



# City of San Antonio

## Agenda Memorandum

**File Number:**19-6070

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**Agenda Item Number:** 20.

**Agenda Date:** 8/15/2019

**In Control:** City Council A Session

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**DEPARTMENT:** City Attorney's Office

**DEPARTMENT HEAD:** Andy Segovia

**COUNCIL DISTRICTS IMPACTED:** Citywide

### **SUBJECT:**

National Opioid Litigation

### **SUMMARY:**

This item affirms the City of San Antonio's commitment to participate in national opioid litigation and asking the City Attorney to seek approval from the State of Texas for a contingency fee contract for professional legal services.

### **BACKGROUND INFORMATION:**

The country is in the middle of a public health crisis stemming from a flood of opioids pouring into the cities and counties, destroying families, taking lives and sapping tax dollars and resources from the community. This opioid epidemic impacts the City of San Antonio and its citizens.

Currently, there is ongoing, multi-district litigation in the United States District Court, Northern District of Ohio, filed on behalf of cities and counties across the country against pharmaceutical manufacturers and distributors. A fundamental purpose of multi-district litigation is to allow for efficient streamlined management of multiple nationwide cases to mitigate unnecessary duplication and costs for all parties. It is in the best interest of the City and its citizens for the City to participate in this litigation styled *In re: National Prescription Opiate Litigation, MDL 2904*.

The complexity and nature of multi-district mass tort litigation, the location of the multi-district jurisdictions, the stage of the proceedings and the staffing levels necessary to pursue these claims makes it unlikely that the

representation of the City can adequately be performed solely by the City Attorney's office. The nature of mass-tort litigation does not reasonably allow for the legal services to be obtained from attorneys in private practice under a contract for the payment of hourly fees. The City does not have appropriated funds available to pay the estimated amounts required under a contract for the payment of hourly fees because the undertaking of mass-tort litigation on an hourly basis would be prohibitively costly thus not allowing the City the opportunity to recover damages. It is in the best interest of the City for the City Attorney to enter into a contingency fee agreement for legal services on behalf of the City in the multi-district litigation.

There is a substantial need for the legal services so that the City has the ability to recover damages to address the costs the City has incurred to deal with the opioid crisis. The legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity because the participation in mass tort multi-district litigation necessarily requires a contingency fee arrangement. The legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because it is cost prohibitive for the City to individually engaging in mass tort litigation on an hourly fee. Mass-tort litigation necessarily entails obtaining and reviewing thousands of documents from numerous defendants, deposing individuals from numerous defendants located across the country, and the preparation and conduct of a long trial all of which can be more effectively pursued under a contingency fee arrangement.

#### **ISSUE:**

Under Texas law, cities are prohibited from entering into contingency fee arrangements without approval by the City Council and the Texas Comptroller's Office.

#### **ALTERNATIVES:**

City Council could determine that the City should not participate in the multi-district litigation against pharmaceutical manufacturers and distributors or enter into a cost-prohibitive agreement with attorneys in private practice under an hourly-fee arrangement.

#### **FISCAL IMPACT:**

There is no direct fiscal impact to the City's general fund by participating in the multi-district litigation. The extent of damages received by the City will be determined according to a model developed during the multi-district litigation.

#### **RECOMMENDATION:**

Staff recommends approval of this Resolution to affirm the City's commitment to participate in national opioid litigation and ask the City Attorney to seek necessary State approval to enter into a contingency fee contract for legal professional services.