

MEMORANDUM

Agenda Item No. 13(A)(1)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

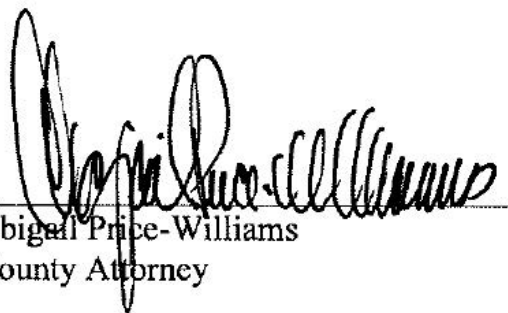
DATE: July 8, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution (1) selecting outside counsel for the purpose of representing the County in litigation related to per- and polyfluoroalkyl substances at the direction of the County Attorney; (2) directing the County Mayor to execute an agreement for retention of outside counsel, and in conjunction with outside counsel, pursue litigation to recover costs and other damages associated with the discovery of per- and polyfluoroalkyl substances in the County; and (3) authorizing the County Attorney or County Attorney's designee to exercise all provisions contained therein and to amend or terminate the agreement

Resolution No. R-688-20

The accompanying resolution was placed on the agenda at the request of the County Attorney.



Abigail Price-Williams
County Attorney

APW/smm

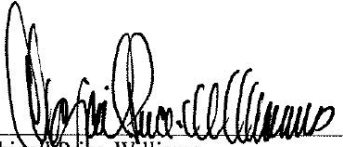
Memorandum



Date: July 8, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From:


Abigail Price-Williams
County Attorney

Subject: Response to Resolution R-146-20 Regarding PFAS Litigation and Recommendation for Selection of Outside Counsel

On February 4, 2020, this Board adopted Resolution No. R-146-20 (the “Resolution”) in response to the discovery of per- and polyfluoroalkyl substances (“PFAS”) within Miami-Dade County. PFAS are a group of man-made chemicals that were used for decades in industrial and household products, such as stain and water-repellant apparel and fabrics, food packaging, cleaning products, non-stick cookware, and Aqueous Film Forming Foam (“AFFF”) used to extinguish fires. Because PFAS accumulate over time, do not break down easily, remain in and move through the environment for decades, and have been linked to certain health impacts, such as cancer and birth defects, many utilities, state attorney generals, and local governments across the United States have brought litigation against the manufacturers of PFAS and other possible culpable parties to recover damages as well as the costs associated with remediation and water treatment to rid their communities of these chemicals.

The Resolution directed the County Attorney’s Office to assess whether the County should engage in litigation to recover costs and other damages associated with the existence of PFAS within the County. In doing so, the Board requested that the County Attorney evaluate the viability of legal claims against PFAS manufacturers and other culpable parties and recommend whether such claims may be brought by the County. The Board further directed the County Attorney, if advisable, to identify up to three law firms that could serve as outside counsel under the direction of the County Attorney’s Office for PFAS litigation. The Board directed that such representation be on a contingency fee basis and at no cost to the County unless the County obtains a monetary recovery. Any payments to the outside counsel will thus come from the proceeds of the litigation itself.¹ The Board requested that the County Attorney provide this information to the Board within 90 days of the effective date of the Resolution.²

¹ Although the County will not be responsible for the costs or attorney fees for outside counsel unless the County receives a monetary recovery, it is anticipated that the County Attorney’s Office, and the County in general, will still need to expend significant resources in managing the litigation and preparing and prosecuting the claims.

² Due to the COVID-19 pandemic, the County Attorney extended the deadline for interested parties to submit their proposals to the solicitation for outside counsel by 30 days. As a result, this Report and Recommendation was delayed in reaching the Board.

Recommendation for Outside Counsel

After soliciting and evaluating proposals, and requesting additional information from two proposers, I recommend the Levin Team³ as outside counsel for the PFAS litigation. The Levin Team provides the County with the unique combination of: an impressive history and experience with PFAS contamination litigation around the country; pricing; and unmatched leadership on behalf of all plaintiffs in the nationwide, multi-district PFAS litigation currently underway in the United States District Court for South Carolina (the “PFAS MDL”).⁴ The Levin Team is comprised of five law firms and is collectively staffed with over 900 attorneys available to assist the key personnel representing the County with this complex litigation and any appeal that may be filed.

The Levin Team has a detailed understanding of a successful strategy for the County’s PFAS litigation and includes team members who have been handling PFAS-related litigation on a continuous basis for decades. In addition, numerous members of the Levin Team have experience representing governmental entities in large complex environmental contamination cases, including currently representing nine public entities in PFAS litigation. The Levin Team has extensive knowledge and expertise managing PFAS jury trials and settlements as well as multi-district and class action litigation. The Levin Team also includes an internationally-recognized attorney, Robert A. Biliot, who, in 1999, brought the very first PFAS case and obtained successful jury verdicts in several PFAS cases that were later consolidated into the original lawsuit. In the past, members of the Levin Team have worked together to obtain verdicts in jury trials and successfully settle at least three PFAS cases against E.I. DuPont de Neumors and Company (“DuPont”) and The 3M Company (“3M”)—potential defendants in the County’s proposed PFAS litigation.

As a result of this decades-long experience with PFAS litigation, the Levin Team brings with it an expansive library of data, research and resources as well as relationships with potential expert witnesses to provide the best representation to the County. Indeed, over years of working in the PFAS field on cases against the largest manufacturers and distributors of PFAS products, the Levin Team has already taken dozens of depositions of representatives from PFAS manufacturers and has accumulated an extensive repository of documents consisting of over six million pages focused on many of the companies that will likely become named defendants in the County’s PFAS case. Because the County will be entering the PFAS MDL at a point when the litigation has already been proceeding for several years, the Levin Team, with its significant existing resources, understanding of the evidence and experience in the field, will give the County a litigation team that is best positioned to hit the ground running.

Further, the Levin Team has an unmatched number of members serving in leadership roles in the PFAS MDL that were appointed by the Court, including one of the three Plaintiffs’ Co-Lead Counsel for the entire case (Michael London); members on the Plaintiffs’ Executive Committee (the “PEC”) (Richard Head, William Jackson, Wesley Bowden); and Advisory Counsel to the PEC (Robert A. Biliot). In addition, the Levin Team has representation on almost every committee within the PFAS MDL, including an attorney serving as Co-Chair of the Law and Briefing Committee (Rebecca Neuman) and attorneys serving as Co-Chairs of the Science Committee (Gary Douglas and Robert A. Biliot). The Levin Team, therefore, will have a significant influence on the direction of the PFAS MDL and a prominent role in the decision-making on behalf of all plaintiffs.

³ The Levin Team consists of five firms: Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.; Taft Stettinius & Hollister LLP; Douglas & London, P.C.; Kelley Drye & Warren LLP; and SL Environmental Law Group PC.

⁴ Participating in the PFAS MDL is currently the anticipated route for the County’s proposed PFAS litigation. The PFAS MDL, *In Re: Aqueous Film-Forming Foam Product Liability Litigation*, consolidates numerous federal cases from local jurisdictions—all involving PFAS contamination caused by the use of AFFF—into one central case for purposes of pretrial coordination, discovery and possible trials.

Moreover, after negotiation with the County Attorney's Office, the proposed contingency fee arrangement offered by the Levin Team is a tiered fee structure based on litigation milestones with a total cap on attorneys' fees and litigation costs of no more than 20 percent of any gross recovery. In addition, the proposed retainer agreement that has been negotiated with the County Attorney's Office includes a "Most Favored Nations" Clause, which guarantees that, in the event the Levin Team enters into a more favorable retainer agreement with another entity in the State of Florida for PFAS litigation, the County would receive those same terms.

Accordingly, I believe that the Levin Team uniquely provides the County with the best value in its representation and is the team that I am recommending for this engagement.

The Solicitation Process

Pursuant to the Resolution, the County Attorney's Office issued a solicitation requesting proposals from firms or groups of firms ("Proposers") interested in serving as outside counsel to the County for the sole purpose of the PFAS litigation. The solicitation requested, among other things, that each Proposer provide: (1) a narrative detailing all potential causes of action and recoverable damages; (2) its experience and qualifications to serve as outside counsel; (3) a description and organizational chart of personnel to be assigned to the PFAS litigation and their tasks or responsibilities; (4) a statement pertaining to the Proposer's capability to litigate the case on behalf of the County; (5) a description of its plan to work with the County Attorney's Office; (6) contingency fee and costs proposal; (7) a draft retainer agreement; (8) information related to disciplinary actions or malpractice claims; (9) malpractice insurance coverage; and (10) references. As part of the solicitation, the County Attorney's Office also created a temporary website where Proposers could find the data available from testing for PFAS that the Miami-Dade Water and Sewer Department and Miami-Dade Regulatory and Economic Resources, Department of Environmental Resources Management, had conducted at various locations throughout the County.

The following Proposers submitted responses to the solicitation before the expiration of the deadline:

- (1) Cohen Milstein Sellers & Toll PLLC; Susman Godfrey LLP; Levin Sedran & Berman LLP; and Earth & Water Law LLC;
- (2) Grant & Eisenhofer P.A. and Klausner, Kaufman, Jensen & Levinson;
- (3) The Lanier Law Firm P.C.; Watts Guerra LLP; Fears Nachawati Law Firm; Edelson P.C.; Miner Barnhill & Galland PC; and Kelley Uustal;
- (4) Baron & Budd, P.C.; Cossich, Sumich, Parsiola & Taylor, LLC; and Young & Partners, LLP (the "Baron & Budd Team");
- (5) Napoli Shkolnik, PLLC and The Ferraro Law Firm, P.A.;
- (6) Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.; Taft Stettinius & Hollister LLP; Douglas & London, P.C.; Kelley Drye & Warren LLP; and SL Environmental Law Group PC. (the "Levin Team");
- (7) Morgan & Morgan and Weitz & Luxenberg, P.C.;
- (8) Allen J. Law Group; and
- (9) Motley Rice LLC.

Upon review of the proposals submitted, multiple teams brought some level of involvement with, and leadership roles in, the PFAS MDL as well as impressive credentials and competitive pricing.⁵ From the outset, however, the Levin Team and the Baron & Budd Team stood out above the rest. These two proposers each include an impressive group of attorneys in significant leadership positions within the PFAS MDL offering a diversity of experience and skills as well as a track record of successful recoveries in complex environmental contamination litigation.

Accordingly, these two Proposers were offered the opportunity to better their proposed contingency fee and retainer agreements. The Baron & Budd Team's original proposed contingency fee arrangement was a tiered structure with a range of 20 percent to 33.3 percent of any gross recovery depending on the total award recovered with a cap of 40 percent on attorneys' fees and reimbursable costs combined. During negotiation, the Baron & Budd Team offered a tiered structure based on various milestones in the litigation that ranged from 4 percent to 15 percent for fees (not inclusive of costs) with a maximum cap range of 5 percent to 20 percent for attorneys' fees and reimbursable costs combined.⁶ The Levin Team's original proposed contingency fee arrangement was a tiered structure based on various litigation milestones that ranged from 15 percent to 25 percent of gross recovery with a maximum fee of 25 percent of gross recovery plus costs. During negotiation, the Levin Team ultimately reduced their contingency fee rates to an overall cap of 20 percent for attorneys' fees and all costs through trial and appeal and with lower percentages at various litigation milestones ranging from 9 percent to 20 percent, inclusive of both attorneys' fees and costs.

When considering the contingency fee arrangement offered by the Levin Team as well the experience of the Levin Team in litigating these types of complex environmental contamination cases—specifically, PFAS cases—I believe the Levin Team will give the County the best representation in this matter.

Potential Litigation

Pursuant to the Resolution, the County Attorney's Office reviewed the litigation initiated by utilities and state and local governments across the country against manufacturers of PFAS and other culpable parties. The County may raise claims against the PFAS manufacturers and others under both Florida and federal law, including possible causes of action for negligence, product liability, nuisance, breach of warranty, trespass, design defect, and fraudulent transfer. Potential defendants include but are not limited to: 3M, DuPont, The Chemours Company, and various distributors of AFFF, which was historically used to extinguish fires, and other products containing PFAS. This list of potential defendants as well as the possible causes of action identified may be altered once further investigation as to the source of the PFAS contamination within the County has been completed.

It is anticipated that the County's PFAS case will become a part of the PFAS MDL currently proceeding before United States District Court Judge Richard Mark Gergel in South Carolina for pretrial consideration and discovery.⁷ By participating in the PFAS MDL, the County will benefit from collaborative litigation

⁵ The contingency fee arrangements received from the nine firms that submitted proposals varied widely. Some were structured using a tiered system based on the total award recovered from the litigation; others were structured using a tiered system with different percentages charged at various stages of litigation; and still others offered flat rates or hourly rates. In addition, certain proposers set forth a cap on combined fees and costs while others provided no cap in their proposal.

⁶ Like the Levin Team, the Baron & Budd Team offered a "Most Favored Nations" Clause.

⁷ The County's case could be filed directly in the PFAS MDL or brought first in the United States District Court for the Southern District of Florida and then transferred to the PFAS MDL.

Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners
Page 5

with other similarly situated plaintiffs through, among other things, potential cost savings for experts and discovery and a more streamlined litigation approach.

A copy of the executive summary from the Levin Team's proposal is attached hereto, and a copy of the proposed negotiated retainer agreement is attached to the resolution accompanying this Response and Recommendation.

cc: Honorable Carlos A. Gimenez, Mayor
Geri Bonzon-Keenan, First Assistant County Attorney
Yinka Majekodumni, Commission Auditor
Melissa Adames, Director, Clerk of the Board

PROPOSAL EXECUTIVE SUMMARY
LEVIN TEAM

Executive Summary

The six law firms submitting this Proposal represent not only some of the most experienced trial lawyers in the country but are unmatched by any other law firm or group of law firms in PFAS litigation experience. We have put together a team of lawyers and law firms (collectively referred to as the “Firms”) who would represent Miami-Dade County in litigation against some of the largest chemical companies in the country. If selected by the County, the Firms would bring to the County over two decades of experience and results related to PFAS litigation against 3M and Dupont – the primary defendants in PFAS lawsuits – as well as contaminant litigation on behalf of states, territories and public water suppliers.

Rob Bilott and his team at Taft, Stettinius & Hollister, LLP, brought the very first PFAS environmental exposure case in 1999 on behalf of a farmer in Parkersburg, West Virginia. That case led in 2001 to the filing of the nation’s first class action lawsuit on behalf of individuals exposed to PFOA in their drinking water with Rob acting as class counsel. After a Science Panel, created through the settlement of that class action in 2004, confirmed the identities of six diseases linked to PFOA exposure, Rob and his colleagues at the Taft Law Firm joined with Douglas & London and Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor to pursue damages against DuPont on behalf of approximately 3,500 individuals who contracted one of those six diseases linked to drinking water that was contaminated with PFOA from DuPont’s Washington Works plant in West Virginia.

Those thousands of cases were consolidated in a multi-district litigation (“C8 MDL”) proceeding in the Southern District of Ohio where Rob Bilott and Mike London of the Douglas & London firm serve as Co-Lead Counsel. During the C8 MDL, which includes over 5200 docket entries, the legal team took 67 depositions and litigated PFOA issues that resulted in twenty-four case management orders, forty-seven pretrial orders, twelve discovery orders, twenty-nine dispositive motions orders, twenty-four evidentiary (Daubert) motions orders, and rulings on 142 motions in limine.

After four years of litigation, including three trials that resulted in verdicts in favor of each individual plaintiff of \$1.8 million, \$5.6 million and \$12.8 million (including punitive damages in the last two trials), a global resolution of the pending cases was reached in 2017 for \$670.7 million.

Rob and the Taft firm also pursued additional PFAS cases against DuPont in New Jersey and West Virginia, and against 3M in Minnesota between 2005 and 2011, ultimately resulting in additional settlements and clean water for PFAS-impacted communities. Through all this litigation, the Firms have developed an extensive and unmatched library of documents from 3M and DuPont that cannot be replicated by anyone else, including 3M and DuPont themselves, as the companies have “lost” many of these documents over the past twenty years. The evidence uncovered in this team’s prior litigation demonstrates 3M and DuPont knew PFAS was harmful, they purposefully manipulated and used inadequate scientific studies to support their position that PFAS was supposedly harmless, and they provided false information to the public about the dangers of PFAS.

The information that was uncovered by this team was so shocking that a documentary (“The Devil We Know,” available on Netflix) and a full-length feature film (“Dark Waters,” released late last year) were made about the team’s litigation efforts to hold DuPont responsible for the damage it has caused to public drinking water supplies.

As highlighted in both of these movies, and what was revealed by the Firms during the four PFAS trials, 3M and DuPont are not the innocent victims of evolving science who created a product decades ago with the best of intentions and who are now being held to what 3M and DuPont might refer to as an unfair legal standard based on hindsight. To the contrary, 3M and DuPont both knew many decades ago that PFAS was toxic and biopersistent, and that PFAS bioaccumulates in humans. Despite this knowledge, both 3M and DuPont engaged in sophisticated campaigns to distort the science around PFAS and manipulate regulatory agencies at the expense of human health and threats to public drinking water supplies.

The Firms bring with them knowledge of PFAS that has developed across two decades of litigation against 3M and DuPont. Their efforts included the analysis of hundreds of thousands of documents (that total over six million pages), taking the depositions of dozens of DuPont and 3M representatives, the preparation of dozens of expert reports (and access to many other experts, including many of the world’s leading scientific experts), and the culmination of three successful trials. There are simply no other attorneys who have a better grasp of the evidence at issue in these cases. As such our legal team can streamline discovery regarding 3M and DuPont’s knowledge and egregious conduct, which can substantially accelerate the County’s case.

For example, many of the documents and materials uncovered by the Firms were used by the State of Minnesota’s Attorney General in its motion to amend its complaint to include punitive damages in its case against 3M, which resulted in a \$850 million settlement three months after the motion and exhibits were filed.

More recently, the firms handling the prior DuPont and 3M cases have joined forces with the lawyers at Kelly Drye & Warren and SL Environmental to help bring their PFAS experience to state and municipal clients facing massive and widespread PFAS contamination damages. The Firms are currently pursuing legal claims against 3M and DuPont on behalf of municipal and state clients across the country for the investigation and treatment of drinking water supplies and remediation of public property contaminated with PFAS. Each client has retained us on a contingency fee basis where the Firms advance all costs associated with the litigation and bear the risk of loss if a case is not successful. Again, the goal of this litigation is to hold the companies which profited from the use of PFAS financially responsible for the treatment and remediation costs, rather than ratepayers and taxpayers.

Some of these cases have been transferred into Multi District Litigation (“AFFF MDL”) proceedings in the District of South Carolina. That MDL was established to handle PFAS cases where the source of the PFAS contamination is from the use of aqueous film forming foam (“AFFF”), which was widely used at airports, air force bases, and fire training facilities. The Firms’ non- AFFF PFAS cases are not part of the AFFF MDL and are being litigated in their home jurisdictions.

In addition, based on information uncovered by the lawyers at Kelley Drye & Warren and their team, the Firms have discovered an effort by DuPont to undertake an elaborate restructuring in an effort to protect substantial assets and business lines of historical DuPont from these mounting liabilities. Based on this investigation, the Firms are actively seeking to protect their clients' rights to access all of DuPont's assets and avoid the transfers that have taken place and continue to occur.

Recognizing the experience of the Firms, the Judge in the AFFF MDL appointed Mike London from Douglas & London as Co-Lead Counsel to the AFFF MDL and Rob Bilott was appointed as Advisory Counsel. The Judge also appointed fourteen other attorneys from the Firms to additional leadership positions within the various plaintiff MDL committees, including Co-Chairs of the Science Committee. As a result, the Firms have representation in every committee and as Co-Lead and Advisory Counsel, which means the Firms have unparalleled control over the MDL proceeding within the group of MDL plaintiffs.

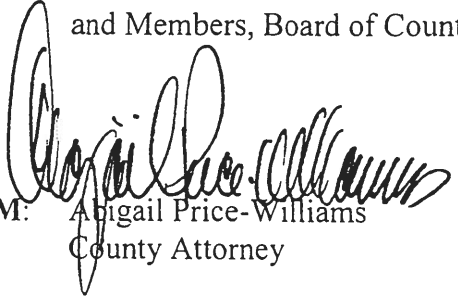


MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 8, 2020

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)

7-8-20

RESOLUTION NO. R-688-20

RESOLUTION (1) SELECTING OUTSIDE COUNSEL FOR THE PURPOSE OF REPRESENTING THE COUNTY IN LITIGATION RELATED TO PER- AND POLYFLUOROALKYL SUBSTANCES AT THE DIRECTION OF THE COUNTY ATTORNEY; (2) DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR RETENTION OF OUTSIDE COUNSEL, AND IN CONJUNCTION WITH OUTSIDE COUNSEL, PURSUE LITIGATION TO RECOVER COSTS AND OTHER DAMAGES ASSOCIATED WITH THE DISCOVERY OF PER- AND POLYFLUOROALKYL SUBSTANCES IN THE COUNTY; AND (3) AUTHORIZING THE COUNTY ATTORNEY OR COUNTY ATTORNEY'S DESIGNEE TO EXERCISE ALL PROVISIONS CONTAINED THEREIN AND TO AMEND OR TERMINATE THE AGREEMENT

WHEREAS, on February 4, 2020, this Board adopted Resolution No. R-146-20 directing the County Attorney to: (i) assess whether Miami-Dade County should engage in litigation to recover costs and other damages associated with the discovery of per- and polyfluoroalkyl substances ("PFAS") in Miami-Dade County; (ii) evaluate the viability of legal claims against PFAS manufactures, distributors and other culpable parties; (iii) identify up to three law firms that could serve as outside counsel for possible litigation related to recovering costs and other damages associated with the existence of PFAS in Miami-Dade County under the direction of the County Attorney and on a contingency fee basis with no cost to the County if the County does not prevail in litigation; and (iv) report back to the Board with such recommendation; and

WHEREAS, the County Attorney has complied with the direction of the Board as detailed in the accompanying memorandum, a copy of which is incorporated herein by reference; and

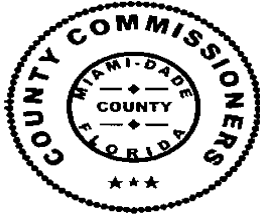
WHEREAS, pursuant to section 5.06 of the Miami-Dade County Home Rule Charter, the Board desires to employ outside counsel for the specific purpose of pursuing litigation to recover costs and other damages associated with the discovery of PFAS in Miami-Dade County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board selects the litigation team consisting of Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.; Taft Stettinius & Hollister LLP; Douglas & London, P.C.; Kelley Drye & Warren LLP; and SL Environmental Law Group PC as outside counsel for the purpose of representing the County in PFAS litigation at the direction of the County Attorney; directs the County Mayor or County Mayor's designee to execute, on behalf of Miami-Dade County, a negotiated retainer agreement, in substantially the same form as that attached hereto as Exhibit A; authorizes the County Attorney or County Attorney's designee to exercise all provisions contained therein on behalf of Miami-Dade County; authorizes the County Attorney to amend or terminate the retainer agreement as necessary to protect the interests of the County; and directs the County Attorney or County Attorney's designee and outside counsel to pursue litigation to recover costs and other damages associated with the discovery of PFAS within Miami-Dade County.

The Sponsor of the foregoing resolution is County Attorney Abigail Price-Williams. It was offered by Commissioner **Rebeca Sosa** , who moved its adoption. The motion was seconded by Commissioner **Joe A. Martinez** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 8th day of July, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Melissa Adames
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SED

Sarah E. Davis

AUTHORITY TO REPRESENT

RE: Miami Dade County (Florida) special counsel for PFAS litigation.

The MIAMI DADE COUNTY COMMISSION (hereinafter “CLIENT”) hereby retains the law firm Levin, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA, pursuant to the Florida Rules of Professional Responsibility 4-1.5, on a contingent fee basis, to conduct a pre-litigation investigation and to pursue all civil remedies against the manufacturers of per- and polyfluoroalkyl substances (“PFAS”) and/or manufacturers of aqueous film forming foam (“AFFF”) responsible for the contamination of soil and groundwater on land owned or under the control of the Client and the groundwater and surface water on and under such land which is impacting Miami Dade County (Florida) including, but not limited to, filing a claim for products liability and other common law and statutory claims that, following an investigation, the Client authorizes to be brought. **Wes Bowden, Esq.** of the law firm LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA. (“LEVIN PAPANTONIO”) shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms (collectively the “ATTORNEYS”):

LEVIN PAPANTONIO THOMAS MITCHELL RAFFERTY & PROCTOR, P.A.
316 South Baylen Street Pensacola, FL 32502
Phone (850) 435-7165

TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
Phone (513) 381-2838

DOUGLAS & LONDON, P.C.
59 Maiden Ln, 6th Floor
New York, NY 10038
Phone (212) 566-7500

KELLEY DRYE & WARREN LLP
515 Post Oak Blvd., Suite 900
Houston, TX 77027
Phone (713) 355-5000

SL ENVIRONMENTAL LAW GROUP PC
175 Chestnut Street
San Francisco, CA 94133
Phone (415) 348-8300

In consideration, CLIENT agrees the gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. The agreed CONTINGENCY FEE

PERCENTAGE and FEE/COST CAPS shall be determined by the stage of litigation, as set forth in the Schedule below:

- 8% of any Gross Recovery obtained before the filing of the complaint in the Legal Action. Total fees and expenses shall not exceed 9% of any Gross Recovery.
- 15% of any Gross Recovery following the commencement of plaintiff's obligation to produce discovery. Total fees and expenses shall not exceed 16% of any Gross Recovery.
- 18% of any Gross Recovery obtained following disclosure of expert reports. Total fees and expenses shall not exceed 20% of any Gross Recovery.
- 19% of any Gross Recovery obtained following briefing of Summary Judgment or Daubert after expert discovery. Total fees and expenses shall not exceed 20% of any Gross Recovery.
- Total fees and expenses shall not exceed 20% of any Gross Recovery after jury selection begins.

Total fees and expenses shall not exceed twenty percent (20%) of the gross recovery. CLIENT grants ATTORNEYS an interest in a fee based on the gross recovery. If a court awards attorneys' fees, ATTORNEYS shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

With respect to the fee and cost structure provided for in this Agreement, ATTORNEYS warrant that no other Florida entity clients that have engaged ATTORNEYS for PFAS litigation have been given a more favorable fee and cost structure. If ATTORNEYS give a more favorable fee and cost structure to a Florida entity clients for PFAS litigation, then CLIENT shall be given the benefit of such fee and cost structure.

ATTORNEYS agree to advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.**

The CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the ATTORNEYS, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

With respect to travel costs and travel-related expenses, the ATTORNEYS agree to adhere to Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses, including

employee lodging, transportation, per diem, and all miscellaneous travel related cost and fees.

This litigation is intended to address a significant problem in the community. The litigation focuses on the manufacturers of PFAS chemistry and products that contain PFAS and their role in the contamination of soil, groundwater and surface water impacting drinking water and resulting in the need for the Client to investigate and remediate soil, groundwater and surface water and design, construct and operate drinking water treatment systems. The manufacturers that placed these products in the stream of commerce deny liability. The litigation will be very expensive and the litigation expenses will be advanced by the ATTORNEYS with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the CLIENT and the ATTORNEYS regarding the definition of a “successful recovery.”

The purpose of the lawsuit is to seek reimbursement of the costs incurred and to be incurred to investigate and remediate soil, groundwater and surface water and design, construct and operate drinking water treatment systems arising out of contamination caused by the conduct of the manufacturers. The CLIENT agrees to compensate the ATTORNEYS, contingent upon prevailing, by paying up to 20% of any settlement/resolution/judgment, in favor of the CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 20% of the gross amount to ATTORNEYS as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay 20% of the gross value of the equitable relief to the ATTORNEYS as compensation and then reimburse the reasonable litigation expenses. To be clear, ATTORNEYS shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. CLIENT and ATTORNEYS agree to make a good faith effort to seek a monetary payment in any settlement that includes a non-monetary equitable remedy. Under no circumstances shall the CLIENT be obligated to pay any attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the CLIENT’s claims. If the defendant(s) expend their own resources to abate or otherwise remedy the contamination in exchange for a release of liability, then the ATTORNEYS will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the ATTORNEYS to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the ATTORNEYS should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the ATTORNEYS will be decided by private agreement between the law firms and subject to approval by the CLIENT. Any division of fees will be governed by the Florida Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the

representation; (3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the CLIENT and each lawyer and shall comply with the Florida Rules of Professional Conduct; and (4) the total fee is *reasonable*.

The litigation authorized by this Agreement may become part of a Federal Multidistrict Litigation (“MDL”) docket, on which one or more attorneys from the Firms currently, or will in the future, serve on plaintiff management or executive committees, performing work that benefits multiple clients of the ATTORNEYS, as well as clients of other attorneys involved in similar litigation. As a result, the court or courts where an MDL is pending may order that one or more of the ATTORNEYS is to receive additional compensation for time and effort which has benefitted all claimants in the MDL. Compensation for this work and effort, known as “common benefit work,” may be awarded to ATTORNEYS and paid out of the MDL court’s assessments against settlements, including settlements on behalf of the CLIENT and others who have filed claims that are pending in the MDL court. This common benefit compensation is separate and distinct from any Contingent Fee owed under this Agreement.

LEAD COUNSEL shall appoint a contact person to keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT. The identity of the contact person designated by LEAD COUNSEL may change over the course of the investigation and litigation to best match the contact person with the stage of investigation and litigation and to best meet the needs of the CLIENT. CLIENT at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation. CLIENT, acting through its County Attorney, shall be the ultimate decision maker on all matters relating to the investigation and/or litigation, including whether to file litigation and whether and what terms to settle such litigation. LEAD COUNSEL shall consult with and obtain the approval of the County, acting through its County Attorney, concerning all important issues regarding the investigation, litigation, and any settlement, including but not limited to the complaint and all dispositive motions, selection of consultants, experts and other professional services, discovery, pre-trial proceedings, trial, and settlement offers, demands, or negotiations. All draft filings in CLIENT’S individual case shall be provided to the County Attorney sufficiently in advance of filing to permit the CLIENT’S review. Regular status meetings shall be held as requested by the County Attorney. The County Attorney may designate an alternate point or points of contact from within the County to be available to LEAD COUNSEL as appropriate. LEAD COUNSEL shall consult with and obtain the approval of the County Attorney, or the County Attorney’s designated alternate contact, prior to making or releasing any press release, news release, media release, press statement or public statements regarding the CLIENT’S role in or position on this litigation or any matters related thereto.

Upon conclusion of this matter, LEAD COUNSEL shall provide the CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers’ fees with a lawyer not in the same firm, as required in Rule 4-1.5 (f)(5) of the Florida Rules of Professional Conduct. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

The ATTORNEYS may retain associate counsel to assist with litigating a litigation pursuant to this Agreement. The attorney or law firm selected by the ATTORNEYS shall be subject to the CLIENT'S approval.

The CLIENT understands that currently, and from time to time, the ATTORNEYS represent other governmental agencies, governmental subdivisions, or investor-owned public water utilities in similar litigation, and that such work is the focus of the ATTORNEYS' practice. Further, the CLIENT understands that the ATTORNEYS represent other clients in actions similar to what would be brought under this Agreement and against the same potential defendants. The CLIENT understands that a recovery obtained on behalf of another client in a similar suit against the same defendants could, in theory, reduce the total pool of funds available from these same defendants to pay damages in a Legal Action brought under this Agreement. The CLIENT understands that the ATTORNEYS would not take on this engagement if the CLIENT required the Firms to forgo representations like those described above. The CLIENT has conferred with its own separate and independent counsel about this matter, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that may occur as the result of the ATTORNEYS' current and continuing representation of cities and other water supplier in similar matters.

Except as may be required by law, the CLIENT agrees that it shall not use or disclose in any legal proceeding, case, or other context of any kind, other than this litigation, or share or disclose to any person not a party to this Agreement, any documents, work product, or other information made available to or to which the District or its counsel acquire access through the ATTORNEYS, including any fact or expert materials produced and/or generated in any prior discovery proceedings in any litigation other than the one authorized by this Agreement involving E. I. du Pont de Nemours and Company, The Chemours Company, and/or the 3M Company, without the express written prior approval and consent of the ATTORNEYS. This paragraph does not limit the CLIENT from sharing information pertaining to the litigation with personnel with a need to know such information.

Nothing in this Agreement and nothing in the ATTORNEYS' statement to the CLIENT may be construed as a promise or guarantee about the outcome of this matter. The ATTORNEYS make no such promises or guarantees. ATTORNEYS' comments about the outcome of this matter are expressions of opinion only and the ATTORNEYS make no guarantee as to the outcome of any litigation, settlement, or trial proceedings.

SIGNED, this _____ day of _____, 2020.

MIAMI DADE COUNTY

Mayor

Accepted:
Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA,
316 South Baylen Street
Pensacola, FL 32502

By _____
Wes Bowden, Esq.
Lead Counsel

Date