

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: 07.31.2024
 Posted Item #: 2407.01982

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: T. Michelle McGrew (tmd)

Email: mmcgreg@cityoftulsa.org

Phone: 9185967717

Resolution Type: Authorizing Sinking Fund Credit or Payment

Owner-Grantor: Easker James Brooks III

Amount: \$175,000.00
Case Number: 22-CV-142

TMAPC Number: _____
Council District: _____

Description (Subject): Payment of Lawsuit

Bid/Project Number: _____

Section: _____
Township: _____

Range: _____
Addition: _____

Lot: _____
Block: _____

Address: _____

Budget

Funding Source(s)

TOTAL:

Approvals

Department: _____
Legal: T. Michelle McGrew
Board: _____
Mayor: [Signature]
Other: _____

Date: 7-25-24
Date: 7-25-2024
Date: _____
Date: JUL 31 2024
Date: _____

Policy Statement

Background Information

On July 10, 2024 Mayor Bynum approved settlement in the above lawsuit in the amount of \$175,000.00. The Journal Entry was signed by the Judge and filed with the Court on July 24, 2024. (See attached JE)

Summation of the Requested Action

Request Council approve the Resolution and Mayor approve payment of this lawsuit and direct Finance to issue a check in the amount of \$175,000.00 made payable to Easker James Brooks III, Plaintiff and Smolen & Roytman, PLLC, attorneys at law and forward 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 (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 and Resolution to City Legal for further processing.

(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 24th day of July, 2024, in Case No. 22-CV-142, filed in the United States District Court for The Northern District of Oklahoma, judgment was entered based on a settlement agreed to by and between Easker James Brooks III, Plaintiff, and the Defendant Cherish Comfort, in the sum of One Hundred Seventy Five Thousand Dollars and 00/100 (\$175,000.00) representing principal judgment, interest, costs and attorney fees, was entered against the Cherish Comfort, which settlement has been approved by the Court; and

WHEREAS, the Plaintiff agrees to waive his rights to appeal the Court's ruling on the Motion for Summary Judgment filed by the City of Tulsa and Cherish Comfort;

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 EASKER JAMES BROOKS III, Plaintiff, SMOLEN & ROYTMAN PLLC, Counsel for Plaintiff, the sum of One Hundred Seventy Five Thousand Dollars and 00/100 (\$175,000.00); 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:



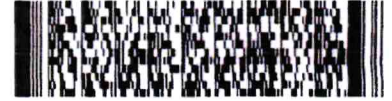
City Attorney

Legal Records

Version 2.9 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

Legal



CITY COUNCIL USE ONLY

Date Received: _____
Committee Date: _____
1st Agenda Date: _____

Tracking #: _____
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Hearing Date: _____
2nd Agenda Date: _____

CITY CLERK USE ONLY

Scanned Date: _____
 Posted Item #: 2407.01772

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

T. Michelle McGrew (tmd)

Email

tmcgrew@cityoftulsa.org

Phone

9185967717

Incident Date

3/29/20

Legal Case No.

22-cv-142

Amount

\$175,000.00

Name

Easker James Brooks III

Originating Department

Police

Date Filed City Clerk

Budget/Payments

Funding Source(s) / Checks to be Issued

TOTAL:

Approvals

Department: _____

Legal: _____

Board: _____

Mayor: _____

Other: _____

[Signature]

APPROVED BY MAYOR
CITY OF TULSA

JUL 10 2024

Date: _____

Date: 7/8/24

Date: _____

Date: _____

Date: _____

Summary

Background Information

This case arises from a domestic in progress call wherein Mr. Brooks alleged Officer Comfort used excessive force as well as alleging wrongful arrest and malicious prosecution claims. The Court granted the City of Tulsa's Motion for Summary Judgment and Officer Comfort's Motion for Summary Judgment regarding the wrongful arrest and malicious prosecution claims. Officer Comfort remained the sole defendant and the only remaining claim was excessive force. On June 28, 2024, after a lengthy settlement conference with Adjunct Settlement Judge Lane Wilson, the parties agreed to resolve this matter for \$175,000.00, inclusive of all costs and attorney fees. The Legal Department recommends approval of this settlement. (See attached memo)

Summation of the Requested Action

Request that the Mayor approve settlement of this matter in the amount of \$175,000.00, and return to City Legal for further processing.

Other Pertinent Information

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

Return executed RFA to City Legal for further processing.



LEGAL

Date: July 2, 2024
To: Mayor Bynum
From: Michelle McGrew, Sr. Assistant City Attorney
Subject: **Brooks v. Comfort - Settlement**

As you may recall, you previously gave your approval to settle this federal court excessive force case for up to \$175,000.00. Judge Frizzell granted the City's Motion for Summary Judgment and granted Defendant Officer Cherish Comfort's Motion for Summary Judgment as to the Wrongful Arrest and Malicious Prosecution claims. The only remaining defendant is former Officer Cherish Comfort and the only remaining claim is Excessive Force.

This case arises from a March 29, 2020 call to 911 about a "Domestic in progress" call. The 911 caller then reported the suspect said he was going to his house to get a gun. Officer Comfort, in uniform and driving a marked patrol vehicle, was the first officer to arrive at the scene. He immediately saw a woman on her cell phone standing in the street near a parked white Chevy Cavalier. Officer Comfort, as soon as he exited his vehicle, asked Ms. Fish (the 911 caller), "where's he at?". She pointed to a black man wearing an orange shirt, shorts, and standing on a driveway. Officer Comfort drew his weapon and ordered the subject to "get on the ground!" When Brooks failed to comply with his orders, Officer Comfort grabbed Brooks' shirt and tried to pull him to the ground but failed. Brooks ignored all commands and then turned and walked toward his house where the weapon was potentially located. Officer Comfort re-approached Brooks and grabbed his shirt, taking him to the ground. Brooks assaulted Officer Comfort by striking Officer Comfort in the face and throat.

Officer Comfort pushed Brooks to the ground, holstered his weapon, got on top of him, and attempted to wrestle Brooks onto his stomach. Brooks continued to ignore commands and resisted Officer Comfort's attempts to gain control of Brooks to handcuff him. During the struggle, Officer Comfort used several different methods to try and get Brooks under control. Shortly, other officers arrived and were able to handcuff Brooks and transport him to jail. He was booked on assault and battery of a police officer, misdemeanor obstruction of a police officer, and misdemeanor resisting. The DA's office later dismissed the charges against Brooks.

On June 28, 2024, after a lengthy settlement conference with Lane Wilson as the Adjunct Settlement Conference Judge, the parties agreed to resolve this matter for \$175,000.00, inclusive of all costs and attorney fees. Given the uncertainties of trial, especially in this political climate, City Legal recommends you approve the settlement.

If you have any questions or would like to discuss this matter in greater detail, please do not hesitate to contact me.

Thank you.

A handwritten signature in black ink, appearing to read "Michelle McGrew".

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

EASKER JAMES BROOKS III,)
)
 Plaintiff,)
)
vs.)
)
OFFICER CHERISH COMFORT,)
)
 Defendants)

Case No. 22-CV-00142-GKF-JFJ

JOURNAL ENTRY OF JUDGMENT UPON AGREED SETTLEMENT

NOW on this 24th day of July, 2024, this matter comes before the undersigned Judge. Plaintiff Easker James Brooks III appears by and through his attorney of record, Bryon D. Helm, and Defendant Cherish Comfort appears by and through its attorney of record, T. Michelle McGrew, Senior Assistant City Attorney.

The Court, having reviewed the allegations set forth in Plaintiff’s Complaint, 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 One Hundred Seventy Five Thousand Dollars and 00/100 (\$175,000.00) 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 Comfort for damages arising from the occurrence of the event identified in Plaintiff’s Complaint and Plaintiff agrees to waive his right to appeal any issue regarding the Court’s granting the City of Tulsa’s Motion for Summary Judgment and waives his right to appeal regarding the Court’s granting Defendant Comfort’s Motion for Summary Judgment on Plaintiff’s claims for wrongful arrest and malicious prosecution, upon being further advised by Plaintiff that it is his desire to settle the

entirety of all claims and causes of action against the Defendant Cherish Comfort relating to the events identified in his Complaint, including costs and fees, upon payment in the sum of One Hundred Seventy Five Thousand Dollars and 00/100 (\$175,000.00), the Court finds:

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

2. That Plaintiff for himself is fully aware of his rights in this matter and it is Plaintiff's desire to compromise his right to trial by jury as to Defendant Cherish Comfort;

3. That Plaintiff desires to accept as full, final, and complete settlement of his claims against Defendant City of Tulsa the sum of One Hundred Seventy-Five Thousand Dollars and 00/100 (\$175,000.00), for any and all damages, losses, fees, and expenses sustained as a result of the actions of the Defendant Cherish Comfort, as alleged in Plaintiff's Complaint;

4. That this settlement is not an admission that Defendant Cherish Comfort violated Plaintiff's constitutional rights, 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 Defendant Cherish Comfort arising from or relating to the events described in Plaintiff's Complaint;

6. That by agreement of the parties, Defendant City's payment (on behalf of Defendant Cherish Comfort) to Plaintiff will stand as full compensation to Plaintiff in his personal capacity and preclude any further or separate action by Plaintiff against Defendant Cherish Comfort, City of Tulsa, a municipal corporation, or any of its employees, arising from or relating to the events described in Plaintiff's Complaint;

7. That the Defendant Cherish Comfort and the City have agreed to settle Plaintiff's lawsuit against the Defendant Cherish Comfort in the sum of One Hundred Seventy-Five Thousand

Dollars and 00/100 (\$175,000.00);

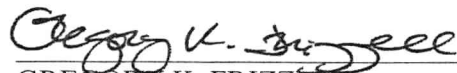
8. That the City shall pay the Plaintiff from the City of Tulsa's Sinking Fund, which has sufficient funds available to pay said judgment; and

9. That Plaintiff and Defendant Cherish Comfort request this Court to approve and finalize their mutual settlement.

10. That the City shall pay the settlement amount as soon as possible, following the entry of the Journal Entry of Judgment, which the City anticipates will be within thirty (30) days after this Court enters the Journal Entry.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff for himself and in his representative capacity have and recover from Defendant Cherish Comfort/City of Tulsa, Oklahoma, damages in the total sum of One Hundred Seventy-Five Thousand Dollars and 00/100 (\$175,000.00), as full, final, and complete compensation for any and all damages, losses, fees, including attorney's fees and expenses incurred or sustained incident to the claims against the City of Tulsa described in Plaintiff's Complaint 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 Cherish Comfort 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 Cherish Comfort, the City, or any employee of Defendant City of Tulsa arising from or pertaining to the events described in Plaintiff's Complaint.



GREGORY K. FRIZZELL
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

//Bryon D Helm

Bryon D. Helm, OBA #33003
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Tulsa, OK 74119
Attorneys for Plaintiff
Bryonhelm@ssrok.com

//T. Michelle McGrew

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Senior Assistant City Attorney
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