

RESOLUTION NO. 2023-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING EXECUTION OF AN ENGAGEMENT LETTER WITH NAPOLI SHKOLNIK TO DRAFT A COMPLAINT AGAINST PRODUCERS OF PFAS FOR DAMAGES AND EXECUTION OF A COMMON INTEREST AGREEMENT WITH THE COLORADO ATTORNEY GENERAL'S OFFICE REGARDING PFAS LITIGATION

WHEREAS, per- and polyfluoroalkyl substances ("PFAS") have contributed to the contamination of water and soil, and these human-made chemical have been used in many industries including but not limited to fire-fighting foam, Scotchgard ®, Stainmaster ®, and other products to repel oil, grease, water, and put out fires or make fire-resistant products; and

WHEREAS, PFAS do not readily break down and accumulate over time in water, soil, animals, and human bodies, and PFAS have been associated with kidney cancer, testicular cancer, high cholesterol, thyroid disease, ulcerative colitis, and pregnancy-induced hypertension; and

WHEREAS, AGC Chemicals Americas Inc., Chemguard Inc., Dupont de Nemours Inc., The Chemours Company, and others designed, manufactured, and distributed aqueous film-forming foam ("AFFF") that contained PFAS to fire departments, airports, oil refineries, and others, which when used as intended entered the environment through surface water and groundwater; and

WHEREAS, the City Council of the City of Brighton ("City") finds that PFAS is a serious health concern and treatment to remove PFAS is expensive, and the City will include such treatment methods in the new water treatment plant, so the City desires to litigate to seek reimbursement of the costs incurred by the City to remove PFAS from its drinking water; and

WHEREAS, pursuant to Section 8.1(G) of the City Charter, the City Council is authorized to retain special legal counsel to handle any matter in which the City has an interest, upon recommendation from the City Attorney, and the City Attorney recommends the retention of Napoli Shkolnik PLLC on a contingency basis, a firm leading the multi-district PFAS litigation; and

WHEREAS, the City Council desires to engage the firm of Napoli Shkolnik PLLC to draft a complaint and litigate on behalf of the City for the recovery of costs incurred by the City in treating water to remove PFAS from drinking water and to cooperate with the Colorado Attorney General's Office in litigation filed on behalf of the State against PFAS manufacturing and distribution companies.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brighton, Colorado, as follows:

Section 1. The City Council hereby approves the engagement of the firm Napoli Shkolnik PLLC to file a complaint against companies who designed, manufactured, and distributed PFAS to recover costs for the harmful effect of PFAS on the City's water utility system.

Section 2. The City Attorney is hereby authorized to execute the Retainer Agreement with Napoli Shkolnik on behalf of the City and to approve litigation strategy with respect to the City's claims and take all actions necessary and appropriate to pursue such litigation through the special counsel.

Section 3. The City Attorney is hereby authorized to execute the Common Interest Agreement with the Colorado Attorney General's Office and to cooperate with the State litigation efforts, including sharing data and information.

Section 4. This Resolution is effective upon the date of its adoption.

RESOLVED this 21st day of February 2023.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

APPROVED AS TO FORM:

ALICIA CALDERÓN, City Attorney