

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. IX. AR
12/31/2024

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

Professional Legal Services Contingency Fee Agreement with McAfee & Taft and Frantz Law Group, APLC, to provide litigation services for the purpose of recovery of overcharges for insulin.

Background:

The healthcare plans for the City of Oklahoma City provide employees, dependents and retirees with access to prescription medication, including insulin. The City healthcare plans utilize Pharmacy Benefit Managers (PBM) to negotiate prices of drugs with drug manufacturers. The City employees, dependents and retirees can then purchase prescription drugs at a discounted price, generally \$15 to \$60. The City, through the Oklahoma City Municipal Facilities Authority (OCMFA), then pays the remainder of the cost for those enrolled in the City's self-funded plans or through premiums paid by a fully insured HMO plan. The cost of manufacturing insulin has not significantly increased in the past 30 years, but the price charged for insulin by pharmaceutical manufacturers and PBMs has increased significantly.

There is evidence that certain pharmaceutical manufacturers and PBMs have engaged in conduct that has led to this significant rise in the cost of insulin paid by the City through the OCMFA.

The Mayor and Council of The City have expressed a desire to pursue litigation to make a recovery of these overcharges. The Municipal Counselor's Office, at the request of Council as expressed in a resolution adopted on November 19, 2024, has negotiated a contingency fee based professional services agreement with McAfee & Taft, PC, and the Frantz Law Group, APLC ("collectively "Attorneys"), to provide legal representation to The City for the purpose of instituting litigation to recover overcharges for insulin. The Attorneys have assembled a team with the experience and resources necessary to prosecute the litigation.

The Professional Legal Services Agreement provides for the Attorneys to initiate, prosecute and pursue litigation on behalf of The City, subject to the terms of a contingency fee arrangement for costs and fees, which allows for attorney fees to be paid as a percentage of any settlement recovery or judgment. This Agreement also places the financial burden on the Attorneys, as allowed by law, including to upfront the costs of their time and expenses in handling the litigation. The City will be responsible to reimburse the Attorneys from its financial recovery from the litigation for the City's directly incurred expenses or its proportional share of expenses incurred with others to prosecute the litigation.

Estimated Cost:

No costs to the City unless the Court determines that the City owes attorneys' fees to the Defendants in the event the Defendants are successful in defending against the causes of action.

Recommendation: Agreement be approved.