

Mayor and Council Communication

DATE: 08/13/24

M&C FILE NUMBER: M&C 24-0625

LOG NAME: 12BIRCHETT BURKE AND FITZGERALD SETTLEMENT

SUBJECT

(ALL) Authorize Settlement and Payment in the Total Amount of \$9,600,000.00 for Full and Final Settlement of All Claims Related to the Lawsuits Styled *William Birchett v. City of Fort Worth*, No. DC-19-01941, in the 162nd District Court, Dallas County, Texas; *Ronald Burke v. City of Fort Worth*, No.: DC- 19-07139, in the 193rd District Court, Dallas County, Texas; and *Joel Fitzgerald v. City of Fort Worth*, No.: DC-19-08184, in the 191st District Court, Dallas County, Texas, and Authorize City Personnel to Execute and File the Necessary Documents to Dispose of those Lawsuits

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize settlement and payment in the total amount of \$9,600,000.00 to William Birchett, Ronald Burke, Joel Fitzgerald, and their attorney, Stephen A. Kennedy, for full and final settlement of all claims related to the lawsuits styled *William Birchett v. City of Fort Worth*, No. DC-19-01941, in the 162nd District Court, Dallas County, Texas ; *Ronald Burke v. City of Fort Worth*, No.: DC-19-07139, in the 193rd District Court, Dallas County, Texas; and *Joel Fitzgerald v. City of Fort Worth*, No.: DC-19-08184, in the 191st District Court, Dallas County, Texas;
2. Adopt the attached appropriation ordinance increasing estimated receipts and appropriations in the Risk Financing Fund in the amount of \$9,600,000.00, from available net position, for the purpose of funding lawsuit expenses; and
3. Authorize the appropriate City personnel to execute all releases, agreements and court filings necessary to complete the settlement.

DISCUSSION:

William Burchett, Ronald Burke and Joel Fitzgerald are all former City employees who sued the City in 2019 under the Texas Whistleblower Act, claiming that their employment ended because of retaliation against them for reporting violations of law.

Burke's lawsuit went to trial in April 2024 and a jury returned a verdict in his favor. The Final Judgment in favor of Burke totaled approximately \$2.4 million. The City has begun the process of appealing that Final Judgment. The Birchett and Fitzgerald lawsuits were scheduled to go to trial in July and October of this year.

After the Burke trial concluded, the parties participated in mediation on July 3, 2024. Mediation was successful and the parties agreed to settle the three cases, as follows: (1) Burke's claims were settled for a total of \$2 million; (2) Birchett's claims were settled for \$2.4 million; and (3) Fitzgerald's claims were settled for \$5.2 million. The total of all settlements is \$9.6 million, and the settlements include a full and final release of all claims that Birchett, Burke, and Fitzgerald have against the City. Other than attorney's fees, as part of the settlement, the parties will bear their own costs. The settlement of these three cases will resolve all three cases, with no need for trials or an appeal.

Approval of this settlement should not be construed as an admission of liability by the City of Fort Worth, as any liability in all three matters is denied.

Funding is available for appropriation from net position of the Risk Financing Fund. The beginning net position balance is \$39,323,418.07 and after appropriation the new net position balance will be \$29,723,418.07.

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 from net position of the Risk Financing Fund, and upon approval of the above recommendations and adoption of the attached appropriation ordinance, funds will be available in the current operating budget, as appropriated, in the Risk Financing Fund. Prior to any expenditure being incurred, the Human Resources Department and the City's Attorney's Office have the responsibility to validate the availability of funds.

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