

Mayor and Council Communication

DATE: 10/31/23

M&C FILE NUMBER: M&C 23-0915

LOG NAME: 12MARTEN LAW FIRM PFAS

SUBJECT

(ALL) Adopt Resolution Retaining the Law Firm of Marten Law LLP, in an Amount Not to Exceed \$125,000.00, as Outside Counsel for Legal Matters Relating to Class Action Litigation Related to Aqueous Film-Forming Foam Products

RECOMMENDATION:

It is recommended that the City Council adopt the attached Resolution approving the retention of the law firm of Marten Law LLP, in an amount not to exceed \$125,000.00, as outside legal counsel to assist and represent the City in class action litigation related to aqueous film-forming foam products.

DISCUSSION:

There is currently class action litigation pending against manufacturers of synthetic per- and polyfluoroalkyl substances, commonly known as PFAS, relating to contamination that impacts governmental water utilities. The City has been named as a potential claimant in the litigation. Two of the defendants, E.I. DuPont de Nemours and Company and the 3M Company, have negotiated preliminary settlement agreements with the plaintiffs. The court has established deadlines for the City to determine whether to submit objections to the settlement agreements, accept the settlement agreements, or continue in the litigation. The deadline for submitting objections to the E.I. DuPont de Nemours and Company settlement agreement is November 4, 2023. The deadline for submitting objections to the 3M Company settlement agreement is November 11, 2023.

On June 13, 2023 Mayor & Council Communication (23-0445), the City Council authorized the City Attorney to retain the law firms of EILAND & BONNIN, P.C., BARON & BUDD, and COSSICH, SUMICH, PARSIOLO & TAYLOR as outside legal counsel to represent the City on a contingent fee basis for claims relating to PFAS. Hiring law firms on a contingency fees basis requires the approval of the Texas Attorney General's Office. The Texas Attorney General's Office has not approved these contracts. Due to the upcoming deadlines to determine whether to submit objections or accept the settlement agreements, hiring outside counsel on an hourly basis is necessary.

Due to the complex nature of the litigation, the specialized subject matter, and the importance to the City, the City desires that the law firm of Marten Law LLP represent the City in the class action litigation with regard to determining whether to submit objections, or whether to accept the settlement agreements.

Legal fees are not expected to exceed \$125,000.00.

Funding is budgeted in the Consultant & Other Prof Service account within the Water & Sewer Fund for the Water Strategic Operations Department.

A Form 1295 is not required because: This M&C does not request approval of a contract with a business entity.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that upon approval of the recommendation, funds are available in the current operating budget, as previously appropriated, in the Water & Sewer Fund. Prior to an expenditure being incurred, the Water Department has the responsibility to validate the availability of funds.

Submitted for City Manager's Office by: ALL ACMs 6122

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Expedited