

REPRESENTATION AND FEE AGREEMENT

THIS AGREEMENT is made the 17th day of July 2018, between the City of Broken Arrow, Oklahoma (the "City"), and McAfee & Taft A Professional Corporation and Fulmer & Sill (collectively, the "Attorneys").

WHEREAS, the City believes that it has a cause of action against certain Opioid Manufacturing, Distributors and potentially other third parties (collectively, the "Defendants") for damages and equitable relief arising out of the conduct of the Defendants in connection with the manufacturing, marketing and distribution of opioids (the "Claim").

WHEREAS, the City represents that they are the owner of the Claim and have not assigned, modified, settled or received payment for the Claim, or entered into any prior fee agreement with any other attorney(s) with respect to the Claim.

NOW, THEREFORE, IT IS AGREED between the City and the Attorneys as follows:

1. **Contingent Fee.** In consideration of the services to be rendered by the Attorneys in connection with the Claim against Defendants, if the City obtains a recovery on their Claim, the City agrees to pay Attorneys a contingency fee equal to twenty-five percent (25%) of the recovery for the risks of prosecuting this case on a contingency fee basis (the "Contingency Fee"). In calculating the Contingency Fee, the Recovery will first be reduced by the Costs as defined in paragraph 4 of this Agreement, and increased by any court awarded attorneys' fees as defined by Paragraph 3.
2. **Recovery.** The term "Recovery" as used herein shall mean all sums and things of value received pursuant to any demand upon or litigation against Defendants whether said sums are received pursuant to settlement, court proceedings or otherwise.
3. **Court-Awarded Attorneys' Fees.** If the City recovers court-awarded attorneys' fees, the amount awarded shall be deemed part of the Recovery. The City understands that if they do not prevail on certain claims that may be asserted against the defendants, there is a potential for the Court to award attorneys' fees and costs in favor of Defendants. City understands and agrees that any such award in favor of Defendants will be against the City, and the City will be solely liable to satisfy such judgment. Attorneys will not be liable for a judgment of attorneys' fees awarded in favor of Defendants.
4. **Costs.** All necessary costs and expenses incurred in connection with the Claims, including but not limited to court costs, deposition costs, expert witness fees, witness expenses, computer forensic expenses, e-discovery, copying, Westlaw and/or other legal research fees, settlement expenses, telephone, travel and lodging expenses of the Attorneys in connection therewith, shall initially be paid for by the Attorneys. Costs may included case specific expenses and the City's pro rata share of any general case expenses or assessments. General case expenses are those expenses incurred in the prosecution of the City's Claim for the benefit of the City that may also arise for other similarly situated municipalities, counties and other parties involved in the opioid litigation. If this matter is removed to an Opioid MDL proceeding in federal court, and it is determined that the City must pay an assessment to the MDL proceedings for attorneys' fees, legal expenses and/or costs connected to the MDL (the "MDL Assessment"), then the MDL.

Assessment shall be treated as Costs under this Agreement and will be paid to the MDL prior to the calculation of the Recovery. All costs incurred by Attorneys shall be deducted from any amounts received and repaid to Attorneys before the Recovery is calculated. To the extent the City receives an award of costs from the Court, the amount awarded shall be deemed part of the Recovery. If no Recovery is obtained, City will have no obligation to pay costs, unless the costs are costs awarded to Defendants by the Court on the City's Claims.

5. **Assignment of Portion of Claim.** City hereby transfers and assigns to Attorneys an undivided interest in City's claims. The undivided interest hereby assigned to Attorneys by City is equivalent to the fees, costs, and expenses, including the percentage of any Recovery, that City, by this Agreement, promises to pay to Attorneys. The undivided interest assigned by this Agreement is a present, not an executor interest.

6. **Settlement Decisions.** All decisions relative to acceptance or rejection of any settlement offer will remain the sole discretion of the City, provided, however, if the City neglects to accept the Attorneys' advice on whether to accept any settlement offer, the City agrees they will become liable for all costs incurred in said action and any attorneys' fees billed after the date the City receive written notification from Attorneys that they should accept the settlement offer.

7. **Attorneys' Obligations.** The Attorneys agree that they will diligently institute and prosecute said action to a final determination, make all reasonable and necessary efforts to collect any judgment that may be rendered therein in favor of the City; that they will promptly communicate to the City any offers of compromise; and that, in the event of a judgment unfavorable to the City, they will, if in the Attorneys' sole judgment reasonable grounds therefore exist, appeal said cause and prosecute the same to final determination. Attorneys shall staff this matter with such attorneys and legal assistants as they deem appropriate.

8. **Withdrawal.** Attorneys may withdraw from representation of City's Claim at any time with written notice.

9. **No Guarantee.** The City acknowledges that Attorneys have made no guarantee regarding the successful prosecution of the Claim, nor any guarantee regarding the Recovery or the type of relief, if any, which the City may obtain therefrom. Further, the City acknowledges that the Attorneys do not warrant or represent the validity of the Claim, the results of any action or the collectability of any judgment.

10. **Multiple Representation.** The City understands and agrees that Attorneys may represent other clients, including governmental entities, in connection with claims against Defendants. Defendants may attempt to settle cases in groups under a matrix-type system whereby our clients are offered different settlement amounts, depending on the circumstances of different groups of clients categorized by the specific allegations of misconduct and/or severity of damages. Once settlement value under the "matrix" is determined, the City is given the opportunity to accept or reject the settlement and/or injunctive relief being offered, within the matrix system, for whatever group within which the City may be placed. Defendants may also try to settle all or a portion of our clients' cases as a group, meaning the Defendants may attempt to settle all or a portion of your Claim along with a number of other similar cases the Attorneys

are handling. When a Defendant offers this "group settlement" system, Attorneys will get each client's authorization for a minimum, gross amount for which the client authorizes the Attorneys to attempt to settle the client's case. The Attorneys then add up the total of all clients' minimum, authorized settlement values and attempts to settle the group for at least the total of all minimum amounts authorized by all the clients. The City agrees to the above settlement procedures.

11. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

12. Amendments and Modifications. The City and the Attorneys specifically acknowledge and agree that this Agreement constitutes the entirety of their agreement and supersedes and replaces any and all prior agreements, negotiations, or discussions between them; and, that this Agreement shall not be amended, modified, or changed in any manner whatsoever unless such amendments, modifications, or changes shall be in writing and signed by all the parties hereto.

13. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Oklahoma.

ATTORNEYS:

CITY OF BROKEN ARROW,
OKLAHOMA:

McAfee & Taft

By: Todd Court, Vice President

Fulmer Sill

By: Matt Sill

By: Craig W. Thurmond, Mayor

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

ATTEST:

(Seal) CITY CLERK

