

Issue Analysis Form



Date: January 12, 2021
Item: Settlement and Release Agreement between the County and James D. Foster
Lead Department(s): Utilities
Contact Person(s): Frank Haltom and Dan Whitten

Description and Current Status

There was a sewer backup at a property owned by James D. Foster located at 11408 Moring Drive, S Prince George, VA. The County owns sewer lines that provide services to this property.

The owner of the property has requested the County reimburse him for expenses related to the sewer backup.

A draft Settlement and Release Agreement is attached for review.

Sample Motion: I move that the Board authorize the County Administrator to sign the Settlement and Release Agreement between the County and James D. Foster.

Government Path

- Does this require IDA action?** Yes No
- Does this require BZA action?** Yes No
- Does This require Planning Commission Action?** Yes No
- Does this require Board of Supervisors action?** Yes No
- Does this require a public hearing?** Yes No
- If so, before what date?** Yes No

Fiscal Impact Statement

The expenses related to the sewer backup total \$118.75

County Impact

Notes

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Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia, this 12th day of January, 2021:

Present:

Floyd M. Brown, Jr., Chairman
Marlene J. Waymack, Vice Chair
Alan R. Carmichael
Donald Hunter
T. J. Webb

Vote:

C-8

On motion of _____, seconded by _____, which carried unanimously, the following Resolution was adopted:

RESOLUTION: SETTLEMENT AND RELEASE AGREEMENT
BETWEEN THE COUNTY OF PRINCE GEORGE, VIRGINIA AND
JAMES D. FOSTER

WHEREAS, there was a sewer backup at a property owned by James D. Foster located at 11408 Moring Drive, S Prince George, VA; and

WHEREAS, the County owns sewer lines that provide services to the property;
and

WHEREAS, the property owner requested that the County reimburse him for expenses related to the sewer backup; and

WHEREAS, the County desires to reimburse the owner for the expenses.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Prince George this 12th day of January, 2021, does hereby approve the signing of the Settlement and Release Agreement between the County of Prince George, Virginia and James D. Foster.

A Copy Teste:

Percy C. Ashcraft

County Administrator

SETTLEMENT AND RELEASE AGREEMENT
BETWEEN THE COUNTY OF PRINCE GEORGE, VIRGINIA
AND JAMES D. FOSTER

This Settlement and Release Agreement ("Settlement Agreement") is made effective this ___ day of _____, 20__ by and between the County of Prince George, Virginia, a political subdivision of the Commonwealth of Virginia ("County") and James D. Foster ("Owner"). Hereinafter, the County and the Owner are collectively referred to as "the Parties."

WHEREAS, there was a sewer backup at a property owned by the Owner located at 11408 Moring Drive, South Prince George, Virginia 23805 ("Property"); and

WHEREAS, the County owns sewer lines that provide services to the Property; and

WHEREAS, the Owner has requested that the County reimburse the Owner for expenses related to the sewer backup ("Backup"); and

WHEREAS, the County desires to reimburse the Owner for the expenses; and

WHEREAS, both Parties desire to enter into the Agreement detailing the duties of each Party.

NOW THEREFORE, in consideration of the foregoing, of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound, hereby agree as follows:

1. Incorporation of Preambles. The preambles set forth above are incorporated herein and made a part of this Settlement Agreement.
2. Board Approval. On January 12, 2020, this Settlement Agreement was

approved by the Prince George County Board of Supervisors.

3. Remedial Actions of the County. The County shall complete the following actions in full and final satisfaction, settlement, compromise, accord and payment of all allegations, claims, damages, disputes and disagreements of whatsoever nature, whether known or unknown, asserted or unasserted, and any further obligation arising under or related to the damage at the Property caused by the Backup:

(a) Reimburse the Owner for plumbing expenses in the amount of \$118.75.

The Mailbox Payment shall be made by check written to the Owner and shall be sent within thirty (30) days of the execution of this Settlement Agreement.

4. Release. For consideration of the foregoing and other good and valuable consideration, the Owner does hereby release, acquit, and forever discharge the County, its elected officials, officers, agents, employees from all and every manner of action, cause of action, suit, claim, demand, obligation, and liability, whether known or unknown, whether foreseen or unforeseen, pertaining or relating to the damage at the Property caused by the Backup.

5. No Admission of Liability. The execution of this Settlement Agreement does not represent an admission by any Party of any liability to the other for tort, negligence, wrongdoing, or liability of any sort or kind.

6. Choice of Law. This Settlement Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia. The Parties acknowledge that this is a jointly drafted Settlement Agreement. The Parties agree that the statements, representations, agreements, and covenants contained herein are contractual in nature and are not mere recitations of fact, and that the agreements and covenants herein shall be

binding upon the Parties hereto and their respective predecessors, successors, and assigns, as described above. If the Parties are unable to resolve any dispute related to the enforcement of this Agreement, then the venue for any dispute shall be the Circuit Court for the County of Prince George, Virginia.

7. Integration Clause: No Oral Modification. This Settlement Agreement contains the entire agreement between the Parties hereto and is intended as a full and final expression of their settlement and mutual release of all claims and Claims as set forth herein, and may not be modified, amended or terminated except by a written agreement specifically referring to this Settlement Agreement and signed by the Parties hereto prior to the effective date of any such modification, amendment or termination.

8. Counterparts. This Settlement Agreement may be executed in one or more counterparts, and shall be effective when all Parties have signed a counterpart hereof.

9. Severability. If any provision of this Settlement Agreement, or application thereof, shall be held to be invalid, the invalidity shall not affect the other provisions of the Settlement Agreement which can be given effect without the invalid provisions or applications, and to this end the provisions of this Settlement Agreement are declared to be severable.

10. Gender and Headings. Where appropriate in this Settlement Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and *vice versa*. Headings are intended only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement.

11. Authority and Voluntary Settlement. Each Party represents and warrants that they have entered into this Settlement Agreement voluntarily, with proper authority,

and without any reservation. Each Party acknowledge that it has had adequate time to reflect upon, consider and consult with legal counsel concerning the terms of this Settlement Agreement and agrees that neither this Settlement Agreement, nor the settlement set forth herein, is the result of fraud, duress, coercion or undue influence on the part of any Party or their counsel, and acknowledged that each has received all information and documentation necessary to permit the party to make fully informed decisions with respect to all aspects of this Settlement Agreement. The Parties expressly agree that any ambiguities determined to exist in this Settlement Agreement shall not be resolved against the drafter of the Settlement Agreement as both Parties negotiated the terms of this Settlement Agreement.

12. Entire Agreement. This Settlement Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges all prior discussions between them and the Parties shall not be bound by any condition/s, definition/s or representation/s with respect to the subject matter of this Settlement Agreement other than as expressly provided for herein. This written agreement embodies all of the understandings and obligations between the Parties and is signed by duly authorized representatives of each Party.

13. No Waiver. No waiver of any provision of this Settlement Agreement shall be valid unless the same is in writing and signed by the Party against whom it is sought to be enforced. The signature thereto must be of the same or comparable person of authority or interest as whom executed this Settlement Agreement. No waiver of any provision of this Settlement Agreement will be deemed a waiver of any other provision of this Settlement Agreement.

14. Notice. Any notice required hereunder, including notice of payment instructions shall be delivered by hand-delivery as follows:

For the County, notice shall be sent to the attention of:

Percy Ashcraft County Administrator
6602 Courts Drive, Third Floor
Prince George, Virginia 23875

For the Owner, notice shall be sent to the attention of:

James D. Foster
11408 Moring Drive
South Prince George, Virginia 23805

15. Binding in Perpetuity Nature of this Agreement. This Settlement Agreement is binding upon the heirs, successors and assigns of the Parties and insurers to the benefit of parents, affiliates, subsidiaries, heirs, boards, successors and assigns of the Parties.

16. Resolution of All Formal Claims. It is the intent of the Parties that this Settlement Agreement resolves all claims, including all Claims, made or held by the Owner related to the Backup.

IN WITNESS WHEREOF, the Parties hereafter have executed this Settlement Agreement on the date indicated below

PRINCE GEORGE COUNTY

BY:

Signature: _____ (date) _____

Percy Ashcraft
County Administrator

JAMES D. FOSTER

BY:

Signature: _____ (date) _____
James D. Foster

Approved as to Form: _____
Dan N. Whitten
County Attorney