

# Resolution

Version 2.5 released on 6/29/23  
Use for all types of Resolutions



### CITY COUNCIL USE ONLY

Date Received: \_\_\_\_\_  
Committee Date: \_\_\_\_\_  
1st Agenda Date: \_\_\_\_\_

Tracking #: \_\_\_\_\_  
Committee: \_\_\_\_\_  
Hearing Date: \_\_\_\_\_  
2nd Agenda Date: \_\_\_\_\_

### CITY CLERK USE ONLY

Scanned      Date: 05.29.2024  
 Posted      Item #: 2405.01405

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

## Primary Details

### Board Approval

### Other Board Name

### City Council Approval

Yes     No

Department: Legal  
Contact Name: Nicholas C. Williams (zee)

Email: nicholascwilliams@cityoftulsa.org

Phone: 918-596-7717

Resolution Type: Authorizing Sinking Fund Credit or Payment

Owner-Grantor: Bull Horn Investments, LLC

Amount: \$35,000.00  
Case Number: CJ-2023-1245

TMAPC Number: \_\_\_\_\_  
Council District: \_\_\_\_\_

Description (Subject): \_\_\_\_\_

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

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

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

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

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

## Budget

### Funding Source(s)

### TOTAL:

Enter the funding source(s) using the appropriate Munis funding format: Org (Allocation Code)-Object-Amount (1001211-531401-\$10.00) or Project String-Amount (144104.AbstrTitle5413102.6001-4043122-541102-\$30,000.01)

## Approvals

Department: \_\_\_\_\_  
Legal: Nicholas Williams  
Board: \_\_\_\_\_  
Mayor: \_\_\_\_\_  
Other: \_\_\_\_\_

Cassia Carr  
Mayor Pro Tem

Date: 5.23.24  
Date: 5/23/24  
Date: \_\_\_\_\_  
Date: MAY 29 2024  
Date: \_\_\_\_\_

## Policy Statement

### Background Information

On May 15, 2024, Mayor Bynum approved settlement in this matter in the amount of \$35,000.00. The Journal Entry was signed by the Judge on May 20, 2024, and filed with the Court on May 21, 2024. (See attached JE)

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*Provide background information on the requested action.*

### Summation of the Requested Action

Request Council approve Resolution and Mayor approve payment of this lawsuit and direct Finance to issue a check in the amount of \$35,000.00 made payable to Bull Horn Investments, LLC, Plaintiff, and Fulda Law, PLLC, Attorneys for Plaintiff, and forward to City Legal for further processing.

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*Summarize the pertinent details of the requested action.*

### Emergency Clause?

Yes

No

### Reason for Emergency Clause

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*Explain why you are requesting that the City Council approve the action with an emergency clause.*

## 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 forward executed RFA and Resolution to City Legal for further processing.

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(Published in the Tulsa World,  
\_\_\_\_\_, 2024.)

## 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 \_\_ day of \_\_\_\_\_, 2024, in Case No. CJ-2023-1245, filed in the District Court for Tulsa County, State of Oklahoma, judgment was entered based on a settlement agreed to by and between Bull Horn Investments, Plaintiff, and the City of Tulsa, Defendant, in the sum of Thirty Five Thousand Dollars and 00/100 (\$35,000.00) 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 BULL HORN INVESTMENTS LLC, Plaintiff; FULDA LAW, PLLC, Counsel for Plaintiff; the sum of Thirty Five Thousand Dollars and 00/100 (\$35,000.00); the same representing the full amount of the judgment, interest, costs and attorney fees, now due and owing to the Plaintiffs 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

ER



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

DISTRICT COURT  
FILED

MAY 21 2024

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

BULL HORN INVESTMENTS, LLC, )  
)  
Plaintiff, )  
)  
vs. )  
)  
THE CITY OF TULSA, )  
)  
Defendant. )

Case No. CJ-2023-01245  
Judge Drummond

JOURNAL ENTRY OF JUDGMENT UPON AGREED SETTLEMENT

NOW ON this 20 day of May 2024, this matter comes before the undersigned Judge. Plaintiff Bull Horn Investments, LLC appears by and through his attorneys of record, Ryan Fulda, and Defendant City of Tulsa appears by and through its attorney of record, Nicholas C. Williams, Assistant City Attorney.

The Court, having reviewed the allegations set forth in Plaintiff's Petition, has been advised that the judgment proceeds being paid by Defendant to the Plaintiff herein shall be paid from the City of Tulsa's Sinking Fund, which has sufficient funds available to pay said judgment. The Court has further been advised that the City's Mayor has authorized a compromised settlement in the sum of Thirty-Five Thousand Dollars and 00/100 (\$35,000.00) 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 against Defendant City of Tulsa 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 against the City of Tulsa relating to the events identified in its Petition, including costs and fees, upon payment in the sum of Thirty-Five Thousand Dollars and 00/100 (\$35,000.00), the Court finds:

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

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hereto;

2. That Plaintiff for itself and in its representative capacity is fully aware of its rights in this matter and it is Plaintiff's desire to compromise its right to trial by jury as to Defendant City of Tulsa;

3. That Plaintiff desires to accept as full, final, and complete settlement of its claims against Defendant City of Tulsa the sum of Thirty-Five Thousand Dollars and 00/100 (\$35,000.00), for any and all damages, losses, fees, and expenses sustained as a result of the actions of the City or its employees identified in Plaintiff's Petition;

4. That this settlement is not an admission that the City of Tulsa or its employees were negligent, but is only a recognition of the uncertainty of trial;

5. The Plaintiff has agreed to dismiss with prejudice or forgo any and all claims against the City of Tulsa and any of its employees arising from or relating to the events described in Plaintiff's Petition;

6. That by agreement of the parties, Defendant City's payment to Plaintiff will stand as full compensation to Plaintiff in its personal and representative capacity and preclude 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;

7. That the City has agreed to settle Plaintiff's lawsuit against the City in the sum of Thirty-Five Thousand Dollars and 00/100 (\$35,000.00);

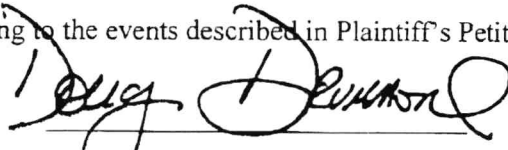
8. That the City shall pay the Plaintiff from the City of Tulsa's Sinking Fund, which has sufficient funds available to pay said judgment; and

9. That Plaintiff and Defendant City request this Court to approve and finalize their


mutual settlement.


IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiff for itself and in its representative capacity have and recovers from Defendant City of Tulsa, Oklahoma, damages in the total sum of Thirty-Five Thousand Dollars and 00/100 (\$35,000.00), as full, final, and complete compensation for any and all damages, losses, fees, and expenses incurred or sustained incident to the claims against the City of Tulsa described in Plaintiff's Petition and that said damages shall be paid from the City of Tulsa's Sinking Fund which has sufficient funds available to pay said judgment; and

IT IS FURTHER ORDERED BY THE COURT that 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 the City, or any employee of Defendant City of Tulsa arising from or pertaining to the events described in Plaintiff's Petition.

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Ryan Fulda, OBA #21184  
Fulda Law, PLLC  
1800 S. Baltimore Ave., Ste 420  
Tulsa, OK 74119  
Attorneys for Plaintiff

  
\_\_\_\_\_  
Nicholas C. Williams, OBA #33287  
Assistant City Attorney

Legal

# Legal Records

Version 2.9 released on 11/29/23

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



<b>CITY COUNCIL USE ONLY</b>		<b>CITY CLERK USE ONLY</b>	
Date Received: _____	Tracking #: _____	<input type="checkbox"/> Scanned	Date: <u>05.15.2024</u>
Committee Date: _____	Committee: _____	<input type="checkbox"/> Posted	Item #: <u>2405.01163</u>
1 <sup>st</sup> Agenda Date: _____	Hearing Date: _____		
	2 <sup>nd</sup> Agenda Date: _____		

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

## Primary Details

<b>Legal Action Type</b> Lawsuit - Settlement	<b>Court Order Date</b> _____	<b>Council Approval</b> <input type="radio"/> Yes <input checked="" type="radio"/> No
<b>Department</b> Legal	<b>Contact Name</b> Nicholas C. Williams (zee)	<b>Phone</b> 918-596-7717
<b>Incident Date</b> 3/17/22	<b>Legal Case No.</b> CJ-2023-1245	<b>Amount</b> \$35,000.00
<b>Name</b> Bull Horn Investments	<b>Originating Department</b> Water and Sewer	<b>Date Filed City Clerk</b> _____
<i>Name or Description</i>		

## Budget/Payments

Funding Source(s) / Checks to be Issued

TOTAL:

Enter the funding source(s) using the appropriate Munis funding format: Org (Allocation Code)-Object-Amount (1001211-531401-\$10.00) or Project String-Amount (144104.AbstTitle5413102.6001-4043122-541102-\$30,000.01)

## Approvals

<b>Department:</b> _____	<b>Date:</b> <u>5.8.24</u>
<b>Legal:</b> <u>Nicholas Williams</u>	<b>Date:</b> <u>5/8/24</u>
<b>Board:</b> _____	<b>Date:</b> _____
<b>Mayor:</b> _____	<b>Date:</b> _____
<b>Other:</b> _____	<b>Date:</b> _____

**APPROVED BY MAYOR  
CITY OF TULSA**

**MAY 15 2024**

## Summary

### Background Information

On April 6, 2023, attorney Ryan Fulda filed suit on behalf of Bull Horn Investments, LLC in Tulsa County, Case No. CJ-2023-1245 against the City of Tulsa, alleging negligence. Plaintiff alleges that the two water leaks were caused by negligence by the City resulting in damage to Plaintiff's building. The Legal Department was able to negotiate the settlement of all claims with a settlement amount of \$35,000.00. (See attached memo.)

Provide background information on the requested action

### Summation of the Requested Action

Request Mayor approve this settlement in the amount of \$35,000.00 and return to City Legal for further processing.

Summarize the pertinent details of the requested action

### Other Pertinent Information

Provide any additional information that should be considered when considering approval of this contract document

## 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 executed RFA to City Legal for further processing.

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**INTER-OFFICE CORRESPONDENCE**

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**To:** Mayor G.T. Bynum  
**From:** Nicholas C. Williams, Assistant City Attorney  
**Date:** May 6, 2024  
**Subject:** Request for Settlement Approval, Tulsa County Case No. CJ-2023-1245

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Dear Mr. Mayor,

I am requesting approval in the amount of \$35,000 for full settlement of this matter: *Bull Horn Investments, LLC v. City of Tulsa*, Tulsa County Case No. CJ-2023-1245. On April 23, 2024, I requested—and was approved—for settlement authority up to \$35,000.

This is a negligence case arising from two (2) City water line leaks—one in March 2022, and one in June 2022—near Plaintiff’s building located at 2705 E. 21<sup>st</sup> St, Tulsa, OK 74114 (the “Building”). Plaintiff claims damage to its Building was caused by the City’s negligence and seeks the maximum allowable under law for property damage of \$25,000 per leak, for \$50,000 in total, plus an additional \$16,000 that Plaintiff qualifies as “consequential damages”, and potential attorney fees atop that.

On April 30, 2024, the parties attended an Early Settlement Conference and reached an agreement to resolve this matter in full for \$35,000. Given the facts below, I believe it is in the best interests of the City for this settlement amount to be approved.

**Facts of the Incidents**

The March Leak

The March Leak poses the most problematic to defend on account of the Water Department’s response to water leaking into the Building—specifically Emergency Man AJ Hartman’s response on March 18 (described in further detail below).

On March 17, 2022, John Belie (Plaintiff’s part-owner) called the City of Tulsa’s Water Department to report an apparent “line break or leak.” Mr. Belie stated that water was surfacing at the northeast corner of 20<sup>th</sup> and Columbia, 21<sup>st</sup> and Columbia, and the parking lot at 2705 E. 21<sup>st</sup> Street. Mr. Belie did not report any water entering or damaging the Building on the March 17 phone call.

In response to Mr. Belie’s call, City of Tulsa Water Department assigned the matter to Emergency Man Caleb Ison, who arrived at the location at 2:15 p.m. that afternoon. Mr. Ison found some standing water at the northeast corner of 20<sup>th</sup> St. and Columbia. Mr. Ison tested the water at multiple spots for chlorine (a standard test to indicate whether the water was emanating from a City water line). All tests were negative. Mr. Ison also noted there was no active water flow to indicate the presence of a leak. Accordingly, Mr. Ison closed out the ticket for no further response.

The next day, March 18, Mr. Belie called the Water Department, this time to report that water was

now leaking into the Building. In response, the City Water Department assigned Emergency Man AJ Hartman to the scene. Upon arriving, Hartman found a puddle of water at the northeast corner of 20<sup>th</sup> St. and Columbia, roughly 250 ft from Plaintiff's Building. *See* Exhibit A for reference. Hartman also noted no active flow to the water, nor any apparent surface water flowing towards the Building. Because Hartman did not note any active flow, nor any surface water flowing towards the Building, Hartman diagnosed the issue as a "leak." This designation prioritizes the issue (depending upon other prioritized issues at the time) for an approximate two-week response period (as opposed to a "break," which is prioritized for immediate response). Hartman made a follow-up task for a City Mainline crew (which is responsible for repairs to City water mainlines) to repair a leak on the 8-inch water main at the northeast corner of 20<sup>th</sup> St. and Columbia.

Notably, however, despite the fact Mr. Belie's March 18 call indicated water was entering the Building, **Emergency Man Hartman did not attempt to make contact with Mr. Belie.** In my interviews with Water Department supervisors, they indicated **this was a mistake**, and that the proper response would've included Hartman actually making contact with Mr. Belie and inspecting whether water was actually entering the Building. Had Hartman contacted the complainant (Mr. Belie), Water Department's response would have been elevated to "break" (emergency repair), and likely would have repaired the March Leak days (if not weeks) earlier.

On April 6, over two weeks later, a City Mainline crew arrived at the scene to further investigate the leak. They excavated the suspected area to find a sleeve on the water main leaking. The crew replaced the sleeve and the water leak ceased.

#### The June Leak

There is no glaring issue with the City Water Department's response to the June Leak. The Water Department faced a multitude of complications and difficulties in finding the source of the June Leak (described in further detail below), and Plaintiff will face difficulties in establishing negligence in the face of these complications/difficulties that were outside of the City's control.

On June 17, 2022, a worker from Mullin Plumbing was at Plaintiff's Building to install sump pumps to prevent water (City or otherwise) from entering the Building. While digging holes for the sump pumps, the Mullin employee noted some underground water beginning to enter the holes. Mr. Belie was notified, who then states he called the City Water Department to report a leak. The City has no record of this call.

However, also on June 17, Skyler Robson (City of Tulsa Stormwater Department) was driving near the Building and noted water coming out of a nearby water meter pit (located on the southwest corner of 20<sup>th</sup> St. and Columbia). Robson created a Work Order for the Water Department, which was responded to by Emergency Man Michael Simmons that afternoon. Simmons tested the water for chlorine (which returned positive, indicating City water) and created an immediate follow-up task for the City Meter Shop, the department responsible for leaks/issues with water meters.

That same afternoon, Meter Shop employee Kevin Blaszkowski responded to the scene, pumped out the meter pit, and determined that the leak did not appear to be from the pit but rather from the service line outside of the pit. Before proceeding further, Meter Shop employees had to determine what property the meter pit was servicing in order to test whether the leak was in fact on the service line. Meter Shop employees determined the meter service was for the commercial building at 2727

E. 21<sup>st</sup> Street. Meter Shop employees had to make arrangements with that property's management to shut off the water supply to 2727 E. 21<sup>st</sup> (which took time due to multiple tenants' water needs) in order to determine whether the leak was due to the service line or City's water main. Upon doing so, Meter Shop employees then determined the leak appeared to be on the City's water main, not the service line.

Before the City could excavate to discover the source of the leak, a utility locate request had to be submitted through OKIE 811 system, as is required under 63 O.S. § 142.6 of the Underground Facilities Damage Prevention Act. Section 142.6 requires excavators to call a notification center so that all utilities in the excavation area may be located and marked before excavation begins.

On June 28, upon receiving an excavation time, Meter Shop employees excavated and determined that the leak appeared to be on a City main line located underneath an AT&T fiber optics inground box. In order to proceed further to isolate the location of the leak, AT&T had to be notified to move their inground box so a City Mainline crew could respond to excavate further to the depth of about 5-7 feet below ground to find and expose the leaking City water main.

On June 29, upon AT&T's moving of the inground box, City Mainline located the source of the leak. In order to make repairs, the water main had to be shut off. This was delayed as property management at 2727 E. 21<sup>st</sup> Street insisted water not be shut off until 3 p.m. because of their tenants' water needs. Accordingly, the Mainline crew waited until 3 p.m. that afternoon, then cut out the section of leaking pipe and completed necessary repairs. No further leak was detected.

#### **Plaintiff's Claimed Damages**

Plaintiff claims both the March and June leaks caused damage to its Building and that repairs equated \$55,597.52. Accordingly, Plaintiff seeks the maximum allowable under law for property damage of \$25,000 per leak, for \$50,000 in total. *See* 51 Okla. Stat. § 154(A)(1). However, at the Early Settlement Conference, Plaintiff's counsel argued that approximately \$16,000 of the damages would qualify as "consequential damages" and hence not be limited by § 154(A)(1), but rather the \$125,000 limit under § 154(A)(2). Plaintiff spent \$16,000 on sump pumps to prevent future water leaks from entering the Building. In support of the argument, Plaintiff cited *Frank Bartel Transportation v. State ex rel. Murray State College*, 2023 OK 121, wherein the Oklahoma Supreme Court ruled that "towing, storage, and rental replacement" qualified as "consequential damages" in an auto-wreck case, and hence not limited by the property damages cap under § 154(A)(1). However, it is doubtful that Plaintiff would procure a ruling in favor of such an argument. But nonetheless, with the extended limit under § 154(A)(2), it does raise the City's potential liability.

#### **Settlement Valuation**

It should be noted that the City is not an insurer of its water lines. *See City of Muskogee v. Turner*, 1940 OK 26, ¶ 10, 98 P.2d 1095, 1097. Rather, under Oklahoma law, the City is charged with reasonably responding to leaks upon proper notice thereof. *Id.* For both the March and June 2022 leaks, Plaintiff's specific negligence claims boil down to the allegation that the City negligently responded to those leaks.

During my interviews with Water Department supervisors, it was noted that Emergency Man AJ

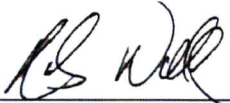
Hartman's response to the March Leak (in which he did not attempt to contact the complainant) was not fully proper. Had Hartman contacted the complainant (Mr. Belie), Water Department's response would have been elevated to line "break" (triggering an emergency response), and likely would have repaired the March Leak days (if not weeks) earlier.

The June Leak poses less of a problem defend, as it appears Water Department employees followed standard protocol while facing numerous complications beyond their control (i.e., difficulty locating a leak which was under an AT&T utility box, working around other water customers' needs when needing to shut off water lines, etc.). However, there is some risk in how a jury would judge the fix (completed on June 28) for a leak that was reported eleven (11) days earlier on June 17.

In conclusion, there is potentially demonstrable negligence in the March Leak, and some liability risk associated with the June Leak. Accordingly, I believe \$35,000 is an acceptable settlement amount—which would include all damages, fees, attorney fees, interest, and costs. I am thus requesting approval for that amount.

If you have questions or concerns, please let me know.

Respectfully,



**Nicholas Williams** Assistant City Attorney - Litigation Division  
City of Tulsa Legal Department  
175 E. 2<sup>nd</sup> Street, Suite 685, Tulsa, OK 74103  
T: 918-596-7713  
F: 918-596-9700  
E: [nicholaswilliams@cityoftulsa.org](mailto:nicholaswilliams@cityoftulsa.org)  
[www.cityoftulsa.org](http://www.cityoftulsa.org)