

RESOLUTION NO.: 2017-R72
SPONSOR: MAYOR NEUGEBAUER
INTRODUCED: NOVEMBER 14, 2017

ASSIGNED TO: PUB. SAFETY

A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH MOTLEY RICE LLC, NEALON & ASSOCIATES, P.C., RAFFELLI & PRAZAK, ATTORNEYS AT LAW, AND BRENNAN MANNA & DIAMOND, LLC FOR PURPOSES OF PROVIDING SPECIALIZED LEGAL COUNSEL TO PURSUE LITIGATION RELATED TO THE SALE OF OPIOIDS, AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to engage specialized legal counsel, in conjunction with Summit County, the City of Akron, the City of Barberton, Summit County Public Health, and other local political subdivisions as necessary, to investigate, litigate, or negotiate for settlement, actionable claims that may be pursued by the City against individuals and entities related to the marketing, prescribing, distribution, or sale of opioids.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, AND STATE OF OHIO THAT:

SECTION ONE:

Pursuant to the City of Green's Codified Ordinance Section 210.08, the Mayor be, and hereby is, authorized to enter into an agreement between the City and Motley Rice LLC, Nealon & Associates, P.C., Raffaelli & Prazak, Attorneys at Law, and Brennan Manna & Diamond, LLC (the "Firms") to provide legal counsel services, to investigate, litigate, or negotiate for settlement, actionable claims that may be pursued by the City against individuals and entities related to the marketing, prescribing, distribution, or sale of opioids.

SECTION TWO:

That the expense herein authorized for legal counsel services provided by the Firms shall be based on a contingency fee structure as contractually agreed to by the parties and approved by the Mayor. No fees shall be paid to the Firms for said services until and unless a monetary settlement is first obtained on the City's behalf and approved by Council.

SECTION THREE:

That the Firms will report directly to the Law Director.

SECTION FOUR:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

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SECTION FIVE:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green and for the further reason that the legal services may commence as soon as possible. Provided that this legislation receives the affirmative vote of three-fourths ($\frac{3}{4}$ ths) of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: Dec 12, 2017
Molly Kapeluck
 Molly Kapeluck, Clerk

Chris Humphrey
 Chris Humphrey, Council President

APPROVED: Dec. 12, 2017
Gerard M. Neugebauer
 Gerard M. Neugebauer, Mayor

ENACTED EFFECTIVE: Dec 12, 2017

ON ROLL CALL: Ahlstrom -Aye Dyer -Aye Humphrey -Aye Knodel -Aye
 Speight -Aye Summerville -Aye Young -Aye Adopted 7-0

Suburbanite publication on Dec 15 and Dec. 22, 2017

Molly Kapeluck
 Molly Kapeluck, Clerk

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11/09/2017 Approved as to form and content by Diane A. Calta, Director of Law

Diane A. Calta

11.8.17

CONTRACT FOR LEGAL SERVICES

The undersigned ("Client") and Motley Rice LLC, Nealon & Associates, P.C., Raffaelli & Prazak, Attorneys at Law, and Brennan Manna & Diamond, LLC (the "Firms"), in consideration of the terms and conditions set forth herein, enter into this Contract for Legal Services.

1. Scope of engagement: The Client requests, and the Firms wish to perform, the following activities: to investigate, litigate, or negotiate for settlement, actionable claims that may be pursued by the Client against individuals and entities related to the marketing, prescribing, distribution, or sale of opioids. The remedies sought may include monetary compensation, injunction, declaratory judgment, damages, restitution, payment of penalties as authorized by law, or other remedies.

2. Terms of engagement: The parties understand that under no circumstances shall the Client be liable for any costs, expenses, or attorney fees incurred by the Firms in preparing and conducting this investigation and/or litigation. All expenses, costs and attorneys' fees, if any, shall be paid from the proceeds of the investigation and/or litigation, as a portion of the recovery in the suit after trial or settlement, from an award by the Court to be imposed upon the defendants, by agreement with the defendants, or some combination thereof. The Client shall be ultimate decision maker on all matters relating to the investigation and/or litigation, including whether to file litigation and whether and on what terms to settle such litigation. The Firms shall consult with and obtain the approval of the Client concerning important issues regarding the investigation, litigation, and any settlement, including but not limited to the complaint and dispositive motions, selection of consultants, experts and other professional services, discovery, pre-trial proceedings, trial, and settlement offers, demands, or negotiations. All draft filings shall be provided to the Client sufficiently in advance of filing to permit the Client's review. Regular status meetings shall be held as requested by the Client. The Client also shall designate a point of contact from within the Client to be available to any defendants as appropriate.

3. Attorneys' expenses and fees:

a. The Firms shall only be entitled to recover such fees, costs, and expenses as are incurred in the investigation and/or litigation from any monetary recovery after judgment or settlement, from an award by the Court to be imposed upon the defendants, by agreement with the defendants, or some combination thereof. In the event there is a judgment or settlement without a monetary payment to the Client, the Client will not owe anything for costs, expenses, or attorneys' fees, but the Firms may seek attorneys' fees, costs, and expenses from the Court or from defendants. Expenses and costs shall include, but not be limited to, pre-litigation investigation, discovery, pre-trial proceedings, experts, investigators, consultants and other contractors, travel, copying, freight and postage, communications charges, and any other necessary expenses related to the investigation or litigation. Costs and expenses will be deducted from any monetary recovery remaining after subtracting the contingency fee. Expenses of more than \$25,000 must be approved in advance by the Client.

b. The Client agrees to pay, as compensation for attorneys' services, twenty-five percent (25%) of all claims or recoveries from and against all sources, persons, or entities whether actually tried before a judge or jury or not. The percentage referenced in this paragraph will be calculated on and subtracted from the gross amount of any recovery obtained before any outstanding expenses incurred by the Firms or other costs have been deducted. The Client agrees that the Firms may bring in additional lawyers or law firms to assist in handling this matter, though the Client must approve the selection of additional counsel. The Client will not have any role or liability regarding the division of fees and expenses among the Firms.

c. The value of any injunctive relief, both presently and in the future, shall be included in the value of the recovery for which a contingent fee is paid. However, nothing in this provision will require the Client to pay the contingency fee except from a financial recovery or as awarded by the Court or negotiated with the defendants. In other words, while the value of injunctive relief will be considered part of the total recovery, the contingency fee will still only be paid pursuant to the terms outlined above. The Client and the Firms shall use their best efforts to agree on the value of injunctive relief obtained. In the absence of an agreement between the parties as to the value of relief, the value of such relief shall be determined by consideration of economic models used in the suit, the cost of remediation imposed on the defendants by the Court or the jury, or by other methods agreed upon by the parties. Should the parties fail to agree on the value of the relief obtained, the value shall be determined by a three member arbitration panel whose decision shall be final and non-appealable. Each party shall choose one member of the panel and the two members shall choose the third who shall be the chairperson. The arbitration shall be conducted under the rules of the American Arbitration Association.

d. In the event the investigation or litigation results in an award of monetary recovery, declaratory relief, or injunctive relief or any combination of these awards through judgment or settlement the total amount of the costs, expenses and fees to be paid to the Firms shall not exceed 50% of the amount of the monetary recovery (the fee cap), except under circumstances set forth in subparagraph (g) below. In the event that the litigation does not result in an award of monetary recovery, attorneys' fees, costs, and expenses shall only be recoverable through a court award or settlement.

e. Should the Court award the Client as prevailing party attorneys' fees, costs, and expenses to be paid by the defendants, the Client shall support as an award of reasonable attorneys' fees in an amount not less than the contingency fee amount required by this contract. Any costs, expenses, or fees due the lawyers under this contract shall first be satisfied from funds awarded by the Court from the defendants. Such an award of costs, expenses, and fees shall not be considered as part of monetary recovery and shall not be subject to the lawyers' twenty-five percent (25%) contingency.

f. The contingent fee described in the agreement will be divided among the Firms as follows: Motley Rice will receive 79% of the fee, Brennan, Manna & Diamond, LLC will receive 15%, and Nealon and Associates and Raffaelli & Prazak will receive 3% each. This division of fees is proportionate to the services each firm expects to provide. Motley Rice will advance the costs and expenses of the litigation and the other Firms will advance their own costs and expenses,

all subject to reimbursement as laid out in this agreement.

g. Nothing in this Contract shall limit, and the Client shall be entitled to seek, from the Court and/or the defendants its own costs, expenses, and fees in pursuing this investigation or litigation.

h. If the Firms are terminated by the Client or otherwise withdraws from the investigation or litigation, it shall be entitled to a share of any recovery (including injunctive relief) on a *quantum meruit* basis, as agreed to by the parties or determined by an arbitration panel, selected and operating as laid out above. Nothing in this provision shall affect the professional responsibility of the Firms to ensure that the Client is adequately represented in the event of its withdrawal.

i. The Firms shall use best efforts to maximize the ultimate net recovery for the Client, including using best efforts to recover costs, expenses, and fees in the first instance from defendants, either through settlement or by petitioning the Court. In the event that attorneys' fees, costs, and expenses are paid directly to the Firms, the Client will receive an equal credit against the contingency fee, costs, and expenses due the lawyers under this Contract. If the Court awards attorneys' fees, expenses, and costs, the Client shall be entitled to that portion of the award that is based on services provided by the Client.

4. The Client shall handle public statements.

5. Confidentiality: The Firms agree to keep all information gained in the course of representation confidential to the full extent allowed by law, including, but not limited to, information pertaining to the investigation or litigation, the Client and its officers and employees. The Firms will not use such information to the detriment of the Client nor its officers and employees at any time. It is understood and agreed that any agreement between the Firms and others providing professional services to the lawyers relating to the suit shall contain a confidentiality clause that conforms to the requirements of this paragraph.

6. Malpractice Insurance: The Firms maintain reasonable malpractice insurance and agrees to maintain such insurance during the term of this Contract, which shall begin upon execution of the contract by all parties and end upon completion of the litigation.

7. Modification: This Contract may be modified at any time, in whole or in part, by consent of the Client and the Firms. Such modification shall be in writing and signed by all parties to the Contract.

[Signatures to appear on the Next Page]

[CLIENT]

_____ Date: _____

Name: _____

Title: _____

Approved as to form and correctness:

[CLIENT]

MOTLEY RICE LLC

_____ Date: _____

Name: _____

Title: _____

NEALON & ASSOCIATES, P.C.

_____ Date: _____

Name: _____

Title: _____

RAFAELLI & PRAZAK, ATTORNEYS AT LAW

_____ Date: _____

Name: _____

Title: _____

BRENNAN MANNA & DIAMOND, LLC

Date: _____

Name: _____

Title: _____

