

RETAINER AGREEMENT

The City of Ann Arbor (the “City”), a Michigan municipal corporation, hereby retains Weitz & Luxenberg P.C. (“W&L”) and The Sam Bernstein Law Firm, PLLC (“SBLF”) (collectively, “Claimant’s Counsel”) to prosecute and adjust for the City of Ann Arbor a claim for past and future damages and/or expenditures caused by the culpable conduct of any and all pharmaceutical manufacturers, retailers, and/or pharmacy benefit managers as it relates to the pricing of insulin products (the “Legal Services”). The City of Ann Arbor hereby gives Claimant’s Counsel the exclusive right to take all legal steps to enforce its claims.

1. Compensation of Claimant’s Counsel.

A. In consideration of the services rendered and/or to be rendered by Claimant’s Counsel, the City of Ann Arbor hereby agrees to pay the following contingent fee:

Thirty (30) percent of the net sum recovered, whether recovered by suit, settlement, or otherwise.

B. This fee will be paid ONLY if there is a recovery and will be deducted after the reimbursement of the litigation expenses and/or costs. Litigation expenses and/or costs include but are not limited to filing fees, costs associated with conducting discovery, hearings, conferences, meetings, trials, expert consultation and testimony, and investigation costs. W&L will advance all costs of the litigation.

2. The Legal Services

A. Claimant’s Counsel agrees to provide the City with the Legal Services.

B. Claimant’s Counsel agrees to perform diligently the Legal Services in accordance with the conditions contained in this Agreement and in compliance with all applicable laws and regulations.

3. Personnel and Administration.

A. Claimant’s Counsel warrants that all attorneys assigned to the performance of the legal services are members in good standing of the State Bar of Michigan or other state bar.

B. Each employee or consultant employed by Claimant’s Counsel in the performance of this Agreement shall devote such time, attention, skill, knowledge and professional ability as it necessary to perform most effectively and efficiently the services in accordance with the level of professional quality performed by attorneys regularly performing these legal services in the State of Michigan; provided, however, it is recognized that Claimant’s Counsel may engage in legal services for other clients to the extent that the rendering of such services does not conflict with the services to be performed under this Agreement.

C. Claimant’s Counsel is authorized, in good faith and in the honest belief that it is in the best interests of the City of Ann Arbor, to associate other firm(s) to assist in this matter,

with prior approval of the City Attorney. Any association of counsel will not include any additional legal fees as the firms will share in any legal fees earned pursuant to the above terms. Regardless, Claimant's Counsel will maintain full control of the matter on behalf of the client at all times.

D. Claimant's Counsel will maintain full control of the matter on behalf of the City of Ann Arbor at all times but will consult with and follow the direction of the City of Ann Arbor through the City Attorney on all matters concerning the discovery, trial, or resolution of the City of Ann Arbor's claim. Claimant's Counsel will prosecute the City of Ann Arbor's claim as an individual action against any and all pharmaceutical manufacturers, retailers, and/or pharmacy benefit managers who have engaged in culpable conduct with regard to insulin pricing. The City of Ann Arbor has the authority to resolve its claim in consultation with Claimant's Counsel.

E. Claimant's Counsel or any other counsel associated in this matter consent to put the City of Ann Arbor on notice as soon as Claimant's Counsel or any other future counsel associated in this matter become aware of new or prospective matters in which a conflict of interest may exist in order to give the City the opportunity to contest or waive any potential conflicts of interest.

4. Insurance.

A. During the term of this Agreement, W&L and SBLF each agree to procure and maintain in effect a policy or policies of professional liability insurance protecting them and their employees in an amount of no less than \$1,000,000.

B. During the term of this Agreement, W&L and SBLF each agree to procure and maintain in effect a policy or policies for general liability in the amount of \$1,000,000 per occurrence and \$2,000,000 in aggregate.

C. Certificates showing W&L and SBLC have the required insurance shall be filed with the City through City-approved means (currently myCOI).

5. Hold Harmless.

A. Claimant's Counsel agrees to save harmless the City against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation reasonable fees and expenses for consultants, expert witnesses and other consultants at the prevailing market rate for such services) which may be imposed upon, incurred by, or asserted against the City by reason of any negligent or tortious act committed by Claimant's Counsel or any of its employees, consultants, or agents, during the course of providing services.

B. Claimant's Counsel agrees that it is their responsibility and not the responsibility of the City to safeguard the property and material that are used in performing this Agreement. Further, Claimant's Counsel agrees to hold the City harmless for costs and

expenses resulting from any negligent loss of such property and material used pursuant to Claimant's Counsel's performance under this Agreement.

C. The relationship of W&L and SBLF to the City is and shall continue to be that of an independent contractor and no relationship other than that of an independent contractor shall be implied between the parties, or either party's agent or employee. Claimant's Counsel agree to hold the City harmless from any such claims, and any costs or expenses related thereto.

D. Claimant's Counsel shall not hold the City liable for any personal injury incurred by its employee(s), agents or consultants while providing services under this Agreement and Claimant's Counsel agrees to hold the City harmless from any such claims.

6. Termination of Agreement.

A. The City has the right to terminate the services at any time, with liability to pay fees and expenses incurred to the date Claimant's Counsel receives notice of termination. Claimant's Counsel has the right to terminate services at any time, subject to its ethical obligations under the Michigan Rules of Professional Conduct and shall be paid for services and expenses rendered to the date of Claimant's Counsel's resignation. The City or Claimant's Counsel shall provide notice of such termination by first-class mail to the other party at the address stated herein.

B. The City or Claimant's Counsel may terminate this Agreement in the case of a breach of this Agreement by another party, if the breaching party has not corrected the breach within 15 days after notice of termination is provided to it by first class mail at the address stated herein.

7. Obligations of the City.

A. The City agrees that the City Attorney shall serve as co-counsel for the City and will give Claimant's Counsel access to City records as required to perform the necessary services under this Agreement.

B. The City shall notify Claimant's Counsel of any defects in the services of which the City Attorney has actual notice.

C. The City shall pay the Compensation described in paragraph 1.

D. The City warrants that this Agreement has been duly executed by its authorized representative, and in accordance with the City Charter and Code.

8. Assignment

This Agreement may not be assigned or subcontracted by Claimant's Counsel, in whole or in part, without the written consent of the City Attorney. If Claimant's Counsel

subcontracts or assigns any portion of the services, including but not limited to expert services, Claimant's Counsel shall require the subcontractor or assignee to enter into a subcontract or other agreement which incorporates all the same terms as this Agreement.

9. Conflict of Interest

A. Claimant's Counsel covenants that they presently have no interest and shall not during the pendency of the services, assume a representation nor acquire any interest, direct or indirect, which does or would conflict in any manner or degree with the performance of the services under this Agreement. Claimant's Counsel further covenants during the pendency of the services, no person having any such interest or conflicting representation shall be employed by Claimant's Counsel.

B. Claimant's Counsel further covenants that no officer or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.

10. Confidentiality

A. The services to be performed by Claimant's Counsel shall be at the direction of the City regarding the services performed.

B. In order that Claimant's Counsel may effectively fulfill its obligations to the City under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information pertaining to the City's past, present, and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, Claimant's Counsel and all their employees shall regard all information gained from City during the term of this Agreement or provided by the City prior to agreement, and as a result of the services to be performed hereunder as information which is proprietary to the City and confidential and not to be disclosed to any organization or individual without the prior written consent of the City, or as required by law. If Claimant's Counsel receives a subpoena or other legal process seeking disclosure of information gained from City during the term of this Agreement and as a result of the services, Claimant's Counsel shall immediately notify the City of same, and the City, at its expense, shall undertake such opposition to the legal process as the City shall deem appropriate, or in the alternative, the City shall provide Claimant's Counsel with its written approval to disclose the information sought by the process.

C. Claimant's Counsel shall take appropriate action to ensure that all employees comply with this policy of nondisclosure.

D. Claimant's Counsel also shall take appropriate action to ensure that all employees protect from improper disclosure all information obtained or produced, all communications made or received, and all work under this Agreement which are covered by the attorney-

client privilege or attorney work product doctrine.

E. Claimant’s Counsel shall retain its files relative to the services for a reasonable period of time after completion of the services and shall then have the right to destroy its files after providing sufficient notice to the City of any planned document destruction and giving the City the opportunity to retrieve the files prior to their destruction.

11. Amendments

A. The City may consider it in its best interests to change, modify, or extend a term or condition of this Agreement, or the City may request Claimant’s Counsel to perform additional services. Any such change, extension, or modification, which is mutually agreed upon by the City and Claimant’s Counsel shall be incorporated by written amendments to this Agreement. Such amendments shall not invalidate this Agreement nor relieve or release the City or Claimant’s Counsel from any of their obligations under this Agreement.

B. No amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed by duly authorized representatives of both parties, and is executed in accordance with the City’s Charter and Code.

C. The parties acknowledge that the amount payable for the services under this Agreement is an estimate which may be increased or decreased by the parties pursuant to this Article.

12. Notices

All notices and communications under this Agreement shall be given in writing, signed by Claimant’s Counsel, mailed by first-class mail, and addressed as follows:

If to Claimant’s Counsel

If to the City:

Weitz & Luxenberg, P.C 3011 W. Grand Blvd, 24 th Floor Detroit, MI 48202	City Attorney’s Office City of Ann Arbor 301 E. Huron P.O. Box 8647 Ann Arbor, MI 48107-8647 Attn: Atleen Kaur, City Attorney
The Sam Bernstein Law Firm 31731 Northwestern Hwy, Ste 333 Farmington Hills, MI 48334	

FOR WEITZ & LUXENBERG, P.C.

By _____

Name: _____

Title: _____

Date: _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Date: _____

Approved as to substance

By _____
Milton Dohoney Jr., City Administrator

**FOR THE SAM BERNSTEIN LAW
FIRM, PLLC**

By _____

Name: _____

Title: _____

Date: _____

Approved as to form and content

Atleen Kaur, City Attorney