

A Resolution

NO. _____

AUTHORIZING THE EMPLOYMENT OF EILAND & BONNIN, P.C., BARON & BUDD, AND COSSICH, SUMICH, PARSIOLO & TAYLOR AS OUTSIDE LEGAL COUNSEL TO REPRESENT THE CITY ON A CONTINGENCY FEE BASIS FOR CLAIMS RELATED TO FIREFIGHTING FOAM PRODUCTS AND/OR OTHER PRODUCTS CONTAINING PERFLUOROALKYL SUBSTANCES (“PFAS”) INCLUDING PFOS (PERFLUOROOCTANE SULFONIC ACID) AND PFOA (PERFLUOROOCTANIC ACID), AND RELATED COMPOUNDS

WHEREAS, City of Fort Worth, Texas intends to pursue claims for monetary damages, declaratory relief, and other legal remedies (“Damages”) against manufacturers, designers, marketers, distributors, formulators, promoters, and/or sellers of firefighting foam products (known as “aqueous film-forming foam” or “AFFF”) and/or other products containing perfluoroalkyl substances (“PFAS”) including PFOA (perfluorooctane sulfonic acid) and PFOA (perfluorooctanic acid), and related compounds (collectively, “Defendants”) as determined for the cost of testing, monitoring, remediating and/or treating soil and groundwater contamination (the “Litigation”); and

WHEREAS, City of Fort Worth, Texas’ desired outcome in the Litigation is to recover from the Defendants Damages owed to City of Fort Worth, Texas for the possible soil and groundwater contamination by the Defendants’ products, in addition to other relief allowed under the law; and

WHEREAS, the Defendants manufactured, designed, marketed, distributed, formulated, promoted and or sold firefighting foam and/or other products containing perfluoroalkyl substances (“PFAS”) including PFOA (perfluorooctane sulfonic acid) and PFOA (perfluorooctanic acid), and related compounds; and

WHEREAS, the Defendants’ products have been proven to contaminate soil and groundwater; and

WHEREAS, City of Fort Worth, Texas has a substantial need for the legal services of counsel to represent it in the Litigation; and

WHEREAS, City of Fort Worth, Texas requires legal counsel that specialize in complex litigation and are highly knowledgeable and experienced in the legal issues surrounding PFAS and AFFF; and

WHEREAS, City of Fort Worth, Texas now desires to enter into a contingent fee contract (“Contract”) for legal services with EILAND & BONNIN, P.C., BARON & BUDD, and COSSICH, SUMICH, PARSIOLO & TAYLOR (“Counselors”) to represent City of Fort Worth, Texas in the Litigation; and

WHEREAS, Subchapter C of Chapter 2254 of the Texas Government Code (“Chapter 2254”) requires that a political subdivision of the State of Texas, including City of Fort Worth, Texas, may enter into a contingent fee contract for legal services only after: (i) the governing body of the political subdivision has provided written notice to the public stating certain provisions enumerated within Chapter 2254; (ii) the governing body of the political subdivision approved such contract in an open meeting called, in part or in whole, for the purposes of considering such contract; and (iii) the governing body of the political subdivision stated in writing certain findings made by the governing body upon the approval of such contract; and

WHEREAS, before the contingent fee contract for the legal services is effective and enforceable, City of Fort Worth, Texas must receive approval of the Contract by the Office of the Attorney General of Texas; and

WHEREAS, City of Fort Worth, Texas has caused notice of this resolution, this meeting, and certain provisions enumerated within Chapter 2254 to be provided to the public in accordance with the Texas Open Meetings Act and Chapter 2254; and

WHEREAS, the meeting at which this resolution is being considered in an open meeting called, in part or in whole, for the purpose of considering: (i) the City’s need for legal counsel to represent it in the Litigation; (ii) terms of the Contract; (iii) the competence, qualifications, and experience of the Counselors; and (iv) the reasons that the Contract is in the best interest of City of Fort Worth, Texas and complies with Chapter 2254; and

WHEREAS, the City Council of City of Fort Worth, Texas hereby finds and determines that the adoption of this resolution is in the best interests of the residents of City of Fort Worth, Texas.

NOW, THEREFORE, BE IT RESOLVED BY the City Council for City of Fort Worth, Texas:

SECTION 1. That the recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this resolution for all purposes and are adopted as a part of the judgment and findings of the City Council for City of Fort Worth, Texas.

SECTION 2. That the City Council for City of Fort Worth, Texas hereby finds that: (i) there is a substantial need for the legal services to be provided in the Litigation; (ii) the legal services to be provided in the Litigation cannot adequately be performed by the attorneys and supporting personnel currently employed by City of Fort Worth, Texas staff; (iii) the legal services to be provided in the Litigation cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the Litigation and without imposing an unnecessary

cost and burden on City of Fort Worth, Texas' finances; and (iv) the relationship between the City or the City Council and the Counselors is not improper and would not appear improper to a reasonable person.

SECTION 3. That based on the findings by the City Council for City of Fort Worth, Texas described above, the City Council for City of Fort Worth, Texas hereby authorizes the City Manager's Office to execute a legal services contract with EILAND & BONNIN, P.C., BARON & BUDD, and COSSICH, SUMICH, PARSIOLA & TAYLOR, and any other documents in connection therewith, approved as to form by the City, effective only upon approval by the Office of the Attorney General of Texas.

SECTION 4. That it is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this resolution, was given, all as required by Chapter 551 as amended, Texas Government Code.

SECTION 5. That the City will pay the Counselors a contingency fee (which shall be inclusive of all expenses) in accordance with the rates in Attachment A to this resolution and contingent upon the recovery, if any, by the City in the Litigation.

SECTION 6. That this Resolution shall take effect immediately from and after its passage in accordance with the provisions of the City Council and City of Fort Worth, Texas, and it is accordingly so resolved.

Adopted this _____ day of _____, 2023.

ATTEST:

By: _____
Jannette S. Goodall, City Secretary

ATTACHMENT A

The fees for legal services provided by the Counselors in connection with the Litigation are contingent upon the recovery by City of Fort Worth, Texas of Damages in the Litigation and will be paid out of such recover, if any, as follows:

If the Counselors obtain a recovery and collection on behalf of City of Fort Worth, Texas the Counselors will receive attorneys' fees and expenses in the amount of Thirty-Five percent (35%) of the gross recovery

The Counselors will advance all costs associated with the Litigation. Any expenses shall be recovered as part of the 35% fee and not reimbursed further by the City.