

## Opioid Litigation Engagement Letter

Date: \_\_\_\_\_

Name of City or Town: \_\_\_\_\_

Name of Mayor or  
authorized signatory: \_\_\_\_\_

Email Address: \_\_\_\_\_

RE: Opioid Litigation - Engagement of Rainwater, Holt & Sexton, P.A., of Cory Watson, P.C., Reddick Moss, PLLC., Wyly~Rommel, PLLC, Attorney Ralph Ohm, and the Arkansas Municipal League/Municipal Legal Defense Program (AML/MLDP), as Counsel in Relation to Claims Against Opioid Companies.

This letter ("Engagement Letter") sets out in writing the terms and conditions upon which the law firms of Rainwater, Holt & Sexton, P.A., Cory Watson, P.C., Reddick Moss, PLLC, Wyly~Rommel, PLLC, Attorney Ralph Ohm and AML/MLDP, collectively "Counsel," will provide legal services to the City or Town (municipality or municipalities where context dictates) in relation to the investigation and prosecution of certain claims against the following companies and other parties involved with the manufacture and/or distribution of opioid medications:

Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Inc., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho- McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions, Inc., Endo Pharmaceuticals, Inc., Mallinckrodt P.L.C., Insys Therapeutics, Inc., Allergan P.L.C. f/k/a Actavis P.L.C., Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis L.L.C., Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., McKesson Corporation d/b/a McKesson Drug Company, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively "Opioid Companies").

Depending upon the results of initial investigations of the facts and circumstances surrounding the potential claim(s), there may be additional parties sought to be made responsible and/or certain of the aforementioned parties may be removed from the potential claim.

This Engagement Letter shall apply solely and exclusively to the services set forth herein in relation to the investigation and Lawsuit, as defined below. This Engagement Letter does not govern, nor does it apply to, any services of Counsel unrelated thereto.

### FEES AND EXPENSES

A. Contingent Fee: In consideration of the legal services to be rendered by Counsel, the contingent attorneys' fees for the services set forth in this Engagement Letter shall be a total gross fee of 25% of the Recovery, which sum shall be divided among Counsel.

B. No Fee if No Recovery: There is no fee for the services provided herein unless a monetary recovery acceptable to the municipality is obtained by Counsel in favor of the municipality, whether by suit, settlement, or otherwise ("Recovery").

C. City or town understands and agrees that a Recovery may occur in any number of different fashions such as final judgment in the Lawsuit, settlement of the Lawsuit, or appropriation to City or Town following a nationwide settlement or extinguishing of claims in lawsuits and matters similar to the Lawsuit.

1. Costs to be Advanced by Attorneys: Counsel agree to advance all costs and expenses of Counsel, and the Lawsuit associated with investigating and prosecuting the Lawsuit provided, however, that any costs and expenses associated with City or Town cooperating with Counsel in conjunction with the Lawsuit and otherwise performing its responsibilities under this Engagement Letter are the responsibility of City or County.

2. Costs to be Paid from Recovery, if Any: After the application of the applicable fee percentage to the gross Recovery, and that dollar amount set aside as attorneys' fees to Counsel, the amount remaining shall first be reduced by the costs and disbursements that have been advanced by Counsel, and that amount shall be remitted to Counsel. By way of example only, if the gross amount of the Recovery is \$1,000,000.00, and costs and disbursements are \$100,000.00, then the fee to Counsel shall be \$250,000.00, the costs amount of \$100,000.00 shall be deducted from the balance of \$750,000.00, and the net balance owed to City or Town shall be \$650,000.00.

3. Explanation of Costs: The costs and disbursements which may be deducted from a Recovery include, but are not limited to, the following, without limitation: court fees, process server fees, transcript fees, expert witness fees and expenses, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses, attend meetings related to the scope of this Engagement Letter and the like, and other appropriate matter related out-of-pocket expenses.

4. Contingency Fee Only: In the event that any Recovery results in a monetary payment to City or Town that is less than the amount of the costs incurred and/or disbursements made by Counsel, City or Town shall not be required to pay Counsel any more than the sum of the full Recovery.

D. Nature of Contingent Fee: No monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel in the event no Recovery to municipality has been obtained. In the event of a loss at trial due to an adverse jury verdict or a dismissal of the Lawsuit by the court, no monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel. In such an event, neither party shall have any further rights against the other.

E. Disbursement of Recovery Proceeds to City or Town: The proceeds of any Recovery on City's or Town's behalf under the terms of this Engagement Letter shall be disbursed to City or Town as soon as reasonably practicable after receipt by Counsel. At the time of disbursement of any proceeds from a Recovery, City or Town will be provided with a detailed disbursement sheet reflecting the method by which attorney's fees have been calculated and the expenses of litigation that are due to Counsel from such proceeds. Counsel are authorized to retain out of any moneys that may come into their hands by reason of their representation of City or Town the fees, costs, expenses and disbursements to which they are entitled as determined in this Engagement Letter.

**SCOPE OF SERVICES:** Counsel will work with City or County in the collection of information necessary to form a good faith basis for filing a claim against the Opioid Companies. City or County hereby authorizes Counsel to file a lawsuit against one or all of the Opioid Companies ("Lawsuit") upon the terms and conditions set forth herein.

**RESPONSIBILITIES OF LEGAL COUNSEL:** Counsel will prosecute the Lawsuit with diligence and keep City or Town reasonably informed of progress and developments, and respond to City's or Town's inquiries. City or Town understands and agrees that all fees paid to Counsel shall be as set forth in this Engagement Letter. City or Town agrees to cooperate with Counsel in the gathering of information necessary to investigate and prosecute the Lawsuit. The following additional terms apply to the relationship between the municipality and Counsel:

A. Counsel shall remain sufficiently aware of the performance of the legal counsel team and the performance of one another to ascertain if each firm's handling of the Lawsuit conforms to the Rules of Professional Conduct. Counsel shall be available to City or Town regarding any concerns on the part of the municipality relating to the performance of Counsel. Counsel shall at all times remain ethically and financially responsible to the City or Town for the services of

Counsel set forth herein.

B. As set forth above, City's and Town's responsibility for attorney fees and expenses is contingent upon the successful outcome of the Lawsuit, as further defined below. The total contingent fee of 25% will be divided by and between Counsel. The City or Town agrees that the fee may be divided by agreement between lawyers who are not in the same firm and understands that each of the lawyers are assuming joint responsibility for the representation.

C. Counsel and municipality understand and agree that Counsel will all be considered attorneys for City or Town, that each and all of Counsel will adhere to the Rules of Professional Responsibility governing the relationship between attorney and client, and that each law firm assumes joint responsibility for the representation.

**ACTUAL AND POTENTIAL CONFLICTS OF INTEREST AND WAIVER OF CONFLICT:** As City or Town is aware, Counsel contemplate entering into the same arrangement as that set forth in this Engagement Letter with other Arkansas counties. As City or Town is also aware, some Counsel contemplate entering into a similar arrangement with Arkansas municipalities. Counsel believe that the goals and objectives of City or Town are aligned with the goals and objectives of all other counties and municipalities with respect to the Lawsuit. Counsel do not believe that to achieve the goals of the Lawsuit, either City or Town or another county or municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which City or Town disagrees with another county or municipality, and one of you may wish to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise City or Town or assist City or Town or any other county or municipality in pursuing such a course. That is to say, Counsel cannot advocate for the municipalities individual interests at the expense of the other counties or municipalities that Counsel represent in a Lawsuit. Counsel do not believe that this poses a problem because City's and Town's interests are currently aligned with the other counties and municipalities that are or may be in the Lawsuit. Counsel are confident that their representation of the municipality will not be limited in this matter by representation of any other county or municipality, but City or Town should consider these consequences of joint representation in deciding whether to waive this potential conflict. In addition to the material limitation discussed above, there are other consequences for City or Town in agreeing to joint representation. Because each county or municipality would be a client of Counsel, Counsel owe equal duties of loyalty and communication to each client. As such, Counsel must share all relevant information with all counties and municipalities who are clients in relation to the Lawsuit and Counsel cannot, at the request of one county or municipality, withhold relevant information from the other client. That is to say, Counsel cannot keep secrets about this matter among the counties and municipalities who are clients of Counsel with respect to the Lawsuit. Also, lawyers normally cannot be forced to divulge information about communications with their clients because it is protected by the attorney-client privilege. However, because City or Town would be a joint client in the same matter with other counties and municipalities, it is likely that were there to be a future legal dispute between County and other counties or municipalities that engage Counsel about this matter, the attorney-client privilege would not apply, and each would not be able to invoke the privilege against the claims of the other. Further, while City or Town's position is in harmony with other counties and municipalities presently, and the conflict discussed above is waivable, facts and circumstances may change. For example, County may change its mind and wish to pursue a course that is adverse to the interests of another county or municipality and the conflict may become unwaivable. In that case, depending upon the circumstances, Counsel may have to withdraw from representing either City or Town or another county or municipality and City or Town would have to bear the expense, if City or Town chooses, of hiring new lawyers who would have to get up to speed on the matter. City or Town is not required to agree to waive this conflict, and municipality may, after considering the risks involved in joint representation, decline to sign this Engagement Letter. By signing this Engagement Letter, City or Town is signifying its consent to waiving the potential conflict of interest discussed herein. Other than the facts and circumstances related to the joint representation of numerous counties and municipalities, Counsel are unaware of any facts or circumstances that would prohibit Counsel from providing the services set forth in this Engagement Letter. However, it is important to note that it is possible that some present and future clients of Counsel will have business relationships and potential or actual disputes with City or Town. Counsel will not knowingly represent clients in matters that are actually adverse to the interests of City or Town without City or Town's permission and informed consent. Counsel respectfully requests that City or Town consent, on a case by case basis, to counsel's representation of other clients whose interests are, or maybe adverse to, the interests of City or Town in circumstances where City or Town has selected other counsel and where counsel has requested a written conflict waiver from City or Town after being advised of the circumstances of the potential or actual conflict and City or Town has provided informed consent.

**TERMINATION OF REPRESENTATION:** This Engagement Letter shall cover the period from the date first indicated

below until the termination of the legal services rendered hereunder, unless earlier terminated as provided herein. This Engagement Letter may be terminated by City or Town at any time, and in the event of such termination, neither party shall have any further rights against the other, except that in the event of a Recovery by City or Town against the Opioid Companies subsequent to termination, Counsel shall have a statutory lien on any such recovery as provided by applicable law and further maintain rights in the nature of quantum meruit to recover fees, costs and expenses reasonably allocable to their work prior to termination. Counsel may withdraw as City's or Town's attorneys at any time for the following reasons:

A. If Counsel determine, in their sole discretion, that City or Town's claim lacks merit or that it is not worthwhile to pursue the Lawsuit further; or

B. For Good Cause. For purposes of this Paragraph, Good Cause may include City or Town's failure to honor the terms of the Engagement Letter, City's or Town's failure to follow Counsel's advice on a material matter, or any fact or circumstance that would, in the view of Counsel, impair an effective attorney-client relationship or would render continuing representation unlawful or unethical. If terminated for Good Cause, City or Town will take all steps necessary to free Counsel of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete withdrawal provided, however, that Counsel shall have a statutory lien on any Recovery as provided by applicable law and further maintain rights in the nature of quantum meruit to recover fees, costs and expenses reasonably allocable to their work prior to termination.

**SETTLEMENT:** City or Town has the authority to accept or reject any final settlement amount after receiving the advice of Counsel. City or Town understands settlements are a "compromise" of its claim(s), and that Counsel's fee, as set forth above, applies to settlements also. For example, if a settlement is reached, and includes future or structured payments, Counsel's fee shall include its contingent portion of those future or structured payments.

**NO GUARANTEE OF RECOVERY:** City or Town understands and acknowledges that dispute resolution through litigation often takes years to achieve. City or Town understands and acknowledges that there is no guarantee or assurances of any kind regarding the likelihood of success of the Lawsuit, but that Counsel will use their skill, diligence, and experience to diligently pursue the Lawsuit.

**LIMITED LIABILITY:** Under Arkansas law, the law firms are limited liability entities. This means that if Counsel fails to perform duties in the representation of the municipality and that failure causes City or Town's damages, the firms comprising Counsel and the shareholder(s) or principals directly involved in the representation may be responsible to City or Town for those damages, but the firm's other shareholders or principals will not be personally responsible. Counsel's professional liability insurance exceeds the minimum amounts required by the Arkansas Supreme Court for limited liability entities of similar size.

**COMMUNICATION BY E-MAIL:** Counsel primarily communicates with its clients via unencrypted internet e-mail, and this will be the way in which communications occur with City or Town. While unencrypted e-mail is convenient and fast, there is risk of interception, not only within internal networks and the systems used by internet service providers, but elsewhere on the internet and in the systems of our clients and their internet service providers.

**FILE RETENTION AND DESTRUCTION:** In accordance with Counsel's records retention policy, most paper and electronic records maintained are subject to a 10-year retention period from the last matter activity date or whatever date deemed appropriate. Extended retention periods may apply to certain types of matters or pursuant to County's specific directives. After the expiration of the applicable retention period, Counsel will destroy records without further notice to City or Town, unless City or Town otherwise notifies in writing.

**MISCELLANEOUS:** This Engagement Letter shall be governed by and construed in accordance with the laws of the State of Arkansas, without regard to conflicts of law rules. In the event of any dispute arising out of the terms of this Engagement Letter, venue for any such dispute shall be exclusively designated in the State of Arkansas, Circuit Court for Pulaski County, Arkansas, or in the United States District Court for the Eastern District of Arkansas. It is expressly agreed that this Engagement Letter represents the entire agreement of the parties, that all previous understandings are merged in this Engagement Letter, and that no modification of this Engagement Letter shall be valid unless written and executed by all parties. It is expressly agreed that if any term or provision of this Engagement Letter, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Engagement Letter, or

the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Engagement Letter shall be valid and shall be enforced to the fullest extent permitted by law. The parties acknowledge that they have carefully read and fully understand all of the provisions of this Engagement Letter, and that they have the capacity to enter into this Engagement Letter. Each party and the person signing on behalf of each party, represents that the person signing this Engagement Letter has the authority to execute this document and thereby bind the party hereto on whose behalf the person is signing. Specifically, City or Town acknowledges that it is bound by this Engagement Letter, has satisfied all conditions precedent to execution of this Engagement Letter and will execute all the necessary documents that may be required by governing law.

**CONCLUSION:** As Counsel, we are pleased to have this opportunity to be of service to the City or Town. If at any time during the course of representation you have any questions or comments about our services or any aspect of how we provide services, please don't hesitate to call one or all of the individuals listed below.

Sincerely,

Don A. Zimmerman, AML Executive Director  
Mark R. Hayes, AML Director of Legal Service  
Mike Rainwater, Rainwater, Holt & Sexton, P.A.  
Ralph Ohm,  
Ernest (Ernie) Cory, Cory Watson Attorneys  
Brian Reddick, Reddick Moss Attorneys  
James C. Wyly, Wyly-Rommel Attorneys

**Acceptance by City or Town of Offer of Representation by Counsel in Opioid Litigation:**

City or Town agrees to retain the services of Counsel upon the terms and conditions specified above.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_