



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 11/14/2023

REQUESTER: Kathryn Walker, City Attorney

PRESENTER: Kathryn Walker, City Attorney

ITEM TITLE: CONSIDERATION FOR APPROVAL, ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-101: BETWEEN THE CITY OF NORMAN AND MCAFEE TAFT FOR CONTINGENCY REPRESENTATION OF NORMAN IN MULTI-DISTRICT LITIGATION FOR THE CLASS ACTION LITIGATION REGARDING DAMAGES FROM PFAS CHEMICALS.

BACKGROUND: The City of Norman was served with notice of a Proposed Class Action Settlement and Court Approval Hearing in the Multi District Litigation (MDL) pending in the United States District Court for the District of South Carolina, Charleston Division. This particular MDL involved E. I. DuPont de Nemours and Company. The City of Norman is also listed as a potential plaintiff in the MDL involving 3M Company. The DuPont case will award up to \$1.85 billion among claimants, while the 3M case will award up to \$12.5 billion among claimants. The City of Norman is an identified plaintiff in these MDLs because the City's drinking water may contain some level of PFAS (per-and poly-fluoroalkyl substances).

Both MDLs relate to claims against companies who manufactured PFAS. PFAS are a class of thousands of synthetic chemicals used both in, and in the manufacturing process of, products like cookware, food wrappers and firefighting foam. Exposure to PFAS has been linked to a variety of health problems. PFAS are known as "forever chemicals" because they do not break down naturally in the environment, and have very long half-lives in the human body.

There is evidence that PFAS are in approximately 45% of the nation's drinking water. The EPA has been conducting sample testing of PFAS in drinking water systems to determine what levels are present and to determine what levels of PFAS should require specialized water treatment to remove.

The MDLs are an attempt to shift the cost of removing PFAS from public water systems from the public water providers to the companies who manufactured products with these chemicals. The settlement funds are intended to provide funds for testing the levels of PFAS in the drinking water systems, as well as treatment and removal costs.

DISCUSSION: City Council was provided two updates regarding the litigation during Executive Sessions on October 24, 2023 and October 31, 2023. Council directed staff to bring forward for its consideration a contingency contract with the law firm of McAfee Taft to allow them to begin

representing Norman in each MDL and assist the City in determining what its best options are regarding these cases. Under the terms of the agreement, McAfee Taft would represent the City for a contingency fee of 25% if settled prior to empanelment of a jury, and 30% if settled after the empanelment of a jury. Any recovery would first be reduced by costs incurred in the representation, meaning the City would not have to pay for these costs until the case is settled or tried with a verdict in the City's favor. Such costs would then be taken from the recovery amount. Staff requested that McAfee Taft provide periodic updates on case specific costs, and that if such costs are anticipated to exceed \$10,000, the cost must be approved by the City prior to being incurred. The City could be responsible for paying costs if costs are awarded to the Defendant on the City's claims.

RECOMMENDATION: Staff recommends approval of K-2324-101.