

CITY OF VINELAND

RESOLUTION NO. 2018-_____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH THE LAW FIRM OF KANNER AND WHITELEY, LLC., NEW ORLEANS, LOUISIANA FOR REPRESENTATION IN THE OPIOID LITIGATION

WHEREAS, opioid addiction in the United States has reached an epidemic level and President Donald Trump has declared the epidemic a national public health emergency, killing almost 100 Americans each day, more than motor vehicle accidents; and

WHEREAS, the State of New Jersey has begun efforts to identify and implement ways to combat such an epidemic; and

WHEREAS, the ultimate impact caused by the opioid epidemic falls upon the municipalities which are entrusted with protection of the health and welfare of its residents and fight the battle in their streets by treatment given to those who have fallen victim to the drug; and

WHEREAS, the City Council of the City of Vineland recognizes the great financial strain placed upon the City for prevention and treatment provided by first responders as well as the impact caused to families and neighborhoods in the City; and

WHEREAS, it is indicated that the greatest cause of the opioid epidemic is attributed to the manufacturers and distributors of the drug who misled consumers into believing opioids were safe to treat chronic non-cancer pain with minimal risk of addiction and further over supplied the drug which contributed to an illegal secondary market; and

WHEREAS, the City Council of the City of Vineland believes that the alleged negligent acts of the manufacturers and distributors of opioids has and will continue to cost the City damages and it is imperative that the City should consider legal action against the manufacturers and distributors, among other parties responsible for the opioid epidemic and has considered several law firms specializing in toxic tort litigation and the Law Firm of Kanner and Whiteley LLC New Orleans, Louisiana has extensive experience in toxic tort litigation and has presented a proposal for such legal representation; and

WHEREAS, the Local Public Contract Law (N.J.S.A. 40 A: 11 – 1, et seq.) requires that the Resolution authorizing the award of contract for Professional Services without competitive bidding and the contract itself must be available for public inspection.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute a Non-Fair and Open Agreement pursuant to N.J.S.A. 19:44A – 20.5 with the Law Firm of Kanner and Whiteley LLC. New Orleans, Louisiana for Legal Services for the City of Vineland in the form and substance as attached hereto for said specified services.

CITY OF VINELAND

2. That this Professional Services Agreement is awarded without competitive bidding in accordance with NJSA 40 A: 11 – 5 (1)(a) of the Local Public Contracts Law because said services to be rendered or performed require knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction distinguished from general academic instruction or apprenticeship and training.
3. That the Business Disclosure Entity Certification, the Political Contribution Disclosure Form and the Determination of Value be placed on file with the Resolution.
4. That a notice of this action shall be printed once in the Daily Journal.

Adopted:

President of Council

ATTEST:

City Clerk

KANNER & WHITELEY, LLC
RETAINER AGREEMENT

This retainer contract is entered into between _____ hereinafter sometimes referred to as CLIENT, and the law firm of Kanner & Whiteley, L.L.C., hereinafter collectively referred to as ATTORNEYS.

CLIENT does hereby employ and retain ATTORNEYS to prepare, present, litigate, negotiate and resolve CLIENT'S potential claims for loss and damage related to the fraudulent marketing, sale and/or over-prescription of opioid drugs by opioid drug manufacturers,¹ including but not limited to health plan or other payments made for opioid prescriptions, worker's compensation, treatment for addiction and substance abuse, increased costs for criminal justice and social services.

ATTORNEYS are hereby authorized by CLIENT to advance/incur costs and expenses of whatever nature ATTORNEYS deem necessary to prosecute CLIENT'S claims. These costs and expenses include, but are not limited to, retaining the services of any experts, expert witnesses, investigators, or other contractors.

CLIENT acknowledges this is a complex case requiring special expertise. In consideration of the work performed by ATTORNEYS in this matter, in the event a contingency fee is applied to any recovery or other benefit (e.g. drug treatment programs, future drug purchase discounts), CLIENT does hereby agree to pay ATTORNEYS in accordance with R. 1:21-7 a fee of THIRTY-THREE AND ONE-THIRD PERCENT (33 1/3 %) of any amount received in connection with CLIENT'S claims from recovery or other benefit, after deductions for costs of litigation, on the first \$750,000 recovered; THIRTY PERCENT (30%) on the next \$750,000 recovered; TWENTY-FIVE (25%) on the next \$750,000 recovered; and TWENTY PERCENT (20%) on the next \$750,000 recovered. In the event recovery exceeds \$3,000,000, CLIENT authorizes ATTORNEYS to apply to the Court for a fee on the portion of the recovery in excess of \$3,000,000 of TWENTY-FIVE (25%) on recovery obtained up to six months after suit is filed, THIRTY PERCENT (30%) on recovery obtained thereafter up to 60 days before trial commences, or THIRTY-THREE AND ONE-THIRD PERCENT (33 1/3 %) for recovery obtained within 60 days prior to the commencement of trial or thereafter, after deductions for costs of litigation. CLIENT agrees that ATTORNEYS may adjust these fees consistent with any future amendments of R. 1:21-7 through a modification of this contract.

In the event defendants agree to pay fees separately, under judicial supervision, or are ordered to pay fees separately, CLIENT authorizes ATTORNEYS to seek the maximum reasonable fee available.

¹ Potential claims may proceed against, but are not limited to, Purdue Pharma L.P., Purdue Pharma, Inc., The Purdue Frederick Co., Inc., Purdue Pharmaceuticals, L.P., P.F. Laboratories, Inc., TEVA Pharmaceutical Industries, LTD., TEVA Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Endo Health Solutions, Inc., Endo Pharmaceuticals, Inc., Actavis PLC, Actavis, Inc., Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis Pharma, Inc., Actavis LLC, Abbott Laboratories, and/or Abbott Laboratories, Inc. and Insys Therapeutics.

CLIENT authorizes ATTORNEYS to associate additional or substitute counsel at the discretion of ATTORNEYS and acknowledges that the fees set forth herein would be shared with such counsel.

CLIENT acknowledges it has been advised of and afforded the opportunity to retain ATTORNEYS under a compensation agreement based on the reasonable value of ATTORNEYS' services. Kanner & Whiteley, LLC's Hourly rates, other than on a contingent basis, are as follows:

Certain Kanner & Whiteley Attorneys

Allan Kanner	\$725.00
Conlee Whiteley	\$500.00
Elizabeth Petersen	\$450.00
Cynthia St. Amant	\$400.00

Other Attorneys of Firm

Senior Associates	\$275.00 - \$375.00
Junior Associates	\$200.00 - \$250.00
Law Clerk/Paralegals	\$125.00 - \$175.00

ATTORNEYS will advance all litigation expenses, to be reimbursed out of the gross recovery from any recovery obtained for CLIENT. All costs and expenses incurred in connection with CLIENT'S claims, including reasonable interest on funds borrowed by ATTORNEYS to advance litigation expenses shall be paid from CLIENT'S percentage of the gross recovery. To the extent provided by law, costs will include applicable interest. If no recovery is obtained, ATTORNEYS will receive no fee. ATTORNEYS may also, where available, recover fees from Defendant(s) separate from CLIENT'S recovery, subject to court approval. CLIENT acknowledges that ATTORNEYS have made no guarantee or representation as to the probable outcome of or the amounts recoverable in connection with CLIENT'S claims. ATTORNEYS are hereby given a lien for its fees, costs and expenses upon any settlement, benefits, judgment, verdict or recovery of any nature obtained in connection with CLIENT'S claims.

CLIENT agrees to cooperate fully with ATTORNEYS in the pursuit of recovery for CLIENT'S claims. CLIENT hereby acknowledges that CLIENT is the proper entity and/or has authority sufficient to pursue the above-described claims. CLIENT further agrees to cooperate with ATTORNEYS to permit CLIENT's claims to be investigated and developed; to disclose to ATTORNEYS all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, inspections, depositions, preparation sessions, hearings and trial. CLIENT acknowledges it has a duty to preserve documents related to the claim that attaches at the commencement of the investigation of the claims and continues throughout the litigation. When the case is over, ATTORNEYS will provide CLIENT with the opportunity to retrieve any documents and/or materials that CLIENT has provided or that ATTORNEYS have obtained from other sources in connection with the case. However, if CLIENT has not retrieved those documents and/or material within ninety days after ATTORNEYS have given CLIENT written notice that the case is over and that those documents and/or materials are available to CLIENT, ATTORNEYS may dispose of those documents and/or materials.

It is further understood and agreed that after the date of this contract CLIENT shall not settle any claim in connection with this matter without first having obtained the consent of ATTORNEYS. CLIENT specifically agrees that ATTORNEYS may withdraw without cause at any time and without waiving compensation for the work performed and the costs and expenses incurred by ATTORNEYS. CLIENT authorizes ATTORNEYS to obtain additional or substitute counsel at the discretion of ATTORNEYS and acknowledges that the ATTORNEYS' fees set forth herein would be shared with such counsel.

It is acknowledged that the scope of this contract and the representation of ATTORNEYS do not include any tax advice, including tax advice about the possible tax consequences of any recovery arising from CLIENT'S claim, and CLIENT is urged to seek independent tax advice about these matters.

CLIENT and ATTORNEYS agree that this contract sets forth the entire agreement between the parties and supersedes and replaces any other oral or written agreements. This contract may only be modified in writing signed by all parties. This contract may be executed in counterparts, all of which taken together shall be deemed an original. Facsimile and copies of this contract may be used instead of originals for any purpose. CLIENT does hereby agree that the terms and conditions of this contract shall be binding upon CLIENT'S heirs, executors, legal representatives, administrators, successors and assigns.

Read and agreed to

By: _____

Date: _____, 2017

Print Name: _____

On behalf of Client: _____

Attorneys

By: _____
On behalf of Kanner & Whiteley, LLC

Date: _____, 2017