

M E M O R A N D U M

To: Mayor Schneier and Town Commissioners
Cc: Howard Tipton, Town Manager
From: Maggie D. Mooney, Esq., Town Attorney
Date: February 13, 2023
Subject: Settlement Agreement with Greeley & Hansen Relating to Wastewater Leak Claim

At the February 6, 2023, Workshop, special litigation counsel Martin Garcia and I presented proposed settlement terms with Greeley & Hansen (Contractor) to Town Commission for consideration that, if agreed to, would settle all claims the Town has against the Contractor associated with a subaqueous wastewater force main condition assessment that was performed in 2016. The Town's claims against the Contractor arose out of a force main leak that occurred three (3) years after the Contractor's condition assessment was provided to the Town, and caused more than 14 million gallons of untreated wastewater to leak into the coastal mangrove area adjacent to Sarasota Bay. The Town sent a demand to the Contractor for the fees and costs the Town incurred due to the leak including: emergency repair costs; engineers, lawyers, and other consultants fees relating to the leak; remediation, fines and penalties from, and FDEP enforcement action arising from that leak. The Town also put the Contractor on notice that representatives of Long Bar Pointe (the private property owner where the pipeline failure occurred) had indicated that they sustained unspecified damages from the leak and that they intended to pursue a claim against the Town.

The Town Commission previously accepted the settlement agreement terms presented by the Town's legal counsel and requested that a written Settlement Agreement memorializing such terms be brought back to the Town Commission at a February 21, 2023, Special Meeting for formal review and consideration. A copy of the written Settlement Agreement agreed to by the Contractor is attached. The relevant terms in the Settlement Agreement are:

- Contractor agrees to pay the Town \$425,000 as part of a full resolution of the Town's claims and threatened claims against the Contractor;

- The settlement payment from the Contractor will be payable in three (3) installments as follows:
 - The first payment of \$100,000 would be made no later than 30 days after the effective date of the settlement agreement;
 - The second payment of \$125,00 would be paid on or before June 30, 2023; and;
 - The last payment of \$200,000 would be paid on or before October 30, 2023.
- The Settlement Agreement includes a provision that failure to make timely settlement payments shall constitute a default and that the Contractor will have 10 business days to cure such default.
- The parties are mutually releasing and discharging all claims presented, any potential or threatened claims the parties have or could have asserted against each other relating to: the force main assessment contract between the parties, the assessment work performed by the Contractor, and the leak incident.
- The Settlement Agreement includes releases of the Contractor's agents, employees, former employees, consultants, affiliates, successors, and insurers; and also includes the Town, its Commissioners, employees, consultants, and agents for any claims arising from or related to the assessment and the leak.
- The Contractor does not admit liability or wrongdoing.
- The Settlement Agreement includes a prevailing party attorney fee provision in the event an action is brought to enforce the terms of the Settlement Agreement, and includes a provision for exclusive venue/jurisdiction in the 12th Judicial Circuit in and for Sarasota County, Florida.

It is the collective recommendation of the Town Manager, special litigation counsel (Martin Garcia), and I that the Town Commission approve the attached Settlement Agreement and authorize the Town Manager to execute the Settlement Agreement on the Town Commission's behalf.

Recommended Motion: Approve the Settlement Agreement with Greeley & Hansen and authorize the Town Manager to execute the Settlement Agreement on the Town Commission's behalf.

Attachment:

Settlement Agreement – available in Town Clerk's Office

End of Agenda Item