

12/14/17 5:45 p.m.

Resolution 87-2017

RESOLUTION NO. 87-2017

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO RETAIN THE LAW FIRMS OF MOTLEY RICE LLC, NEALON & ASSOCIATES, P.C., RAFFAELLI & PRAZAK, AND BRENNAN, MANNA & DIAMOND, LLC TO REPRESENT THE VILLAGE IN A LAWSUIT AGAINST THE OPIOID INDUSTRY AND DECLARING AN EMERGENCY.

WHEREAS, Village Council recognizes that the State of Ohio is at the center of the country's opioid epidemic; and

WHEREAS, Ohio's counties, municipalities, and townships have expended a considerable amount of taxpayer dollars to help those addicted to or affected by the use of opioids; and

WHEREAS, the State of Ohio has filed a lawsuit on behalf of the State of Ohio, but not on behalf of political subdivisions, against five prescription opioid manufacturers seeking, among other remedies, an injunction to abate the harm caused by opiate manufacturers and to recover the State's costs spent responding to the opioid epidemic; and

WHEREAS, Summit County is working with the law firms of Motley Rice, LLC, Nealon & Associates, P.C., Raffaelli & Prazak, and Brennan, Manna & Diamond LLC to organize a lawsuit to be filed by Ohio counties, municipalities, and townships against individuals and entities that market, prescribe, distribute and sell opioids in an effort to recoup a portion of the taxpayer dollars spent fighting the opioid epidemic; and

WHEREAS, this Council believes it is in the best interest of the Village and its inhabitants to participate in the lawsuit and to authorize the Mayor and Finance Director to enter into a Contract for Legal Services with the law firms listed above to represent the Village in the lawsuit; and

WHEREAS, the Contract for Legal Services provides that the Village will pay for the legal services by remitting a percentage of the proceeds of any settlements or judgments in the Village's favor as a result of the lawsuit to the law firms and, thus, the Village will have no obligation to pay the law firms if there is no monetary recovery.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Contract for Legal Services with Motley Rice, LLC, Nealon & Associates, P.C., Raffaelli & Prazak, and Brennan, Manna & Diamond LLC, in accordance with the Contract attached hereto as Exhibit "A" and incorporated herein fully as if by reference, for the purpose of representing the

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Village in ligation against individuals and entities that market, prescribe, distribute and sell opioids in an effort to recoup the Village's costs expended in response to the opioid epidemic.

SECTION 2. It is found and determined that all formal actions of this Council concerning and related to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to participate in the above-described lawsuit to be filed in a court of proper jurisdiction forthwith; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 12/19/17

Roger David Swan  
President of Council

Balduce Baslam  
Mayor

Dated: 12/19/17

ATTEST:  
Jeffrey  
Clerk of Council

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## EXHIBIT A

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

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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 (h) 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

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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 Ncalon 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 withdraw 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, subject, in any case, to the fee cap described in paragraph 3(d).

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.

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8. Choice of law: Disputes under this Contract are to be resolved pursuant to Ohio law, and any legal actions to enforce its terms shall be filed in a court of competent jurisdiction in Summit County, Ohio

[Signatures to appear on the Next Page]

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[CLIENT]

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Date: .....

Name: .....

Title: .....

Approved as to form and correctness:

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[CLIENT]

MOTLEY RICE LLC

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Date: .....

Name: .....

Title: .....

NEALON & ASSOCIATES, P.C.

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Date: .....

Name: .....

Title: .....

RAFAELLI & PRAZAK, ATTORNEYS AT LAW

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Date: .....

Name: .....

Title: .....

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BRENNAN MANNA & DIAMOND, LLC

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Date: .....

Name: .....

Title: .....