



**CITY OF FORT LAUDERDALE
City Commission Agenda Memo
REGULAR MEETING**

#20-0397

TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Alain E. Boileau, City Attorney

DATE: May 19, 2020

TITLE: Motion Approving Compromise Agreement Between the City of Fort Lauderdale and All Named Plaintiffs and Putative and Potential Class Members in the Matters of Walter Hinton, et al. v. City of Fort Lauderdale and Ray Adderley, et al. v. City of Fort Lauderdale, in the Amount of \$18,000,000 - **(Commission Districts 1, 2, 3 and 4)**

Recommendation

It is recommended that the City Commission approve a Compromise Agreement, in substantially the form attached, between the City of Fort Lauderdale and all named Plaintiffs and putative and potential class members in the matters of Walter Hinton, et al. v. City of Fort Lauderdale, Case No. CACE 07-030358 (26), and Ray Adderley, et al. v. City of Fort Lauderdale, Case No. CACE 11-008499 (26), in the amount of \$18,000,000. Following 13 years of litigation and expert discovery, and despite the City's strong belief and scientific evidence that it is not liable for the claims asserted, and that the concentrations of any constituents of concern in the foregoing areas are adequately protective of human health and the environment and do not constitute a risk to the community, it is recommended to be in the City's best interest to enter into this Compromise Agreement to avoid the further time and expense and risks associated with continued litigation and the likelihood of conducting numerous trials over several years.

Background

In November 2007, over 100 Plaintiffs, including Walter Hinton and his family, who are residents of the Durrs Neighborhood and surrounding areas, sued the City of Fort Lauderdale by bringing individual claims pursuant to Florida Statute, Section 376.313 (Pollutant Discharge Prevention and Control Act), as well as for negligence, medical monitoring, inverse condemnation, and violation of substantive due process. The lawsuit claimed personal injury, property damage and entitlement to medical monitoring (the cost of periodic medical screening to diagnose the latent diseases expected to arise as a result of an exposure). In April of 2011, a second group of Plaintiffs filed an action, asserting class action allegations, arising out of the same facts and circumstances as the individual claims asserted in the 2007 suit. The 2011 putative class action proposes two subclasses of Plaintiffs: a medical monitoring subclass and a property damage subclass. The 182 Plaintiffs named in both actions, excluding any potential and putative class members,

allege total damages in excess of \$150,000,000.

The claims in both actions arise out of alleged exposure to certain environmental constituents, with the key contaminants being arsenic and dioxin, which the Plaintiffs assert were released in conjunction with the operation of the Lincoln Park municipal waste incinerator between the 1920's and 1950's. Three City-owned properties, which Plaintiffs have termed the "Lincoln Park Complex," are at issue and are located on the north side of Sistrunk Boulevard at Northwest 6th Street, between Northwest 19th Avenue and Interstate 95 in the City. The first parcel is the westernmost property which currently houses a trash transfer and recycling station that serves the residents of Fort Lauderdale. In the past, this property has contained the municipal Lincoln Park incinerator and a wastewater treatment facility. To the northeast of the first parcel is the City's One Stop Shop for municipal services. This land formerly housed Lincoln Park Elementary School. To the south of the One Stop Shop is a grassy field which includes Lincoln Park. Below is a depiction of the separate properties at issue in this matter:



The City has worked proactively with the Florida Department of Environmental Protection and the Florida Department of Health for several years with regard to the sites. The FDOH has issued reports indicating no apparent health hazard and that prior exposures are indeterminate.

Through several years of settlement negotiations, a provisional settlement has been reached in the amount of \$18,000,000, and as detailed in the attached Compromise Agreement, subject to the approval of the City Commission, and thereafter subject to the approval of the Circuit Court, in and for the Seventeenth Judicial Circuit, in and for

Broward County, and potentially subject to the approval of the Florida Legislature, in accordance with Florida Statute, Section 768.28(5).

Resource Impact

Funds for this settlement in the amount of \$18,000,000 were accrued and expensed in fiscal year 2019.

<i>Funds available as of May 11, 2020</i>			
ACCOUNT NUMBER	INDEX NAME (Program)	CHARACTER CODE/ SUB-OBJECT NAME	PURCHASE AMOUNT
543-INS010101-5113	Self-Insurance Claims	Non-Operating Expenses /General Liability Claims	\$18,000,000.00
PURCHASE TOTAL ►			\$18,000,000.00

Attachment

Exhibit 1 – Compromise Agreement

Prepared by: Alain E. Boileau, City Attorney

Charter Officer: Alain E. Boileau, City Attorney