

# Resolution

Version 2.3 released on 8/3/21

Use for all types of Resolutions



## CITY COUNCIL USE ONLY

Date Received: \_\_\_\_\_  
Committee Date: \_\_\_\_\_  
1<sup>st</sup> Agenda Date: \_\_\_\_\_

Tracking #: \_\_\_\_\_

Committee: \_\_\_\_\_  
Hearing Date: \_\_\_\_\_  
2<sup>nd</sup> Agenda Date: \_\_\_\_\_

## CITY CLERK USE ONLY

☐ Scanned

Date: 03.08.2023

☐ Posted

Item # 2303.00436

**All department items requiring Council approval must be submitted through the Mayor's Office.**

## Primary Details

### Board Approval

Department: Legal  
Contact Name: Hayes T. Martin

Resolution Type:  
Authorizing Sinking Fund Credit or Payment

Amount: \$51,480.00  
Case Number: CV-2021-01300

Description (Subject):  
Payment of Lawsuit

Section: \_\_\_\_\_  
Township: \_\_\_\_\_

Lot: \_\_\_\_\_  
Block: \_\_\_\_\_

### Other Board Name

Email: hmartin@cityoftulsa.org

Owner-Grantor:  
American Waste Control, INC. (Douglas L. Boyd)

TMAPC Number: \_\_\_\_\_

Council District: \_\_\_\_\_

Bid/Project Number: \_\_\_\_\_

Range: \_\_\_\_\_

Addition: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

## Budget

Funding Source(s): \_\_\_\_\_

TOTAL: \_\_\_\_\_

## Approvals

Department: [Signature]  
Legal: [Signature]  
Board: \_\_\_\_\_  
Mayor: [Signature]  
Other: \_\_\_\_\_

Date: 3.6.23  
Date: 3/6/23  
Date: MAR 08 2023  
Date: \_\_\_\_\_

## Policy Statement

### Background Information

On July 20, 2022, Mayor Bynum approved settlement in the above lawsuit in the amount of \$51,480.00. The Journal Entry was signed by the Judge and filed with the court on March 1, 2023. (See attached JE)

### Summation of the Requested Action

Request Mayor Bynum approve payment in the above lawsuit and direct Finance to issue a check in the amount of \$51,480.00 made payable to American Waste Control, INC and Douglas L. Boyd, and return to City Legal for further processing.

### Emergency Clause?

☐ Yes  
☐ No

### Reason for Emergency Clause

\_\_\_\_\_

## Processing Information for City Clerk's Office

### Post Execution Processing

- ☐ Mail vendor copy (addtl signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Addtl governmental entity approval(s) required

### Additional Routing and Processing Details

Return executed RFA and Resolution to City Legal for further processing.

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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
**FILED**  
MAR 01 2023

AMERICAN WASTE CONTROL, INC., )  
a corporation, )  
Plaintiff, )  
vs. )  
CITY OF TULSA, an Oklahoma )  
Municipality, )  
Defendant. )

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

Case No. CV-2021-01300  
Judge Greenough

**JOURNAL ENTRY OF JUDGMENT UPON AGREED SETTLEMENT**

NOW ON this 1 day of MAR 2023, this matter comes before the undersigned Judge. Plaintiff American Waste Control, INC. appears by and through its attorneys of record, Douglas L. Boyd and Kelly F. Monaghan, and Defendant City of Tulsa, appears by and through its attorney of record, Hayes T. Martin, Assistant City Attorney.

The Court, having reviewed the allegations set forth in Plaintiff's Petition, having reviewed the Defendant's *Offer of Proof* filed herein on the 28 day of February 2023 evidencing that the statutory requirements pursuant to 62 O.S. § 362 have been met and that the judgment proceeds being paid by Defendant City of Tulsa to the Plaintiff herein shall be paid from the City of Tulsa's pooled cash and investment portfolio which has sufficient funds available to pay said judgment as evidenced by the Affidavit of Chad Becker attached as Exhibit "A" to the Defendant's *Offer of Proof*, and the Court being advised that the City's Mayor has authorized a compromise settlement in the sum of Fifty-one Thousand Four Hundred Eighty Dollars and 00/100 (\$51,480.00) and the Court being satisfied that Plaintiff fully understands the nature of this action with regard to its finality which precludes additional or further compensation for damages arising from the occurrence of the event identified in Plaintiff's

Petition and, upon being further advised by Plaintiff that it is its desire to settle the entirety of all claims and causes of action relating to the events identified in his Petition, including costs and fees, upon payment in the sum of Fifty-one Thousand Four Hundred Eighty Dollars and 00/100 (\$51,480.00), the Court finds:

1. That the Court has jurisdiction over the subject matter of this lawsuit and the parties hereto;

2. That Plaintiff is fully aware of its rights in this matter and it is Plaintiff's desire to compromise its right to hearing before duly appointed commissioners;

3. That Plaintiff desires to accept as full, final and complete settlement from the City of Tulsa, and the City of Tulsa agrees to pay to Plaintiff the sum of Fifty-one Thousand and Four Hundred Eighty Dollars and 00/100 (\$51,480.00), for any and all damages, losses, fees and expenses sustained as a result of the events identified in Plaintiff's Petition;

4. That Plaintiff has agreed to dismiss with prejudice or forgo any and all claims which are the subject of this lawsuit against the City of Tulsa and its employees individually;

5. That by agreement of the parties, Defendant's payment to Plaintiff will stand as full compensation from the City to Plaintiff and precludes any further or separate action by Plaintiff or those it represents against City of Tulsa, a municipal corporation, or any of its employees, arising from or relating to the events described in Plaintiff's Petition;

6. That the City has agreed to settle Plaintiff's lawsuit for the payment to Plaintiff in the sum of Fifty-one Thousand Four Hundred Eighty Dollars and 00/100 (\$51,480.00);

7. That the City shall pay Plaintiff from the City of Tulsa's pooled cash and investment portfolio which has sufficient funds available to pay said judgment; and

8. That all parties request this court to approve and finalize their mutual settlement;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiff has and will recover from Defendant City of Tulsa, Oklahoma, damages in the total sum of Fifty-one Thousand Four Hundred Eighty Dollars and 00/100 (\$51,480.00), as full, final and complete compensation for any and all damages, losses, fees, and expenses incurred or sustained incident to the events described in Plaintiff's Petition and that said damages shall be paid from the City of Tulsa's pooled cash and investment portfolio which has sufficient funds available to pay said judgment; and

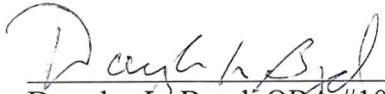
IT IS FURTHER ORDERED BY THE COURT that upon Plaintiff's receipt of the payment to be made by the City of Tulsa, Plaintiff's claims against Defendant City of Tulsa are dismissed with prejudice and that payment to Plaintiff by Defendant City of Tulsa will preclude any further or separate action by Plaintiff against Defendant City of Tulsa or any employee of Defendant City of Tulsa arising from or pertaining to the events described in Plaintiff's Petition.

**Kelly M. Greenough**

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JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:



Douglas L. Boyd, OBA #1020  
1800 S. Baltimore Ave., Ste. 500  
Tulsa, OK 74119  
(918) 742-9580

Kelly F. Monaghan OBA#11681  
Monaghan, Warrick, King  
4111 South Darlington, Suite 900  
Tulsa, OK 74137  
918-627-6202  
Attorneys for Plaintiff



Hayes T. Martin, OBA #32059  
Assistant City Attorney  
City of Tulsa  
175 East Second Street, Suite 685  
Tulsa, OK 74103  
(918) 596-7717  
Attorney for City of Tulsa

(Published in the Tulsa World,  
\_\_\_\_\_, 2023.)

## **RESOLUTION**

**A RESOLUTION AUTHORIZING PAYMENT IN FULL OF A JUDGMENT SETTLEMENT, FROM SURPLUS MONIES IN THE SINKING FUND; AND DECLARING AN EMERGENCY.**

WHEREAS, on the 1st day of March, 2023, in Case No. CJ-2021-01300, filed in the District Court of Tulsa County, State of Oklahoma, judgment was entered based on a settlement agreed to by and between American Waste Control, INC, Plaintiff, and the City of Tulsa, Defendant, in the sum of Fifty One Thousand Two Hundred Eighty and 00/100 Dollars (\$51,280.00), representing principal judgment, interest, costs and attorney fees, was entered against the City of Tulsa, which settlement has been approved by the Court; and

WHEREAS, it appears from a survey of the Sinking Fund that there is a surplus of cash and investments in said fund, over and above accrued liabilities and statutory obligations, which would allow the City of Tulsa to pay said judgment in full, including court costs and interest thereon; and

WHEREAS, it is desirable and in the best interest of the City of Tulsa to make such present payment out of the City's Sinking Fund, and thereafter reimburse the Sinking Fund from subsequent tax levies, as provided by 62 O.S. '435.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TULSA, OKLAHOMA:**

Section 1. That the City Clerk and the City Treasurer of the City of Tulsa be, and the same hereby are, authorized to consummate and complete the payment of said judgment by drawing the following warrant on the City of Tulsa's Sinking Fund:

To the order of American Waste Control, INC., Plaintiff, and Douglas L. Boyd, Attorney at Law, the sum of Fifty One Thousand Two Hundred Eighty and 00/100 Dollars (\$51,280.00); the same representing the full amount of the judgment, interest, costs and attorney fees, now due and owing to the Plaintiff in the lawsuit identified above.

Section 2. That the City Clerk and the City Treasurer of the City of Tulsa be, and the same hereby are, authorized and directed to properly advise the Tulsa County Excise Board by appropriate reports, of the prepayment of said judgment in order that said Board may include said prepaid judgment as a necessary and lawful expense of the Sinking Fund of the City of Tulsa, Oklahoma, for which appropriate tax levies may be made to replenish said Sinking Fund,

as provided by the provisions of Title 62 of the Statutes of the State of Oklahoma.

Section 3. That an emergency exists for the preservation of the public peace, health, and safety, by reason whereof this Resolution shall take effect immediately from and after its passage, approval, and publication.

ADOPTED by the Council: \_\_\_\_\_ (Date)

ADOPTED as an emergency measure: \_\_\_\_\_ (Date)

\_\_\_\_\_  
Chairman of the Council

OFFICE OF THE MAYOR

Received by the Mayor: \_\_\_\_\_, at \_\_\_\_\_  
Date Time

G.T. Bynum, Mayor

By \_\_\_\_\_  
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: \_\_\_\_\_,  
Date

\_\_\_\_\_  
Time

\_\_\_\_\_  
Mayor

(Seal)  
ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney



# Legal Records

Version 2.6 released on 8/3/21

For torts, lawsuits, settlements, and other legal actions. Use other more specified RFAs for other record types including Contracts, MOUs, Election Actions, Worker's Compensation Orders and Miscellaneous



## CITY COUNCIL USE ONLY

Date Received: \_\_\_\_\_  
Committee Date: \_\_\_\_\_  
1<sup>st</sup> Agenda Date: \_\_\_\_\_

Tracking #: \_\_\_\_\_  
Committee: \_\_\_\_\_  
Hearing Date: \_\_\_\_\_  
2<sup>nd</sup> Agenda Date: \_\_\_\_\_

## CITY CLERK USE ONLY

☐ Scanned Date: \_\_\_\_\_  
☐ Posted Item #: \_\_\_\_\_

*All department items requiring Council approval must be submitted through the Mayor's Office.*

## Primary Details

### Legal Action Type

Lawsuit - Settlement

### Court Order Date

### Council Approval

☐ Yes ☒ No

### Department

Legal

### Contact Name

Hayes T. Martin (maf)

### Email

hmartin@cityoftulsa.org

### Phone

918-596-7717

### Incident Date

11/9/20

### Legal Case No.

CV-2021-01300

### Amount

\$51,480.00

### Name

American Waste Control

### Originating Department

Streets and Stormwater

### Date Filed City Clerk

5/11/21

## Budget/Payments

Funding Source(s) / Checks to be Issued

TOTAL:

## Approvals

Department: \_\_\_\_\_

Legal: \_\_\_\_\_

Board: \_\_\_\_\_

Mayor: \_\_\_\_\_

Other: \_\_\_\_\_

Date: 2.2.23

Date: 2/2/23

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Summary

Background Information

### Summation of the Requested Action

Request Mayor approve the above lawsuit settlement in the amount of \$51,480.00.

Other Pertinent Information

APPROVED BY MAYOR  
CITY OF TULSA

FEB 08 2023

## Processing Information for City Clerk's Office

### Post Execution Processing

- ☐ Mail vendor copy (add'l signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Add'l governmental entity approval(s) required

### Additional Routing and Processing Details

Please return a copy of the approved RFA to Legal for processing.

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**INTER-OFFICE CORRESPONDENCE**

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**To:** Mayor G.T. Bynum  
**From:** Hayes T. Martin, Assistant City Attorney  
**Date:** January 11, 2023  
**Subject:** Settlement Approval, Case No. CV-2021-01300

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American Waste Control operated a private residential trash collection services in the area that was annexed as part of the Gilcrease Expressway extension in April 2020. In November 2020, the City began trash collection in that area and American Waste Control filed suit. American Waste Control argued that 11 O.S. § 22-105.1, hereinafter “Displacement Statute”, required the City of Tulsa to compensate American Waste Control for the value of those services and that the City had failed to follow state law. American Waste Control had made this argument prior to the lawsuit, but it was the City’s stance that the “Displacement Statute” was not triggered by the annexation. Both parties briefed their arguments and sought summary disposition from the Court because there are no facts at issue. On October 24, 2022, Judge Greenough heard arguments from counsel and determined that the City had displaced American Waste Control by annexing that territory and granted summary disposition of that issue in favor of American Waste Control. The Court then set the case for a status conference to see if the City and American Waste Control can negotiate an agreed amount of compensation rather than submitting the case to commissioners appointed by the Court.

Through negotiations, it was determined that there were 33 residences that received notices that the City of Tulsa would be taking over residential solid waste service in the annexed area. American Waste Control charged \$26.00 each month to provide service. The industry standard for purchases of these routes is typically three to five times yearly revenue.

In preparation for settlement negotiations in this matter, I presented this case to you by email and was authorized to offer \$51,480.00 to resolve this case. The parties have negotiated the settlement of all claims and the Legal Dept. recommends approval of settlement of this lawsuit in the amount of \$51,480.00, which includes all damages, fees, attorney fees, interest, and costs.

Respectfully,

Hayes T. Martin  
Assistant City Attorney