



Cover Memorandum/Staff Report

File #: 23-785

Agenda Date: 6/6/2023

Item #: 6.L.

TO: Mayor and Commissioners
FROM: Lynn Gelin, City Attorney
DATE: June 6, 2023

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE ANY SETTLEMENT DOCUMENTS RELATED TO THE CITY'S PARTICIPATION IN THE MULTI-DISTRICT PFAS LITIGATION AND TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THIS RESOLUTION; APPROVING THE CITY'S PARTICIPATION AS A SETTLEMENT CLASS REPRESENTATIVE; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Recommended Action:

Motion to Approve Resolution 115-23.

Background:

This Resolution, if approved, would authorize the City Manager to execute settlement agreements related to the City's participation in its PFAS multi-district litigation and allow the City, through its outside counsel, to participate as a settlement class representative.

By way of background, pursuant to the City Commission's authorization, the City elected to participate in a multi-district litigation concerning the presence of PFAS in the drinking water. On December 8, 2022, the City's outside counsel filed an action against numerous defendants alleged to have caused the presence of PFAS in the drinking water.

The City has been requested to serve as a settlement class representative ("Class Rep"). As a Class Rep, the City would play a crucial role in representing the interests of the entire class of plaintiffs in the litigation, would contribute to the success of this case, and would provide the opportunity to actively participate in the decision-making process. Staff recommends approval of this request.

Outside counsel has negotiated a settlement agreement with DuPont de Nemours, Inc.; The Chemours Company and the Chemours Company FC, LLC; Corteva, Inc. and E.I. DuPont de Nemours and Company n/k/a EIDP, Inc. ("Settling Defendants"). Under this Settlement Agreement, subject to other terms and conditions, the Settling Defendants agree to pay a settlement amount of one billion one hundred eight-five million dollars (\$1,185,000,000). In exchange, the Settling Defendants would receive a release, covenant not to sue, and dismissal from the settling class members. A copy of the Memorandum of Understanding concerning the parties' agreement on the material terms of a class action settlement, the draft Class Action Settlement Agreement, and the DuPont/Chemours, Corteva Allocation Procedures Executive Summary for Phase 1 and Phase 2 Class Members are included in the backup to this agenda item. Staff recommends authorizing the City Manager to execute any documents related to this settlement.

Last, to promote efficiency and avoid delays in recovering settlement funds for the City, going forward, staff recommends authorizing the City Manager's execution of any documents related to the settlement of the PFAS litigation.

The City's outside counsel concurs with these recommendations.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

Exact settlement proceeds are unknown at this time.