

City of Fort Worth, Texas

Mayor and Council Communication

DATE: 11/12/24M&C FILE NUMBER: M&C 24-0959

LOG NAME: 12FTCOFW LLC SETTLEMENT

SUBJECT

(ALL) Authorize Settlement and Payment in the Amount of \$368,057.50 for Full and Final Settlement of All Claims Related to the Lawsuit Entitled FTCOFW, LLC v. City of Fort Worth, Cause No. 348-350322-24 in the 348th District Court, Tarrant County, Texas, and Authorize City Personnel to Execute and File the Necessary Documents to Dispose of this Lawsuit and Adopt Appropriation Ordinance to Effect a Portion of Water's Contribution to the Fiscal Years 2025-2029 Capital Improvement Program

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize settlement and payment in the amount of \$368,057.50 to FWCOFW, LLC and their attorney, Matthew W. Bobo for the full and final settlement of all claims related to the lawsuit styled FTCOFW, LLC v. City of Fort Worth, Cause No. 348-350322-24 in the 348th District Court, Tarrant County, Texas;
2. Authorize the appropriate City personnel to execute all releases and agreements necessary to complete the settlement; and
3. Adopt the attached appropriation ordinance increasing estimated receipts and appropriations in the Water & Sewer Capital Projects Fund in the amount of \$368,057.50, from available PayGo residuals within the Water & Sewer Capital Projects Fund, for the purpose of funding lawsuit expenses within the Emergency Sanitary Sewer Main 503 Replacement South of Rosedale Ratification project (City Project No. 105408) and to effect a portion of Water's Contribution to the Fiscal Years 2025-2029 Capital Improvement Program.

DISCUSSION:

On January 28, 2024, Water Field Operations learned of a sanitary sewer overflow that discharged approximately 200 gallons per minute into Lake Arlington. A break in the City's 54-inch sewer main (M-503) south of Rosedale Street caused up-stream sewer backup, resulting in overflow at the discharge point in the vicinity of the 3000 block of Quail Street. The segment of pipe crossing Rosedale Street was found to be badly deteriorated and blocked, exacerbating the situation.

Pursuant to the emergency authority in City Code, Chapter 2, Article I, § 2-9, the Water Department engaged William J. Schultz, Inc. d/b/a Circle C Construction Company to conduct necessary bypass pumping to allow for the replacement of the broken pipe segment. In order to complete the work necessary to replace the broken pipe segment, the City entered and occupied 7000 E. Rosedale (the property) owned by FTCOFW LLC. The City's contractor laid bypass lines across the property and performed heavy excavation near Rosedale. The City occupied the property from February until late July of this year.

FTCOFW LLC filed a lawsuit and obtained a temporary restraining order against the City in an ex parte hearing. The City entered into an agreement with FTCOFW LLC that allowed the City to continue its work.

The City and FTCOFW LLC have reached an agreement:

1. City will pay FTCOFW, LLC \$368,057.50;
2. City of Fort Worth will not require FTCOFW, LLC to replant or replace vegetation the City removed for the emergency project, but this would not include a waiver of any regulations that may pertain to future development;
3. City of Fort Worth will clear and remove from the property any debris, trees and shrubs that were uprooted from the property;
4. The parties will enter into mutual releases; and
5. FTCOFW, LLC will nonsuit the lawsuit.

This Mayor and Council Communication (M&C) is, therefore, to authorize settlement and payment in the amount of \$368,057.50 to FTCOFW, LLC and its lawyers for full and final settlement of all claims related to the lawsuit styled *FTCOFW, LLC v. City of Fort Worth*, cause number 348-350322-24, filed in 348th District Court of Tarrant County.

It is the practice of the Water Department to appropriate its CIP plan throughout the Fiscal Year (FY), instead of within the annual budget ordinance, as projects commence, additional funding needs are identified, and to comply with bond covenants. The actions in the M&C will appropriate funds in support of the Water's portion of the City of Fort Worth's Fiscal Years 2025-2029 Capital Improvement Program, as follows:

12FTCOFW LLC SETTLEMENT

Capital Fund Name	Project Name	FY2025 CIP Appropriations	Authority	Budget Change (Increase/Decrease)	Revised FY2025 Budget
-------------------	--------------	---------------------------	-----------	-----------------------------------	-----------------------

W&S Capital Projects – Fund 56002	105408 - Emer SSM503 Rep S ROSED Ratif	\$0.00	This M&C	\$368,057.50	\$368,057.50
-----------------------------------	--	--------	----------	--------------	--------------

Funding is available in the Unspecified All-Funds project within the Water and Sewer Capital Projects Fund for the purpose of funding the settlement within the Emergency Sanitary Sewer Main 503 Replacement South of Rosedale Ratification project.

Appropriations for the Emergency Sanitary Sewer Main 503 Replacement South of Rosedale Ratification project are as depicted below:

Fund	Existing Appropriations	Additional Appropriations	Project Total*
W&S Capital Projects - Fund 56002	\$4,982,216.00	\$368,057.50	\$5,350,273.50
Project Total	\$4,982,216.00	\$368,057.50	\$5,350,273.50

*Numbers rounded for presentation purposes.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that funds are currently available in the Unspecified All-Funds project within the W&S Capital Projects Fund, and upon approval of the above recommendations and adoption of the attached appropriation ordinance, funds will be available in the W&S Capital Projects Fund for the Emer SSM503 Rep S ROSED Ratif project. Prior to any expenditure being incurred, the Water Department and the City's Attorney's Office have the responsibility to validate the availability of funds.

Submitted for City Manager's Office by: ALL ACMs 6122

Originating Business Unit Head: Leann Guzman 8973

Additional Information Contact: Leann Guzman 8973