

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

0116-00001-0000

Date: October 28, 2016

To: Budget and Finance Committee
Attn: Richard Williams, Office of the City Clerk

From: Miguel A. Santana, City Administrative Officer

Subject: **ADDENDUM TO THE 2016-17 FIRST FINANCIAL STATUS REPORT
COUNCIL FILE NO. 16-0600**

The City Administrative Officer issued the First Financial Status Report (FSR) on October 28, 2016. This addendum to the First FSR provides additional recommendations pursuant to the settlement *Ardon v. City of Los Angeles*, a class that challenged the validity of the City's telephone users' tax based on a federal government interpretation of the federal excise tax. The City settled this case in 2015 but has been waiting for final court approval of the settlement agreement. The Superior Court of California granted final approval of the settlement on October 26, 2016.

Per the terms of the settlement, the City's total liability inclusive of refund claims, litigation expenses and attorney's fees is limited to \$92.5 million, of which \$50 million was included in the 2015-16 Budget within the Unappropriated Balance (UB), Reserve for Liability Resolution. Litigation expenses totaling \$2.1 million were paid in 2015-16 and the balance of the funds were re-appropriated to the 2016-17 Budget, UB Reserve for Liability Resolution (\$47.9 million).

The First FSR includes a recommendation to transfer an additional \$2.1 million from the UB Reserve for Liability Resolution to the City Attorney Litigation Expense account and authorize the City Attorney to process payments for administrative expense. These expenses were incurred by the claims administrator (Gilardi & Co LLC) and mobile phone carriers in connection with administering the claims process and assisting class action members retrieve documentation for their claims. With the final court approval of the settlement, the City must now deposit the remaining funds in the UB Reserve for Liability Resolution (\$45.8 million) into two escrow accounts at a custody services bank (Huntington National Bank) to cover refund claims, attorney's fees, and any other administrative expenses pending. The claims administrator will establish two separate escrow accounts to receive the funds. One account will be used to deposit funds to pay attorneys' fees and expenses and the other will be used to deposit funds to pay the refund claims and administrative expenses.

In order to complete this task, the UB funds must first be appropriated to Department 59, Miscellaneous Liability Payouts account 009798. The City Attorney will then process the required wire transfers from this account to the two escrow accounts. Per the terms of the settlement, attorneys' fees and expenses are technically due to be deposited into

the separate escrow account within 5 business days of the Court's order, Thursday, November 3. Additionally, the City must make the initial deposit into the second escrow fund no later than 30 days after the order issued, Friday, November 25, 2016.

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. Appropriate \$45,789,960.62 from the UB Reserve for Liability Resolution to Department 59, Miscellaneous Liability Payouts account 009798;
2. Authorize the City Attorney to process a wire transfer of funds in the amount of \$18,500,000 from Department 59, Miscellaneous Liability Payouts account 009798 to an escrow account to be established at Huntington National Bank by Gilardi & Co LLC for the purpose of paying attorneys' fees and expenses upon receipt of wire transfer instructions;
3. Authorize the City Attorney to process a wire transfer of funds in the amount of \$27,289,960.62 from Department 59, Miscellaneous Liability Payouts account 009798 to an escrow account to be established at Huntington National Bank by Gilardi & Co LLC for the purpose of paying valid refund claims and administrative expenses upon receipt of wire transfer instructions;
4. Authorize the CAO to make technical corrections as necessary to those transactions included in this report to implement Mayor and Council intentions.

FISCAL IMPACT STATEMENT

An appropriation of \$45,789,960.62 is recommended from the Unappropriated Balance to the Miscellaneous Liability Payouts account pursuant to the terms of a court approved settlement. There is no impact to the General Fund as a result of this action as the funds were previously re-appropriated for this purpose by prior Council and Mayor action (C.F. No. 15-0600-S102). However, there will be a General Fund impact if the total amount required to pay all validated refund claims and administrative expenses are greater than \$27,289,960.62. The City will address this impact, should one arise, in a subsequent FSR.

MAS:BC:MDG