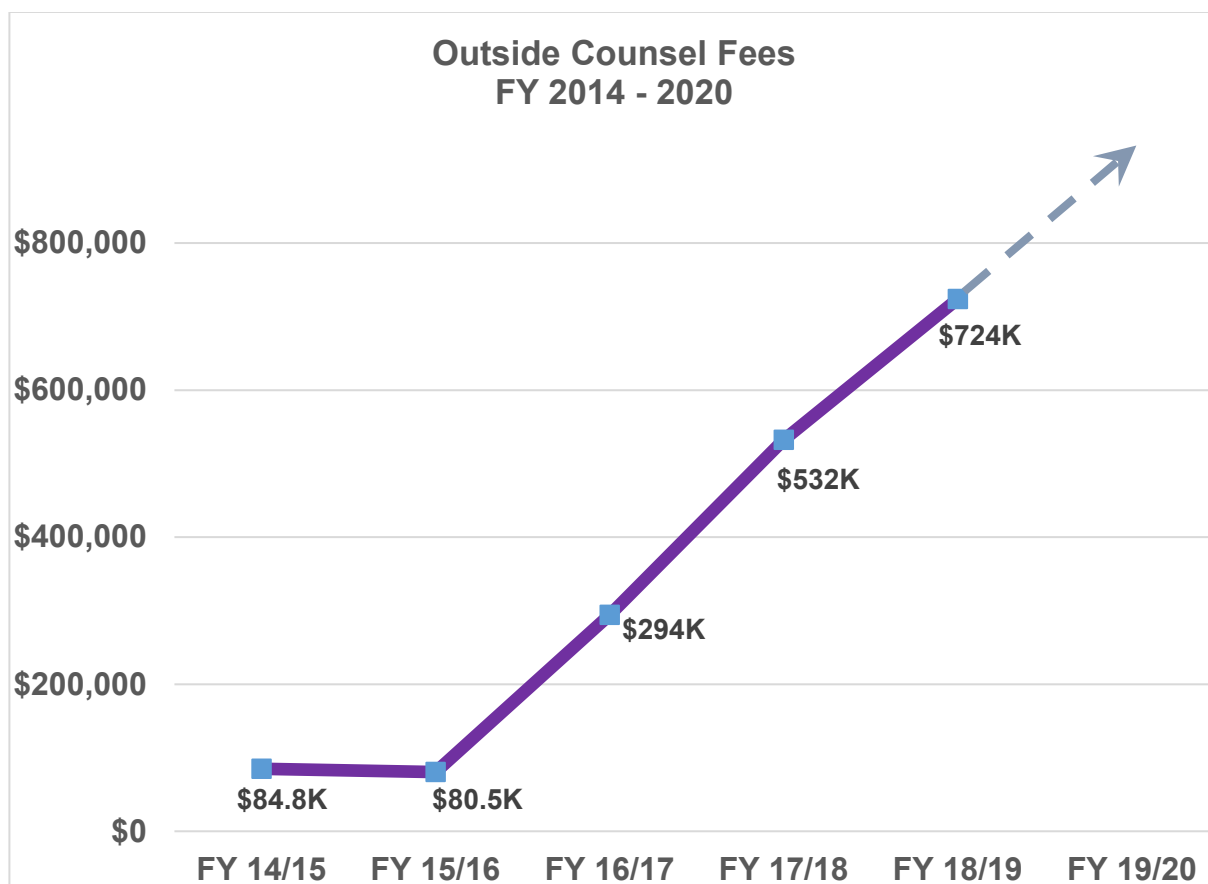
Beyond that, in 2019, the litigation unit obtained a complete defense verdict in two trials, it obtained summary judgment or a dismissal in eight cases, and it prevailed in

two appeals. In total, the litigation unit settled and resolved approximately 225 claims and lawsuits in 2019.

B. Outside Counsel.

The City generally retains outside counsel when a conflict of interest prevents the City's litigation unit from defending the lawsuit, when a particular expertise is needed, and/or for certain high-exposure claims that may erode the City's SIR.

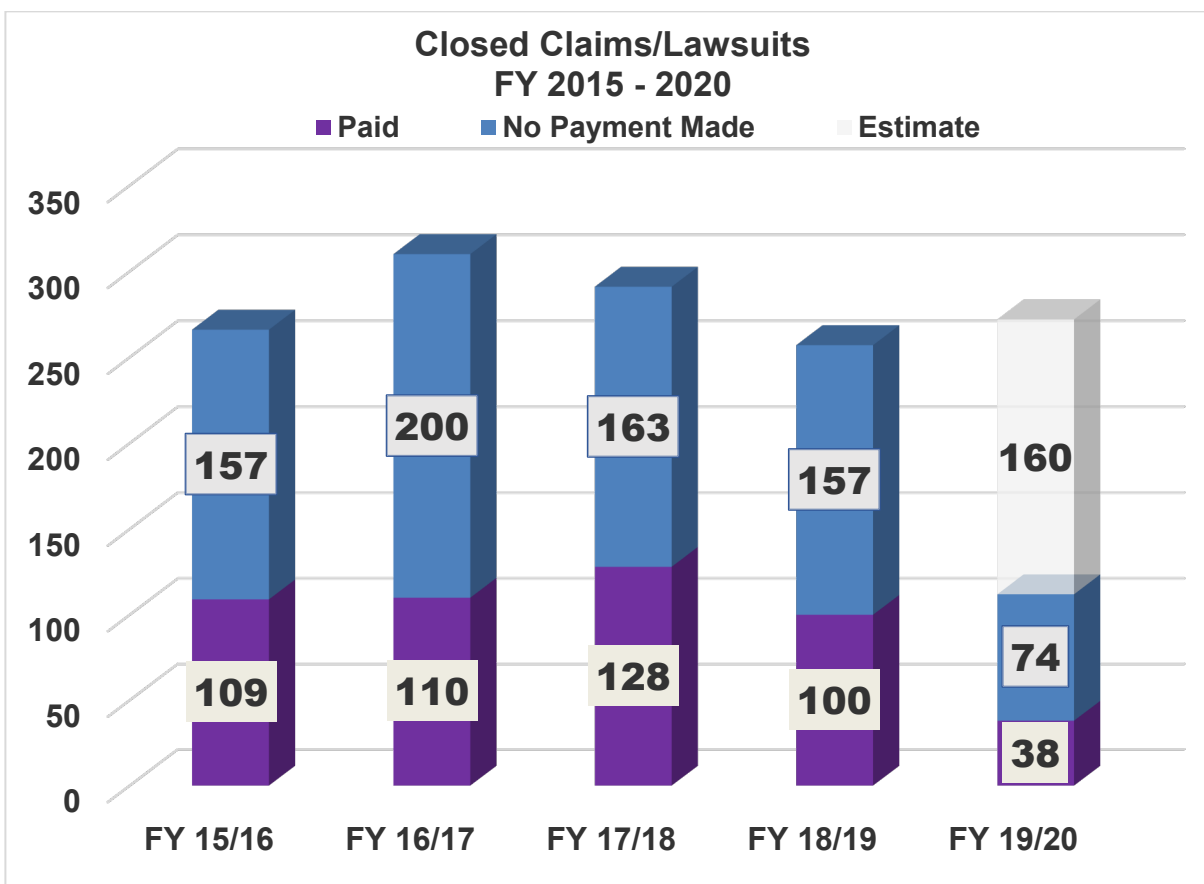
Outside counsel costs have increased due to the activity in some of the City's high-exposure cases. In one case, outside counsel had to attend multiple depositions, engage in extensive summary judgment briefing, resolve discovery disputes, and prepare an appeal. Because high-exposure cases can last for several years, the City can continue to incur costs for outside counsel until these matters are resolved. The following chart, for example, shows the amounts spent on outside counsel for the last five years.



To help limit the PPL Trust Funds' exposure to outside counsel expenses, the City works with outside counsel to explore options to more efficiently manage those cases. Some of those strategies include retaining outside counsel with specific expertise, exploring areas for dispositive motions, using offers of judgment to limit plaintiffs' ability to shift their attorney fees to the City, and exploring reasonable settlement proposals. For example, the City recently settled the claims associated with the 2014 flood. Once any final matters are resolved, outside counsel costs for that case will end.

IV. Claims And Lawsuits.

The City receives around 300 claims and 30 lawsuits each year. The City is able to resolve a majority of these claims and lawsuits without making a payment to the claimant.

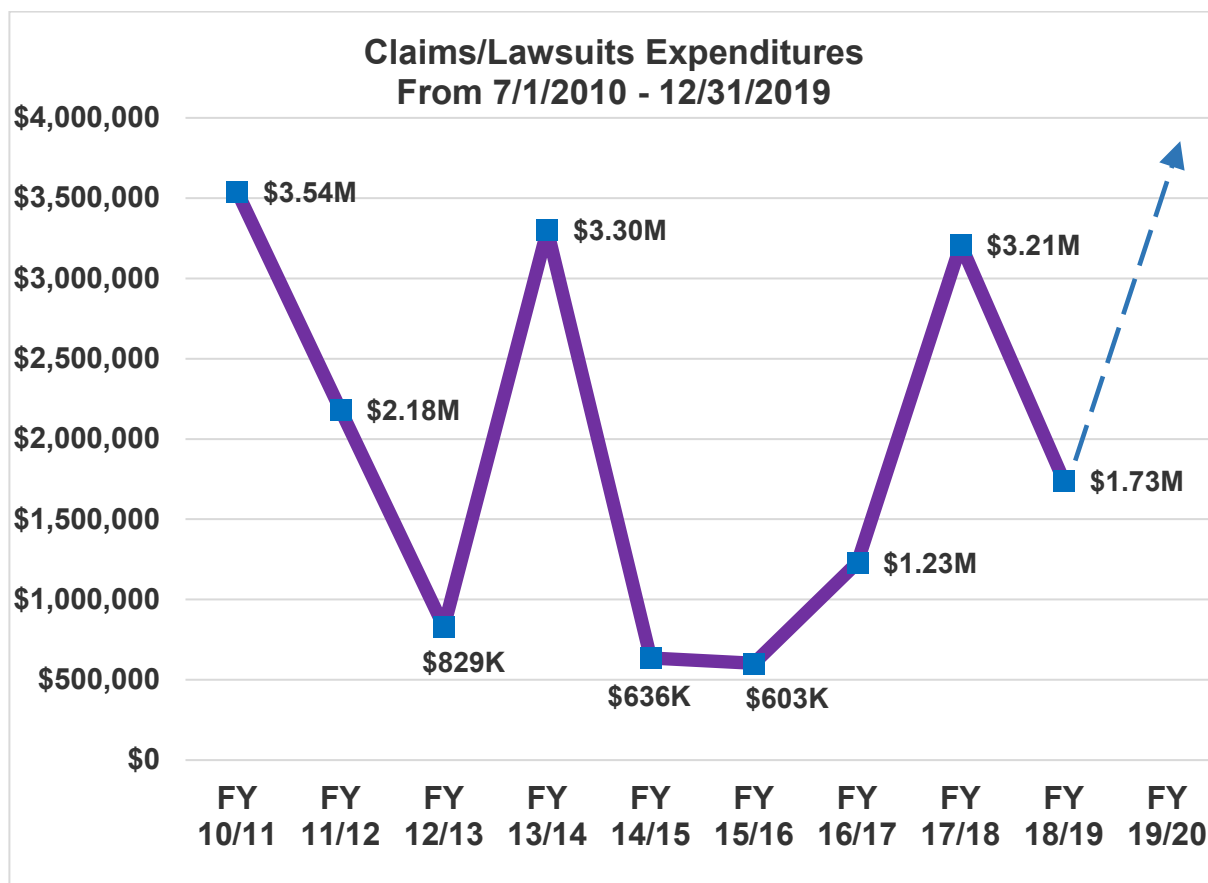


That said, the City anticipates that the number of claims and lawsuits filed against the City will increase. As the number of these claims and lawsuits increase, the City anticipates that payouts from the PPL Trust Fund will increase because, in addition to

the increased number of claims, the City continues to grow and provide more services, litigation costs have increased, and juries are awarding higher damage awards.

The City generally incurs greater costs to defend high-exposure cases as a result of the potential for larger damage awards, increased outside counsel fees, expert witness fees, increased technology costs, attorney fee shifting provisions, and other litigation expenses. Based on the trends discussed above, the City’s litigation costs and annual payouts to resolve claims likely will increase.

The following chart shows the annual claim-related payouts from the PPL Trust Fund. The variation in the annual payout depends primarily on whether high-exposure cases were resolved during a particular fiscal year.



The City is currently defending multiple high-exposure lawsuits. Considering the factors listed above, pressure may be placed on the PPL Trust Fund if a jury awarded significant damages in one or more of the City’s high-exposure cases.

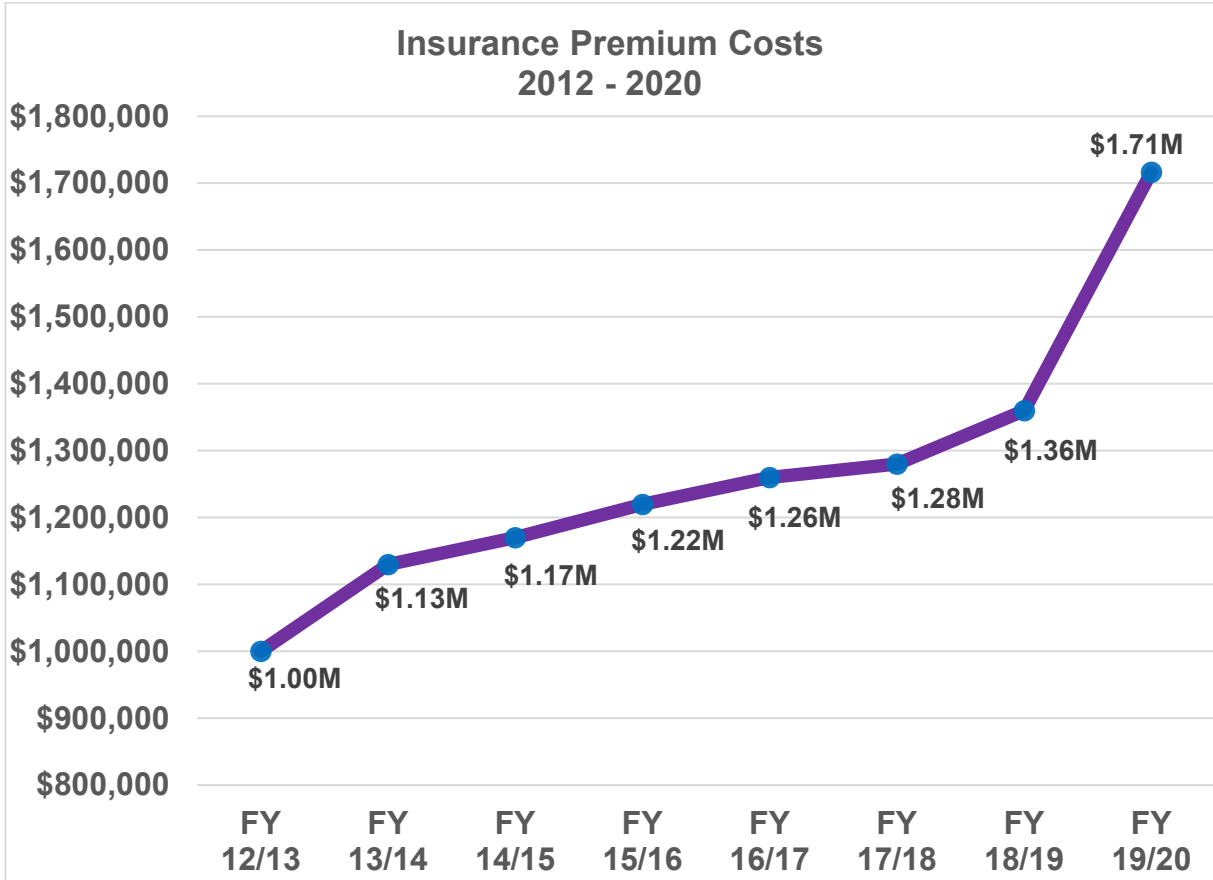
V. Insurance.

Based on the trends discussed above (more claims against municipalities, increased litigation costs, and higher jury verdicts), insurance premiums for the City's insurance will also increase.

For example, the number of insurers willing to offer municipality insurance is decreasing. In the past two years, when the City requested insurance quotes, many insurance companies indicated either that they had abandoned the municipality insurance market and/or that they would not submit a quote for the City's insurance.

For the insurers that remain in the market, premiums for municipality insurance nationally have increased due to the increased number of claims, increased litigation cost, and rising jury verdicts. This past year, the City's property insurance premium increased by approximately 40 percent. This significant increase was attributable, at least in part, to national natural disasters, including the California wildfires and the East Coast hurricanes. Due to that property loss in those situations, property insurance for all municipalities (including the City) increased significantly.

The following chart shows the annual cost of the City's insurance. Based on current market conditions, the City anticipates that insurance premiums will continue to increase.



For its part, the City works to minimize future premium increases. For example, the City has worked to establish stronger relationships with its current insurer. As part of that relationship, the City and its insurer meet at different points during the year to identify significant cases, litigation trends, and any training that the insurer could provide to the City.

By establishing a stronger relationship with its insurer, the City can help the insurer recognize the steps the City has adopted to reduce exposure, which in turn, is more likely to lead to lower premium increases.

For example, in 2019, the City requested quotes for the City’s first layer of its excess liability insurance. For the quotes the City received, the quote provided by the City’s current insurer was approximately \$150,000 less than that of the next lowest quote.

Finally, and as discussed above, the City Attorneys’ Office works with City Departments to identify areas of risk, to identify national and local trends related to new claims and lawsuits, and to offer and implement additional training to reduce future claims and lawsuits. These proactive steps to reduce the City’s exposure are also

more likely to lead to lower premium increases.

VI. The City's Self-Insured Retention.

The City is currently self-insured for \$3 million per covered event. The amounts paid by the City towards items like litigation costs, outside counsel fees, and expert witness fees erode the SIR.

For claims that exceed the City's \$3 million SIR, the City has purchased \$50 million in excess liability insurance coverage. Once the City's SIR is completely eroded, insurance is intended to cover the remaining expenses, costs, and any damage award, up to the \$50 million maximum, associated with defending and resolving the underlying claim or lawsuit.

In the future, insurers may pressure the City to raise its SIR in order to reduce the insurers' potential exposure.

VII. Summary And Recommendation.

The City has had a successful year in managing the claims and lawsuits filed against the City and its employees. The City also came in under budget. As a result, the City can carry that savings into the next fiscal year and allow for a smaller contribution from the City to the PPL Trust Fund.

That said, pressure continues to exist on the PPL Trust Fund based on, among other things, high-exposure claims and the rising cost of litigation, outside counsel fees, and insurance. To ensure that the PPL Trust Fund maintains the ability cover the costs and expenses necessary to protect the City, the City recommends a City contribution of \$5.9 million for FY 19/20 so that the PPL Trust Fund will have an ending balance of \$13.0 million.

Based on the trends discussed above, the City anticipates that contributions will need to be increased in future years. The City will continue to evaluate the PPL Trust Fund's funding level and make recommendations as to the amount of future contributions.