

CITY OF BROOK PARK, OHIO

ORDINANCE NO: 11474-2025

INTRODUCED BY: MAYOR ORCUTT and *C/W*

P/C	_____
CA	_____
1st R	<u>6-17-25</u>
2nd R	_____
3rd R	_____
B/C	_____

AN ORDINANCE
 RETAINING AND EMPLOYING
 SEVERAL FIRMS TO PROTECT AGAINST PFAS CLAIMS,
 DECLARING AN EMERGENCY

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: That the firms of Magazine Light, LLP, Law Office of Kevin Madonna, PLLC, Douglas & London, P.C. SL Environmental Law Group PC, Taft Stettinius, LLP. And Levin, Papantonio, Proctor, Buchanan, O'Brien, Barr, Mougey, P.A., (collectively the "Firms"), are experienced in PFAS contamination, and the City of Brook Park is retaining the Firms under a contingent fee agreement, attached hereto and incorporated herein as Exhibit "A".

SECTION 2: The money needed for the aforesaid transaction shall be paid from the General Fund, No. 100; theretofore appropriated for said purposes.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare in the City, and for the further reason to retain in Firms on a contingency fee agreement; therefore provided this Ordinance receives the affirmative vote of at least five (5) members elected to Council it shall take effect and be in force immediately from and after its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

RECEIVED
 JUN 12 2025
 BROOK PARK CITY COUNCIL

PASSED: June 17, 2025

Richard [Signature]
PRESIDENT OF COUNCIL

ATTEST: Carol Johnson
Clerk of Council

APPROVED: Edward A. Dent
MAYOR

6-18-25
DATE

CERTIFICATE

Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance Resolution No. 11476-2025 passed on the 17 day of June 20 25 by said council.

Carol Johnson
Clerk of Council

	Yea	Nay
Troyer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mencini	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McCorkle	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Poindexter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dufour	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS.
[Signature]
DIRECTOR OF LAW

CITY OF BROOK PARK, OHIO
PFAS REPRESENTATION CONTINGENT FEE AGREEMENT



I. INTRODUCTION

A. RECITALS.

1. The City of Brook Park, Ohio ("Client"), is committed to protecting its property including surface water, groundwater, and/or soil. Client is also committed to identifying responsible parties and taking reasonable steps to avoid passing on the costs to its users for the treatment and remediation of surface water, soil and/or groundwater contamination and for any and all other damages associated with contamination on Client's property.

2. Magazine Light, LLP; Law Office of Kevin Madonna, PLLC; Douglas & London, P.C.; SL Environmental Law Group PC; Taft Stettinius & Hollister, LLP; and Levin, Papantonio, Proctor, Buchanan, O'Brien, Barr, Mougey P.A. (collectively the "Firms") have joined together to assist clients facing the challenges posed by contamination with per- and polyfluoroalkyl substances ("PFAS"). The Firms are experienced both in PFAS litigation and in the representation of public and private entities in cases involving PFAS contamination.

3. The purpose of this PFAS Representation Contingent Fee Agreement (this "Agreement") is (i) to enter into an attorney-client relationship between Client and the Firms (collectively, the "Parties") for the purpose of investigating and assessing potential claims Client may have against others arising out of the presence of PFAS in soil, groundwater surface water, or other real property owned by Client ("PFAS Claims"); and (ii) to provide for the terms and conditions for the representation of Client in any civil action that may be filed in the appropriate state or United States District Court and any proceeding by writ or appeal related to that action filed on behalf of Client by the Firms as to the PFAS Claims ("Legal Action").

II. INVESTIGATION AND ASSESSMENT OF PFAS CLAIMS

A. PRE-LITIGATION SCOPE OF SERVICES.

1. **Contaminants.** Client has detected, or is concerned about, the presence of one or more PFAS compounds (the "Contaminants" or "Contamination") in the soil, groundwater surface water, or other real properties owned by Client. If necessary, the engineering, construction, operation and maintenance of systems to treat and/or remediate contamination at Client's Properties will result in significant financial costs to Client.

2. **Investigation.** Client has retained the Firms to assist Client in investigating the presence of the Contaminants at its Properties and potential sources of the Contamination, evaluate the potential to recover the costs associated with the Contamination, provide advice, and, if mutually agreed upon, represent Client in any Legal Action against parties potentially responsible for the Contamination.

B. COSTS AND FEES OF ANY INVESTIGATION.

1. *The Firms.* All costs incurred by the Firms, or at the Firms' direction, during any pre-litigation investigation shall be paid in the first instance by the Firms and otherwise treated as "Costs" pursuant to Section III.K of this Agreement.

2. *Client.* All costs associated any investigation of the Contaminants undertaken by the Client in the ordinary course of operations, including those associated with water or soil sampling, laboratory testing and engineering expenses, shall be paid directly by Client.

3. *Other.* Nothing contained herein should be interpreted to preclude seeking recovery of such fees and costs incurred by either Party as part of any Legal Action that may be filed pursuant to this Agreement. In addition, if the Firms file any Legal Action, the Firms may use the time incurred for any investigation contemplated herein to support the reasonableness of this Agreement.

C. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEYS.

Client is retaining the Firms, not any particular attorney, and attorney services to be provided to Client shall not necessarily be performed by any particular attorney.

D. DESIGNATION. Client designates [REDACTED] or such other individual(s) as either of them may designate from time to time, as its supervising attorneys and authorized representatives to direct the Firms and to be the primary individuals to communicate with the Firms regarding the subject matter of its representation of Client under this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty. Unless otherwise expressly directed or approved by a supervising attorney, the Firms will communicate with and take direction only from a supervising attorneys or their designee(s) in connection with the representation.

III. LITIGATION SERVICES

A. LITIGATION SERVICES TO BE PROVIDED.

1. *Inclusions.* It is the intent of the Parties that the Firms, if mutually agreeable, shall represent Client in a civil action for damages in the appropriate state court and/or the United States District Court as well as in any proceeding by writ or appeal related to that action. The legal services to be provided by the Firms consist of representation of Client with respect to:

a. The contamination of surface water, groundwater supplies and/or soil by the Contaminants or other contaminants identified during the investigation stage described in Section II of this Agreement, as approved by Client and the Firms.

b. Claims and/or actions for damages sustained by Client as a result of actual or threatened conduct relating to contamination of surface water, groundwater, the loss of use of groundwater, and any past, present, and future costs incurred to remove the Contaminants from drinking water, surface water, groundwater and/or soil, and any related appeals in such actions.

2. ***Retention; Filing of Legal Action.*** The filing of any Legal Action pursuant to this Agreement shall be at the discretion of the Parties. Nothing in this Agreement shall be construed as obligating Client to retain the Firms in connection with any Legal Action or obligating the Firms to file a Legal Action on behalf of Client. If Client chooses not to move forward with litigation, Client will not owe the Firms any monies for the time spent by the Firms investigating Client's potential case.

B. LEGAL SERVICES SPECIFICALLY EXCLUDED.

1. ***Exclusions.*** Legal services that are not to be provided by the Firms under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any administrative or governmental agency, department or board. However, at Client's election, the Firms shall appear at such administrative proceedings to protect Client's rights to pursue any Legal Action filed pursuant to this Agreement, without Client being assessed any additional attorneys' fees in connection with such appearance.

b. Defending any legal action(s) against Client commenced by any person, except for any cross-complaints, counterclaims, or other third-party claims filed in a Legal Action pursuant to this Agreement.

c. Defending any claim against Client for unreasonable use of water and/or waste of water.

d. Defending any action concerning water rights.

2. ***Additional Legal Services.*** If Client wishes to retain the Firms to provide any legal services for additional compensation not provided under this Agreement, a separate written agreement between the Firms and Client shall be required.

C. RESPONSIBILITIES OF ATTORNEY AND CLIENT.

1. ***The Firms' Responsibilities.*** The Firms shall perform the legal services called for under this Agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. The Firms shall provide status reports to Client on a mutually agreeable schedule, as events reasonably warrant further reporting, and at the further request of Client. The supervising attorney(s) designated in Section II.D, or any of them, shall have final sign-off on all work product. The Firms will provide the supervising attorney(s) a reasonable amount of time to review and approve material work product or submissions before the applicable deadline(s).

2. ***Client Responsibilities.*** Client shall cooperate with the Firms and keep the Firms reasonably informed of developments in connection with any Legal Action.

3. ***Selection of Experts.*** The Firms and Client shall meet and confer regarding selection and retention of experts in the Legal Action. Client shall not unreasonably withhold approval of selection and retention of such experts. Client shall not be required to pay for the

selection or retention of experts. These costs will be advanced by the Firms and be reimbursed pursuant to this Agreement only in the event of a recovery.

4. **Settlement.** The Firms shall not settle any Legal Action without the approval of Client. Client shall have the absolute right to accept or reject any settlement. The Firms shall notify Client promptly of the terms of any settlement offer received by the Firms.

5. **Client Agreement Not to Use, Share, or Disclose the Firms' Work Product Outside the Context of this Legal Action.** Subject to Section VI.F, Client agrees that it shall not use or disclose in any legal proceeding, case, or other context of any kind, other than this Legal Action, or share or disclose to any person not a Party to this Agreement any documents, work product, or other information made available to or to which Client or their counsel acquire access through the Firms or any co-counsel of the Firms, including any fact or expert materials produced and/or generated in any prior discovery proceedings in any litigation involving E. I. du Pont de Nemours and Company, The Chemours Company, and/or the 3M Company, without the express written prior approval and consent of the Firms and all such other co-counsel of the Firms.

D. ATTORNEYS' FEES.

1. **Contingent Fee.** The amount the Attorneys shall receive as full compensation for the legal services provided under this Agreement shall consist of a contingent fee ("Contingent Fee"), which shall be twenty-five percent (25%) of the Gross Recovery.

2. Definitions Relevant to Attorneys' Fees.

a. "Net Recovery" means the total value received by Client of all Cash Recoveries plus Non-Cash Recoveries, whether awarded by Settlement or Final Judgment, minus (i) all amounts owed by Client to any litigants in a Legal Action filed by the Firms on behalf of Client, (ii) all court-awarded attorneys' fees or costs received by Client from said litigants, and (iii) any Costs incurred hereunder.

b. "Gross Recovery" means the total value received by Client of all Cash Recoveries plus Non-Cash Recoveries, whether awarded by Settlement or Final Judgment.

c. "Costs" include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, and process server fees attributable to any Legal Action and incurred or advanced by the Firms. To the extent any such cost items are incurred or advanced by the Firms on behalf or for the benefit of both Client and the Firms' other clients in the same or similar representation, only Client's pro rata share of such costs shall be considered Costs hereunder. Items that are not to be considered Costs, and that must be paid by Client without being either advanced or contributed to by the Firms, are Client's expenses incurred in providing information to the Firms or defendants.

d. "Final Judgment" means any final, non-appealable court order or judgment terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of any parties to the Legal Action where no issue is left for future consideration or appeal.

e. “Settlement” refers to any voluntary agreement executed by Client and any third party not a party to this Agreement, whether resulting from a settlement conference, mediation, or court stipulation, terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of parties to the Legal Action where no issue is left for future consideration or appeal.

f. “Cash Recovery” means, without limitation, the total monetary amount received by Client in a Settlement or Final Judgment arising from an actual or threatened Legal Action by the Firms pursuant to this Agreement, including interest of any kind received by Client.

g. “Non-Cash Recovery” means, without limitation, the fair market value of any property delivered to Client, any services rendered for Client’s benefit by any third party not a party to this Agreement, and any other non-cash benefit, including but not limited to the construction, operation, and maintenance of one or more water or soil treatment facilities; delivery of replacement water; modification, alteration, construction or operation of well(s) and/or any part of a public or private water system; or any other types of injunctive and/or equitable relief conferred on Client, pursuant to a Settlement or Final Judgment of an actual or threatened Legal Action by the Firms pursuant to this Agreement.

h. “Present Value” means the interest rate of the one-year treasury bill as reported by the United States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the recovery for which the present value is being calculated.

i. “Reasonable Fees” or “Reasonable Attorney’s Fee” means such fees as is reasonably determined by taking into account the amount of time spent on the Legal Action by the Firms and associate counsel retained by the Firms with the prior written approval of Client, the value of that time, the complexity of the Legal Action, the proportional benefit conferred on Client, and the financial risk to the Firms and associate counsel by their agreeing to represent Client in the Legal Action and to invest time and advance Costs without compensation or reimbursement in the event that there is no Net Recovery or a Net Recovery that does not fully compensate or reimburse the Firms and associate counsel for their time and advanced Costs.

3. *Calculation of Non-Cash Recovery.*

a. For any Non-Cash Recovery resulting in the receipt of property, the provision of services, or the receipt of other non-monetary benefits by Client, such property, services, or other non-monetary benefits shall be deemed for purposes of this Agreement to have been received by Client upon the execution of a Settlement or Final Judgment. The value of the services shall be discounted to Present Value.

b. If any Non-Cash Recovery is awarded in a Final Judgment, or before accepting any settlement offer that involves a Non-Cash Recovery, Client shall provide the Firms with its estimate of the value of the Non-Cash Recovery. The Firms shall promptly respond in writing, indicating whether the firms accept said estimate. If the Firms object to Client’s estimate, the Parties shall proceed as set forth in Section III.G (“Disagreements Concerning Value of

Recoveries”). Nothing herein shall impede or restrict Client’s right to include a Non-Cash Recovery in any Settlement, nor the Firms’ right to receive a Non-Cash Recovery.

E. DISTRIBUTION OF PROCEEDS.

1. ***Pay-if-Paid; Option for Advance Payment.*** Receipt of any Net Recovery by Client is a condition precedent to payment of any portion of the Contingent Fee by Client to the Firms. Undisputed payment(s) of the Contingent Fee owed to the Firms in accordance with Agreement shall be made no later than thirty (30) days after receipt by Client of any Net Recovery. Notwithstanding the foregoing, Client, in its sole and absolute discretion, may choose to pay any Cash Recovery portion of the Contingent Fee prior to receipt of any Net Recovery by Client (“Advance Payment”). Upon Client’s election to make an Advance Payment, Client shall estimate the amount and timing of outstanding Cash Recoveries, treat all such outstanding payments as constructively received by Client upon the execution of a Settlement or Final Judgment requiring such payments, discount all such payments to their Present Value as of the time of said Settlement or Final Judgment, and pay the Firms the Contingent Fee due on the Present Value of such portion of the Cash Recovery at that time. Nothing herein shall be construed to modify how any amount shall be distributed or the Parties’ remedies in this Agreement upon a dispute over any estimate or amount due under this Agreement.

2. ***Distribution.*** The receipt of any Net Recovery by Client shall be distributed as follows: (i) all unpaid Costs shall be paid, including all Costs advanced by the Firms, which shall be reimbursed, (ii) the Contingent Fee shall be paid until the Firms are paid in full, and (ii) any remaining amounts shall be paid to Client.

3. ***Use of Monies Held in Trust.*** The firms are authorized to apply any funds received on behalf of Client in connection with a Settlement or Final Judgment and held in one of the Firm’s trust accounts to the payment of any Costs owed to third parties to this Agreement; provided that for any payments in excess of \$1,000, the Firms shall furnish copies of third party invoices for Client’s review at least thirty (30) days prior to making said payments.

F. REASONABLE FEE IF CONTINGENT FEE UNENFORCEABLE.

1. ***Reasonable Fee.*** In the event of a Final Judgment finding that the Contingent Fee portion of this Agreement is unenforceable for any reason or that the Firms cannot represent Client on a Contingent Fee basis, Client shall pay a reasonable fee for the services rendered.

2. ***Fee Determination.*** The Parties shall use best efforts to negotiate a reasonable fee. If the Parties fail to do so, said fee shall be determined by arbitration proceedings before a mutually agreeable arbitration service, but absent such agreement, before the Judicial Arbitration and Mediation Services (JAMS), with any costs of such proceedings born equally by Client and the Firms.

G. DISAGREEMENTS CONCERNING VALUE OF RECOVERIES.

1. ***Procedure.*** In the event the Parties disagree with respect to the value of any Contingent Fee, Net Recovery, Cash or Non-Cash Recovery, Costs (collectively, “Disputed

Recoveries”) or settlement offer, and the Parties cannot resolve the disagreement through good faith negotiations, the Parties shall proceed as follows:

a. Each party shall select an appraiser qualified to conduct an appraisal of the value of the Disputed Recoveries or settlement offer within five (5) days of any written notice to the other party advising of a bona fide dispute that cannot be resolved by negotiations.

b. Each party’s selected appraiser shall then confer and select a third qualified appraiser within five (5) days of said conference, and the third appraiser shall determine the value of the Disputed Recoveries or settlement offer.

c. The third appraiser shall conduct an appraisal, and the valuation of any Disputed Recoveries or settlement offer shall be final and binding, subject to appeal by arbitration in the case of Disputed Recoveries as provided in Section VI.L (“Arbitration of Disputes”).

2. **Expenses.** Client and the Firms shall each bear the expense of their own selected appraiser, and Client and the Firms shall each pay one-half of the expenses of the third appraiser.

H. COURT-AWARDED AND/OR SETTLEMENT-AWARDED ATTORNEYS’ FEES.

1. **Duty to Seek Attorneys’ Fees and Costs in Legal Action.** Client may obtain an award of Attorneys’ Fees and/or Costs in a Final Judgment or Settlement. The Firms agree to seek any such award(s) in any Legal Action it files on behalf of Client.

2. **Credit for Court-Awarded Fees and Costs.** Any Attorneys’ Fees or Costs awarded in connection with a Legal Action shall not be considered part of the Net Recovery for purposes of calculating the Firms’ Contingent Fee but said fees and costs shall be applied as a credit against Client’s obligation to pay the Firms’ Contingent Fee and any Costs under this Agreement.

3. **Court-Awarded Fees and Costs in Excess of Contingent Fee.** Notwithstanding any other provision of this Agreement, if court-awarded Attorneys’ Fees and Costs exceed the Contingent Fee to which the Firms would otherwise be entitled under this Agreement, the amounts due to the Firms under this Agreement shall be the court-awarded fees and any Costs remaining unpaid or unreimbursed by Client, and Client shall receive all other amounts awarded in a Legal Action.

I. NEGOTIATED FEE. Client is informed that the Attorneys’ Fees provided for herein are not set by law but rather are negotiable between the Firms and Client.

J. DIVISION OF ATTORNEYS' FEES.

1. *Division of Fees; Disclosure.* The Firms may divide the fees and/or costs to which it is entitled under this Agreement with another attorney or law firm retained as associate counsel. The terms of such additional division, if any, shall be disclosed to Client in advance.

2. *Retention of Associate Counsel.* The Firms may retain associate counsel to assist with litigating a Legal Action pursuant to this Agreement. The attorney or law firm selected by the Firms shall be subject to Client's approval in its sole and absolute discretion.

K. COSTS.

1. *Costs Advanced by the Firms.* The Firms shall advance all Costs incurred in connection with the Firms' representation of Client under this Agreement. Costs shall be advanced by the Firms and then paid by Client after calculating any Net Recovery.

2. *Reimbursement; Risk of Loss.* The Firms shall be reimbursed for any Costs before any distribution to Client. If there is no Net Recovery or the Net Recovery is insufficient to reimburse the Firms in full for Costs advanced, the Firms shall bear the loss for any Costs not reimbursed under this Agreement.

3. *Defense of Attorneys' Fees and Costs to Third Party.* Notwithstanding any provision of this Agreement to the contrary, the Firms shall defend Client in any motion seeking an award of Attorneys' Fees or costs against Client in any Legal Action brought under this Agreement. Any costs incurred in such defense shall be treated as Costs for purposes of, and in the manner provided by, this Agreement.

IV. REPRESENTATION OF ADVERSE INTERESTS

A. DISCLOSURE.

1. *Duty to Disclose; No Conflicts Identified.* If any of the Firms have a relationship with another party with interests adverse to Client, or with someone who would be substantially affected by any action taken under this Agreement, the Rules of Professional Conduct require the Firms to disclose that to Client so Client can evaluate whether that relationship causes Client to have any concerns regarding any of the Firms' loyalty, objectivity, or ability to protect Client's confidential information. To the extent required, the Client waives any conflict under the Pennsylvania Rules of Professional Conduct.

2. *Representation of Other Clients; Waiver of Potential Conflicts.* Client understands that currently, and from time to time, the Firms represent other municipalities, governmental agencies, airports, counties, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation, and that such work is the focus of the Firms' practice. Further, Client understands that the Firms represent other clients in actions similar to what would be brought under this Agreement and against the same potential defendants. Client understands that a recovery obtained on behalf of another client in a similar suit against the same defendants could, in theory, reduce the total pool of funds available from these same defendants to pay damages in a Legal Action brought under this Agreement. Client understands that the Firms

would not take on this engagement if Client required the Firms to forgo representations like those described above. Client has conferred with its own separate and independent counsel about this matter and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that may occur as the result of the Firms' current and continuing representation of cities and other water suppliers in similar litigations, because such waiver enables Client to obtain the benefits of the Firms' experience and expertise. Therefore, Client consents that the Firms may continue to handle such work, and may take on similar new clients and matters, without disclosing each such new matter to Client or seeking the consent of Client while representing it. The Firms shall not, of course, take on such other work if it requires the Firms to be directly adverse to Client while the Firms are still representing Client under this Agreement.

V. TERMINATION

A. **DISCHARGE OF ATTORNEY.**

1. ***Right to Discharge.*** Client may discharge the Firms at any time, with or without cause, by written notice effective when received by the Firms. Client shall have the right to terminate this Agreement with cause upon the Firms' breach of this Agreement, Client's reasonable determination that the Firms' representation of Client is unsatisfactory, or the Firms' failure to strictly adhere to the applicable state Rules of Professional Conduct. Unless specifically agreed by the Firms and Client, the Firms shall provide no further services and advance no further Costs on Client's behalf after receipt of the notice. If any or all of the Firms are Client's attorney of record in any proceeding, the Firms shall immediately execute and return a substitution-of-attorney form.

2. ***Reimbursement of Costs.*** In the event the Firms are discharged without cause before the conclusion of a Legal Action, Client shall reimburse the Firms for any and all Costs advanced by the Firms for such Legal Action not later than thirty (30) days from receipt of a reasonably detailed final cost accounting from the Firms. Nothing herein shall be construed to limit Client's rights and remedies in the event of a discharge of the Firms for cause.

B. **WITHDRAWAL OF ATTORNEY.**

1. ***Right to Withdraw.*** The Firms may withdraw from representation of Client (i) with Client's consent upon court approval, or (ii) if no Legal Action is filed, for good cause upon reasonable notice to Client. Good cause includes Client's breach of this Agreement, Client's unreasonable refusal to cooperate with the Firms or to follow the Firms' advice on a material matter, or any other fact or circumstance that would render the Firms' continuing representation unlawful or unethical. If the Firms withdraw due to Client's breach of this Agreement, which breach remains uncured more than sixty (60) days after written notice of breach is delivered to Client, Client shall remain obligated to pay the Firms and any associated counsel, out of any Net Recovery, a Reasonable Fee for all services provided and to reimburse the Firms for all reasonable Costs advanced before the withdrawal.

2. ***Withdrawal Without Cause.*** The Firms may terminate this Agreement at any time, without cause, by giving Client not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination. Where the Firms terminate

this Agreement without cause, the Firms shall not be entitled to the recovery of any amount, regardless of the status of any pending Legal Action, and regardless of whether any amounts have been or are subsequently received by Client.

VI. MISCELLANEOUS

A. LIEN. Except in the event of a breach of this Agreement by the Firms or the Firms' withdrawal without cause pursuant to Section V.B.2, Client hereby grants the Firms a lien on any and all claims or causes of action that are the subject of the Firms' Contingent Fee and/or Costs advanced under this Agreement. The Firms' lien shall be for sums owed to the Firms for any unpaid Contingent Fee or Costs at the conclusion of the Firms' services. The lien shall attach to any Net Recovery Client may obtain.

B. RELEASE OF CLIENT'S PAPERS AND PROPERTY. Upon the conclusion of services under this Agreement, the Firms shall release promptly to Client on request all of Client's papers and property. "Client's papers and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to Client's representation, regardless of whether Client has paid for said documents or property.

C. INDEPENDENT CONTRACTOR. The relationship to Client of the Firms, and any associate counsel or paralegal provided through the Firms, in the performance of services hereunder, is that of independent contractor and not that of employee of Client, and no other wording of this Agreement shall stand in derogation. The fees and expenses paid to the Firms hereunder shall be deemed revenues or expense reimbursements of the Firms' offices practices and not remuneration for individual employment apart from the business of the individual Firm's law offices.

D. NOTICES. All written notices and communications to Client relating to this Agreement shall be mailed to or personally delivered to Client. Written notices and communications to the Firms relating hereto shall be mailed or emailed to Kevin Madonna, Kennedy & Madonna, LLP, 48 Dewitt Mills Road, Hurley, NY 12443, kmadonna@kennedymadonna.com unless and until Kennedy & Madonna, LLP shall have given written notice to Client of a change in such office address.

E. CONFIDENTIALITY. This Agreement establishes the relation of attorney-client between the parties hereto. The Firms shall hold all money and property of Client in trust for Client's benefit, with all funds deposited and managed in the Firms' client trust account as required by law. The Firms understand and agree that their oral and written communications with Client regarding legal services provided to Client are confidential and shall not divulge Client's confidences. Client shall undertake reasonable efforts to facilitate candid cooperation of all Client's stakeholders and employees in all matters related to the assigned files and any related actions. The Firms understand and agree that no aspect of the Firms' representation may be communicated with any individuals other than the Client's supervising attorneys or their designee(s), unless the Firms receive prior authorization for such communication, or as required by law, court order, or Rule of Professional Conduct. The Firms agree to work only upon direction from the supervising attorneys, and no others. Communications from any others to the Firms

requesting legal advice or legal work will be referred to the supervising attorneys. Furthermore, this Agreement is an attorney-client communication and shall not be disclosed by Client or the Firms to any third party, except as may otherwise be required by law. In the event of a request, demand, or lawsuit to compel Client to provide a copy of this Agreement or a description of its terms, the Firms shall work with Client to provide an appropriate response and the Firms shall defend any such litigation at the Firms' cost. Nothing herein shall preclude the Firms and Client from agreeing together to disclose the Agreement or its terms.

F. DISCLAIMER OF GUARANTEE. Although the Firms may offer an opinion about possible results regarding the subject matter of this Agreement, the Firms cannot guarantee any particular result. Client acknowledges that none of the Firms have made promises about the outcome and that any opinion offered by the Firms in the future shall not constitute a guarantee.

G. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement shall be binding on the parties.

H. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.

I. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

J. RECITALS; TITLES, SUBTITLES, HEADINGS. The recitals to this Agreement are part of this Agreement, but all titles, subtitles, or headings in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Agreement.

K. ARBITRATION OF DISPUTES. Notwithstanding any other provision of this Agreement, any disputes relating to the Firms' Contingent Fee arising out of this Agreement may first be submitted to the State Bar's program for arbitration of fee disputes. If a fee dispute arises, the Firms shall provide Client with information about the State Bar program.

L. VENUE IN ACTION ON AGREEMENT. In any dispute relating to the Contingent Fee or other dispute arising out of this Agreement, the venue shall be New York, New York.

M. GOVERNING LAW. The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of Ohio.

N. EFFECTIVE DATE OF AGREEMENT. The effective date of this Agreement shall be the date when last executed by the Parties. Once effective, this Agreement shall, however, apply to services provided by the Firms on this matter before its effective date.

