City of Fort Worth, Texas

Mayor and Council Communication

DATE: 04/09/24 **M&C FILE NUMBER:** M&C 24-0264

LOG NAME: 12OUTSIDECOUNSELCARTERMAR2024

SUBJECT

(ALL) Adopt Resolution and Appropriation Ordinance Authorizing an Increase of \$1,100,000.00 in the Total Amount to be Paid to the Law Firm of Carter Arnett, PLLC, as Outside Legal Counsel to Provide Legal Representation to the City of Fort Worth in the Lawsuit Entitled, Joel F. Fitzgerald, Sr. v. City of Fort Worth, Texas (Cause No. DC-19-08184)

RECOMMENDATION:

It is recommended that the City Council:

- 1. Adopt the attached resolution authorizing an increase in the amount of \$1,100,000.00 to the maximum amount to be paid to the law firm of Carter Arnett, PLLC, as outside legal counsel for legal services related to legal representation for the City of Fort Worth in the lawsuit entitled, Joel F. Fitzgerald, Sr. v. City of Fort Worth, Texas (Cause No. DC-19-08184), for a total amount of \$2,000,000.00; and
- 2. Adopt the attached appropriation ordinance increasing estimated receipts and appropriations in the Risk Financing Fund in the amount of \$1,100,000.00, from available net position, for the purpose funding outside legal counsel.

DISCUSSION:

Joel F. Fitzgerald, Sr. (Fitzgerald) was hired as the Chief of Police in 2015. On May 20, 2019, Fitzgerald was terminated from his employment with the City of Fort Worth (City). Fitzgerald filed a lawsuit against the City on June 6, 2019, claiming that the termination of his employment with the City violated the Texas Whistleblower Act, the Texas Open Meetings Act, the Public Information Act, and the Texas Constitution. Due to the complex nature of the litigation and the importance to the City, on February 8, 2022, by Mayor and Council Communication M&C G-21-0298 and Resolution No. 5526-02-2022, the City Council approved the hiring of the Law Firm of Carter Arnett, PLLC to represent the City in the lawsuit entitled, Joel F. Fitzgerald, Sr. v. City of Fort Worth, Texas (Cause No. DC-19-08184). The City Council approved legal expenses up to \$250,000.00. On May 24, 2022, the City Council increased that amount to a total of \$900,000.00. To date, the City has incurred approximately \$1,200,000.00 in legal expenses to Carter Arnett for their work in this case.

The City Attorney's Office handled the legal work related to the successful appeal that dismissed Fitzgerald's Texas Constitutional claims, leaving only his Whistleblower Act claims remaining.

The case was set for trial on January 8, 2024, and the Carter Arnett firm expended hundreds of hours of legal work getting the case ready for trial in November 2023 through January 2024. Four days before the trial was to begin, the trial judge postponed the trial until October 7, 2024. While much of the work has been completed, the trial judge's postponing the case will require the Carter Arnett attorneys to get the case ready for trial, again, in the weeks leading up to the October 7, 2024 trial. Then, additional work and expenses will be needed to actually try the case in front of a jury, which could last 3-4 weeks, and to handle the necessary legal work related to post-trial matters.

Because the City has had to respond to Fitzgerald's attorney's numerous motions, challenge many discovery requests that have no real relevance to Fitzgerald's claims, and will have to prepare for trial twice, the legal fees the City has incurred are beyond what would normally be expected in a one-plaintiff Whistleblower Act case. It is estimated that an additional amount of approximately \$1,100,000.00 beyond the current authorized \$900,000.00 will be needed for the necessary legal services, through trial in October 2024.

Adoption of this Resolution will increase the total authorized amount of compensation to be paid to the Law Firm of Carter Arnett, PLLC, by \$1,100,000.00, for a total amount of \$2,000,000.00.

Funding is available for appropriation from net position of the Risk Financing Fund. The beginning available net position balance is \$34,864,354.88 and after appropriation the new net position balance will be \$33,764,354.88.

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 City 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:

Christopher Troutt 7609

Expedited