

## **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 for the City of Ann Arbor a claim on behalf of indirect purchasers, through a proposed class action litigation entitled *City of Ann Arbor v. Oshkosh Corporation, et al.*, Wisconsin Eastern District Court Case No. 25-cv-1973 (the “Litigation”), for injunctive relief and damages caused by the culpable conduct of fire truck manufacturers, trade associations, and their co-conspirators as it relates to the supra competitive pricing of fire trucks in the United States (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.

Whereas, this Agreement confirms the City’s retention of Claimant’s Counsel to represent the City in the Litigation;

Whereas, the Agreement also explains the role of a proposed class representative in a class action lawsuit and confirms the City’s agreement to serve in that role;

Whereas, this Litigation is about the excessive pricing of fire trucks in the United States and the role of various industry actors in causing the supra competitive pricing of those trucks, in alleged violation of federal and state antitrust related laws. Claimant’s Counsel intends to assert claims on the City’s behalf as a proposed class representative of indirect purchasing organizations who purchased such overpriced fire trucks.

Whereas, the Parties agree as follows:

### **1. Compensation of Claimant’s Counsel.**

A. In consideration of the Legal Services rendered and/or to be rendered by Claimant’s counsel, the Parties agree that the City will not be charged any fees to pursue this litigation. Instead, Claimant’s Counsel will reply upon the Court to award attorneys’ fees and costs, if any, to be paid by the Defendants or from a fund created through settlement or a judgment for the class.

B. In the event that the case is not certified as a class action, but Claimant’s Counsel are still successful in obtaining a recovery for the City or equitable relief, Claimant’s Counsel will be paid from the recovery or by the Defendants. In such event, Claimant’s Counsel will be entitled to fees based on the total lodestar (based on the attorneys’ hourly rates times the number of hours incurred in the case) or one-third of the settlement or an amount awarded by the Court. In class actions, a Court must approve the amount of attorneys’ fees at the end of the case and will only do so if it believes such fees are both reasonable and fair.

C. Claimant's Counsel will advance any costs required to be expended in prosecuting the case, including, without limitation, filing fees, expert witness fees, transcript fees, photocopying costs, and messenger fees. If Claimant's Counsel are successful in obtaining a recovery, it is Claimant's Counsel's intention to seek reimbursement of their expenses from the Defendants or from any common fund created. If the case is not certified as a class action, Claimant's Counsel will be entitled to be reimbursed any costs incurred that are directly attributable to the prosecution of the City's individual claim, however, the City acknowledges that the Michigan Rules of Professional Conduct currently state that clients must ultimately be responsible for payment of expenses, although Claimant's Counsel's practice is not to seek reimbursement of expenses from their clients if they are not successful in 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.

C. It appears that the City is a member of the proposed class, and a state subclass of Michigan-based purchasers. Claimant's Counsel may request that the Court permit the City to serve as a class representative. The class representative in a class action serves as a representative for all similarly situated persons.

D. The City acknowledges that in order for any lawsuit to be considered a class action lawsuit, it must first be certified as a class action by the Judge, after determining that the case meets certain criteria to qualify as a class action. Claimant's Counsel are hopeful that the Court will certify this action as a class action, but cannot guarantee that it will. If this matter is not certified as a class action, Claimant's Counsel will make an effort to obtain a settlement of the City's individual case.

E. If the case is certified as a class action, but the City is not approved as the class representative, the City will be entitled to participate in the case as a class member and the City will have a right to intervene or file an appearance in the case, but in that event, Claimant's Counsel will not pursue the City's individual claim or appear on the City's behalf.

G. It is understood that Class Counsel can make no guarantee as to the outcome of this Litigation. If the case results in a successful class resolution, the City will have a right to recover as a member of the class. Under applicable rules, the lead plaintiffs and class representatives may only receive the same proportionate

recovery as other members of the class. Class Counsel are unable to pay the City a referral fee, expenses, or any other form of compensation or remuneration that is not approved by the Court. The City represents that it has not been provided or promised, and will not seek or accept, any money, or other benefit, directly or indirectly, other than as may be awarded by the Court, in connection with the City's participation in this Lawsuit.

### **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 is 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 City at all times.

D. Claimant's Counsel will maintain full control of the matter on behalf of the City at all times but will consult with and follow the direction of the City through the City Attorney on all matters concerning the discovery, trial, or resolution of the City's claim. The City 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 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 personal conflicts of interest.

#### **4. Insurance.**

A. During the term of this Agreement, Claimant's Counsel 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, Claimant's Counsel 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 each Claimant's Counsel 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 Claimant's Counsel and 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 each 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 each agree 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 until 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 Counsels' 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 Claimants 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 warrants that this Agreement has been duly executed by its authorized representative, and in accordance with the City Charter and Code.

D. The City acknowledges that if it serves as a class representative, City representatives may be required to attend a deposition, and the City may need to assist Class Counsel by telephone to prepare responses to written interrogatories. The City may also be required to produce all records it has relevant to this Litigation. As a party to an action, the City acknowledges that it must preserve all information that may potentially relate to this Litigation. Also, any communication between the City and its attorneys and any information about this Litigation must be treated as confidential and not publicly disclosed to other persons.

E. The City understands that trials of these types of cases are unusual, but not impossible. If the Litigation goes to trial, the City acknowledges that it and City representatives may be called to testify in court concerning relevant issues relating to the case.

## **8. Assignment.**

A. 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. 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 this 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 and 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 Legal Services for a reasonable period of time after completion of the Legal 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.

## **12. Notices.**

A. 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 <sup>th</sup> Floor Detroit, MI 48202	City Attorney's Office City of Ann Arbor 301 E. Huron Street P.O. Box 8647 Ann Arbor, Michigan 48107-8647 Attn: Atleen Kaur, City Attorney
The Sam Bernstein Law Firm 31440 Northwestern Hwy, Ste. 333 Farmington Hills, Michigan 48334	

**[Signatures Appear on the Following Page]**

**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