

**CITY OF SANTA FE
LEGAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Salazar Sullivan & Jasionowski, Ferrer Poirot & Wansbrough, Motley Rice LLC., and Fears Nachawati Law Firm, PLLC. ("Contractors"). The date of this Agreement shall be the date when it is executed by the City and the Contractors, whichever occurs last.

1. SCOPE OF WORK

The Contractors shall provide the following professional legal services to the City under this agreement:

A. Investigate, evaluate the merits of and, to the extent desired by the City, pursue litigation against opioid manufacturers, distributors and others related to the impact of the opioid epidemic on the City of Santa Fe. The Contractors shall collaborate with other public entities if the City, in consultation with the Contractors determines such collaboration to be in the best interest of the City.

B. Be responsible for legal research, advice and representation concerning the manufacture, marketing and distribution of opioids and the impact of opioids on the City of Santa Fe.

C. Brief City officials, employees and the City Attorney on all matters related to this Scope of Work of this RFP.

D. Provide copies of all litigation correspondence and pleadings produced and received in connection with that litigation and give timely written notice to the City Attorney on any and all pleadings, dispositive motions, rulings, hearings, trials, mediations or settlement negotiations and any other legal events relevant to the Scope of Work of this RFP.

E. Meet, coordinate with and submit interim reports to the City Attorney on a basis to be determined by the City Attorney.

F. Refrain from making any settlement or compromise of any nature of any of the City's claims without the City's prior approval. The City has the absolute right to accept or reject any settlement or compromise. The City agrees to seriously consider any settlement offer Contractors recommend before making a decision to accept or reject such offer.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractors represents that Contractors possess the personnel, experience, knowledge, and financial resources necessary to perform the services described under this Agreement.

B. The Contractors agree to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. CONTINGENT FEE COMPENSATION; COSTS AND EXPENSES

A. There is no fee for this representation unless a monetary recovery acceptable to City is obtained by Contractors. Contractors will only be compensated for services performed if the Contractors obtain Recovery for the City. Recovery means a monetary recovery stemming from performance of the scope of work set forth herein, acceptable to the City, and obtained by Contractors, whether by suit, settlement, or otherwise. Contractors agree to advance all costs and expenses associated with prosecuting the litigation. Absent Recovery, Contractors will not be compensated for fees and costs and expenses associated with this Agreement.

B. The fee for the representation outlined herein shall be on a sliding scale as a percent gross fee, as defined in this document below at 3(C). From any Recovery, after the application of the sliding scale percent fee to the gross amount recovered, Contractors will be reimbursed for all costs and expenses associated with representation of City in this matter. Contractors shall facilitate payment of fees and costs and expenses in accordance with this Agreement, and shall then remit the balance of monies recovered to the City. The fees, costs and expenses received by Contractors in accordance with this Agreement shall be paid from the settlement proceeds, with authorization from the City, to the Contractors. The Contractors shall be solely responsible for payment to subcontractors or third parties whose services are rendered to the Contractors as part of Contractors Scope of Work under this Agreement. In the event of a loss at trial or abandonment of the claim prior to recovery of any sums, no monies shall be paid to Contractors or any subcontractors for any work performed or any costs or expenses incurred.

C. Attorneys will assume joint responsibility for the City's representation and the division of the attorney's fees between Attorneys and any associated counsel will be based upon that joint representation and will not affect the amount that the City recovers in any way. The percentages referenced below will be calculated on and subtracted from the gross amount of any recovery obtained before any outstanding expenses incurred by Attorneys. The attorneys' fees will be split between Attorneys as follows: Motley Rice LLC will retain 50 percent (50%) of the total net attorneys' fees, and Fears | Nachawati Law Firm, PLLC will retain 16 and 2/3 (16.66%) of the total net attorneys' fees, and the Law Office of Ferrer Poirot & Wansbrough will retain 16 and 2/3 (16.66%) of the total net attorneys' fees,

and the Law office of Salazar, Sullivan & Jasionowski will retain 16 and 2/3 (16.66%), of the total net attorneys' fees, based upon the following schedule of fees:

Twenty-five percent (25%) of any recovery up to Two and a half Million Dollars (\$2,500,000.00); plus

Twenty percent (20%) of any portion of such recovery between Two and a half Million Dollars (\$2,500,000.00) and Three and a half million (\$3,500,000.00); plus

Fifteen percent (15%) of any portion of such recovery between Three and a half Million Dollars (\$3,500,000.00) and Four and a half Million Dollars (\$4,500,000.00); plus

Ten percent (10%) of any portion of such recovery between Four and a half Million Dollars (\$4,500,000.00) and Five and a half Million Dollars (\$5,500,000.00); plus

Five percent (5%) of any portion of such recovery exceeding Five and a half Million Dollars (\$5,500,000.00).

D. By way of example only, if the litigation is settled for the gross amount of \$1,000,000.00, and the costs and expenses are \$100,000, then the fee to Contractors shall be \$250,000, the costs and expenses of \$100,000 shall be deducted from the balance, and the net recovery to City shall be \$650,000. The costs and expenses which may be deducted from a monetary recovery acceptable to City that is obtained by Contractors include the following without limitation: court fees, process server fees, transcripts fees, expert witness fees, MDL fees, common benefit assessments, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses and the like, and other appropriate out-of-pocket expenses, as determined in the reasonable discretion of City.

E. In the event that any settlement, final judgement, or other resolution of the action results in a monetary recovery to the City that is less than the amount of the

attorney's fees and costs and expenses incurred by Contractors, City shall not be required to pay Contractors any more than the sum of the full monetary recovery. No monies shall be paid to Contractors for any work performed or costs or expenses incurred by Contractors in the event no monetary recovery to City has been obtained by Contractors. In the event the Contractors fails to secure funds from which attorney's fees and costs and expenses can be paid, including but not limited to a loss at trial or a dismissal of the lawsuit by the court, no monies shall be paid to Contractors for any work performed or costs and expenses incurred by the Contractors. In such an event, neither party shall have any further rights against the other.

F. Contractors' fee set forth above is not set or regulated by law but has been freely negotiated between the Contractors and City. Unless Contractors and City negotiate and execute a separate agreement, the City need not pay Contractors for any matter related to, but not specifically covered in, this Agreement.

G. No settlement or compromise of any nature shall be made of any of the City's claims without the City's prior written approval.

H. Payment of Contractors' fee under this Agreement shall not foreclose the right of the City to recover excessive or illegal payment.

I. Contractors will incur various costs and expenses in performing these legal services. Costs and expenses shall include court fees, jury fees, service of process charges, court and deposition reporters' fees, MDL fees, common benefit assessments, photocopying and reproduction costs, notary fees, long distance telephone charges, messenger and other delivery fees, postage, deposition costs, travel costs including parking,

mileage, transportation, meals and hotel costs, investigation expenses, consultant, expert witness, professional mediator, and arbitrator and/or special master fees. Costs and expenses will be compensated at cost in the event of a sufficient recovery. Costs shall be charged at a reasonable rate, in an amount not to exceed the lowest rate charged to other clients, and shall be pro-rated when shared with other clients.

J. As set forth above, the City's responsibility for attorney fees, costs and expenses is contingent upon the scope of work defined above resulting in Recovery. Contractors and any additional law firms working as subcontractors with the approval of the City have agreed in writing as to the appropriate split of attorney fees. Specifically, in the event of a Recovery (as defined above), the attorney fees will be split between the law firms as follows:

Motley Rice LLC will retain 50 percent (50%) of the total net attorneys' fees

Fears | Nachawati Law Firm, PLLC will retain 16 and 2/3 (16.66%) of the total net attorneys' fees

Ferrer Poirot & Wansbrough will retain 16 and 2/3 (16.66%) of the total net attorneys' fees

Salazar, Sullivan & Jasionowski will retain 16 and 2/3 (16.66%)

The split of attorneys' fees outlined above may be subject to change. In the event of such an amendment, the City will be notified in writing of that amendment.

K. The City shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the City's option to withhold, for the purposes of set-off, any moneys due to Contractors under this Agreement

up to any amounts due and owing to the City with regard to this Agreement. The City shall exercise its set-off rights in accordance with normal City practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the City.

4. TERM AND EFFECTIVE DATE

A. This Agreement shall be effective when signed by both parties and terminate upon a final disposition of the case including distribution of the proceeds of any settlement or judgment, unless terminated sooner pursuant to Article 5 below.

5. TERMINATION

A. The City may discharge the Contractors at any time and in the event of such termination neither party shall have any rights against the other party, except as follows. In the event of a recovery by the City against the Defendants of a claim brought by Contractors subsequent to termination, Contractors shall have rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination. Contractors may withdraw with the City's consent or, within a reasonable time after giving notice to the City, for good cause. Good cause includes the City's breach of this Agreement and/or the City's refusal to cooperate with the Contractors in pursuing this litigation, the Contractors' determination that there is a lack of merit to any claims, or any other fact or circumstance that would render Contractors's continuing representation unlawful or unethical. To the extent the term expires prior to the completion of litigation commenced by Contractors during the term of this Agreement, Contractors shall also have rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to expiration of the Agreement, but only if they thereafter

attempt unsuccessfully to compete to secure responsibility for continuing the litigation.

6. STATUS OF CONTRACTORS; RESPONSIBILITY FOR PAYMENT OF
EMPLOYEES AND SUBCONTRACTORS

A. The Contractors and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractors, and their agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractors shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractors in the performance of the services under this Agreement.

7. CONFIDENTIALITY

A. Any confidential information provided to or developed by the Contractors in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractors without the prior written approval of the City, except as otherwise provided by law.

8. CONFLICT OF INTEREST

A. The Contractors represent that they have no interest that conflicts with the Scope of Work under this Agreement. The City understands that the Contractors may have in the past represented other clients adverse to the City in matters unrelated to the Scope of Work. The City agrees that such past and current representation will not require the disqualification of Contractors in such other matters. The Contractors represent that they

will not, during the term of this Agreement, represent new clients in any future matter whose interests are adverse to the City without the City's consent.

9. ASSIGNMENT; SUBCONTRACTING

A. The Contractors shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractors shall not subcontract any portion of the services to be performed under this Agreement (other than as contained in Contractors' proposal for services) without the prior written approval of the City.

10. RELEASE

A. The Contractors, upon acceptance of final payment of the amount due under this Agreement, release the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. If not completed at the time of final payment, the Contractors shall remain obligated to complete the Scope of Services and other obligations under this Agreement. The Contractors agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractors has express written authority to do so, and then only within the strict limits of that authority.

11. INSURANCE

A. Types of insurance. At all times during the term of this Agreement, Contractors shall maintain insurance coverage as follows:

1. Commercial General Liability. Commercial General Liability (COL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage

at least as broad which shall cover liability arising from any and all bodily injury, personal injury or property damage providing the following minimum limits of liability.

- General Annual Aggregate (other than Products/completed Operation) \$2,000,000
- Products/Completed Operations Aggregate: \$2,000,000
- Personal Injury Limit \$2,000,000
- Each Occurrence \$2,000,000

2. Automobile Liability. For all of the Contractors' automobiles including owned, hired and non-owned automobiles, Contractors shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$1 million per accident. An insurance certificate shall be submitted to the City that reflects coverage for any automobile [any auto].

3. Professional Liability. For Contractors and all of Contractors' employees who are to perform professional services under this Agreement, Contractors shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall

provide a limit of not less than \$3,000,000 per claim and \$3,000,000 annual aggregate. Contractors shall ensure both that: (i) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (ii) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement, whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

4. Workers' Compensation. For all of Contractors' employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractors shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide Employers Liability Limits as follows:

- Bodily Injury by Accident \$1,000,000 Each Accident
- Bodily Injury by Disease \$1,000,000 Each Employee

Contractors shall provide an endorsement that the insurer waives the right of subrogation

against the City of Santa Fe and its elected officials, officers, employees, agents, volunteers and representatives.

B. Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the AM. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

12. INDEMNIFICATION

The Contractors shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractors' performance under this Agreement as well as the performance of Contractors' employees, agents, representatives and subcontractors, including payments of all attorneys' fees and costs.

13. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractors. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

14. RECORDS AND AUDIT

A. The Contractors shall conform with and participate in the Document Control policies of the City of Santa Fe. The Contractors shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to

the scope of services provided under this Agreement. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

B. The Contractors shall maintain, throughout the term of this Agreement and for a period of three years thereafter, all records that relate to the scope of services provided under this Agreement. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

15. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractors shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractors agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District.

16. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

17. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

18. NON-DISCRIMINATION

During the term of this Agreement, Contractors shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractors hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

19. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

20. NOTICES

Any notices, requests, demands or other communications given, as provided in this agreement, will be in writing and will be deemed to have been given if delivered in

person (including by Federal Express or other personal delivery service), or mailed by certified or registered mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Attn: City Attorney's Office
P.O. Box 909
Santa Fe, NM 87504

Contractors
Attn: Pia Salazar
100 Gold Ave SW #201,
Albuquerque, NM 87102

Ferrer Poirot & Wansbrough,
2603 Oak Lawn Ave. Ste.300
Dallas, TX 75219
Motley Rice LLC.,
401 9th St. NW, Ste. 101
Washington, DC 20004

Fears|Nachawati Law Firm, PLLC
4925 Greenville Ave. Ste. 715
Dallas, TX

Any such notice sent by registered or certified mail, return receipt, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notice sent by recognized overnight delivery service shall be effective only upon actual receipt thereof at the office of the addressee set forth above, and any such notice delivered at a time outside of normal business hours shall be deemed effective at the opening of business on the next business day. Notice sent by facsimile or email shall be effective only upon actual receipt of the original unless written confirmation is sent by the recipient of the facsimile or email stating that the notice has been received, in which case the notice shall be deemed effective as to the date specified in the confirmation. Any party may change its address for purposes of this paragraph by giving notice to the other party as herein provided. Delivery of any copies as provided herein shall not

constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF SANTA FE:


ALAN WEBBER, MAYOR

DATE: 11/06/2018


CONTRACTORS:

Salazar Sullivan & Jasionowski

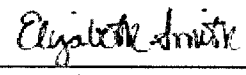
See attached
Attorney Pia Salazar

DATE: _____
CRS# 11955837744
CITY OF SANTA FE BUSINESS
REGISTRATION # _____


Ferrer Poirot & Wansbrough,


Name & Title
Date: 10/23/2018

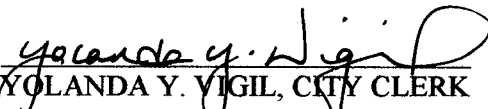
Motley Rice LLC.,


Name & Title
Date: 10/29/2018

Fears Nachayati Law Firm, PLLC


Name & Title
Date: 10/29/2018

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 9/26/18

constitute delivery of notice hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY OF SANTA FE:




ALAN WEBBER, MAYOR

DATE: 11/06/2018

CONTRACTORS:

Salazar Sullivan & Jasionowski



Attorney Pia Salazar

DATE: _____
CRS# 11955837744
CITY OF SANTA FE BUSINESS
REGISTRATION # _____

Ferrer Poirot & Wansbrough,

Name & Title
Date: _____

Motley Rice LLC.,

Name & Title
Date: _____

Fears|Nachawati Law Firm, PLLC

Name & Title
Date: _____

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 9/26/18

APPROVED AS TO FORM:



ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:



MARY MCCOY, FINANCE DIRECTOR
Business Unit/Line Item:
12005.510200