



# Fairhaven Board of Selectmen

## September 24, 2018 Meeting Minutes

**Present:** Vice Chairman Charles Murphy, Clerk Robert Espindola Town Administrator Mark Rees, and Administrative Assistant Vicki Paquette. Chairman Daniel Freitas was absent.

Vice Chairman Murphy called the meeting to order in the Town Hall Banquet Room at 6:36 p.m. The meeting was recorded by Cable Access.

### MINUTES

Mr. Murphy motioned to approve the minutes of the September 10, 2018 meeting, open session as amended. Mr. Espindola seconded. Vote was unanimous. (2-0)

Mr. Murphy motioned to approve the minutes of the September 10, 2018 meeting, executive session as amended. Mr. Espindola seconded. Vote was unanimous. (2-0)

### TOWN ADMINSTRATORS REPORT

- Mr. Rees informed the Board that Kevin Fournier has been hired to replace retiring Town Hall custodian Frank Fostin. Mr. Fournier started this week training with Mr. Fostin. Mr. Fostin's last day at Town Hall will be Friday, September 28, 2018. Mr. Rees thanked him for his many years of service.
- Mr. Rees read a letter regarding the Community electricity Aggregation Program regarding the electricity rates.
- Mr. Rees reported to the Board that the Rogers School property will be surveyed by the developer who is interested in redeveloping the property into housing
- Mr. Rees stated that the Town will be moving forward with the Green Communities application. SRPEDD will help with 20 hours of technical assistance. Mr. Murphy made a motion to use the 20 hours from SRPEDD for the Green Communities grant application. Mr. Espindola seconded. Vote was unanimous (2-0)

### COMMITTEE LIAISON REPORTS

- Mr. Espindola reported that at the Economic Development Committee meeting a representative from Southeastern Regional Planning and Economic Development District (SRPEDD) presented vacant land survey data base

- Mr. Espindola told the Board that he recently attended the SRPEDD communities meeting. At that meeting they discussed the extension of the Mattapoisett section of the bike path.
- Mr. Murphy reported that the Whitfield-Manjiro House will hold a summit in a few weeks and they expect many visitors to be coming to Fairhaven.

### **64 FORT STREET**

Mr. Murphy read a letter from Jane Cabral of 64 Fort Street requesting a handicap sign in front of her residence. Mr. Espindola made a motion to approve the handicap sign at 64 Fort Street. Mr. Murphy seconded. Vote was unanimous. (2-0) (See Attachment A)

### **TOWN ADMINISTRATORS AGREEMENT EXTENSION**

Mr. Rees told the Board that after the Selectmen had met in executive session on September 10, 2018, Chairman Freitas contacted him regarding the changes to his contract renewal. His current contract will end on December 31, 2018. Mr. Rees requested an additional three years on his contract to end on December 31, 2021. Mr. Espindola stated that he feels Mr. Rees has been a great leader for Fairhaven and is moving the Town in a great direction. Mr. Murphy said he is happy to have Mr. Rees in our Town and the Department Heads have all expressed how pleased they have been with his leadership and the communication between their departments and the Town Administrator. Mr. Rees thanked the Selectmen for their support and also thanked the Department Heads for all their hard work. Mr. Espindola made a motion to approve the Town Administrator agreement extension with the Town of Fairhaven. Mr. Murphy seconded. Vote was unanimous. (2-0) (See Attachment B)

### **CHANGE OF MANAGER- OCEAN STATE JOB LOT**

Selectmen met with Ocean State Job Lot manager Hilario Paulo Galvao. Mr. Galvao told the Board that all the strict policies regarding the sale of alcohol at the store will remain in place. Mr. Espindola made a motion to approve the change in manager at Ocean State Job Lot. Mr. Murphy seconded. Vote was unanimous. (2-0)

### **NATIONAL OPIOD LITIGATION**

Mr. Espindola made a motion to sign the National Opioid Litigation and authorize the Town Administrator to sign on behalf of the Selectmen. Mr. Murphy seconded. Vote was unanimous. (2-0) (See Attachment C)

## REVIEW OF ARTICLES FOR SPECIAL TOWN MEETING

Mr. Rees read the list of potential articles for the November Special Town Meeting scheduled for November 13, 2018. Resident Doug Brady presented two petitions to Selectmen Murphy with more than 100 signatures from registered voters. Mr. Rees will have Town Counsel review one of the petitions to ensure the wording is legal for Special Town meeting. The other petition is a referendum for the ballot on the April 2019 town election. Residents Maria Carvalho, Bernard Roderick, Eleonore Crowell and Karen Vilandry all expressed their reasons why they would like to see a ban on recreational sales of marijuana in Fairhaven because of the potential dangers of marijuana. They urged the Selectmen about the importance of extending the moratorium in order to have more time to have the proper by-laws in place.

## OTHER BUSINESS

- Mr. Espindola urged residents to voice their opinion to Mass DOT regarding the East Coast Greenways project in Mattapoisett. This project will expand the Mattapoisett end of the bike path and will benefit Fairhaven residents. The information will be posted to the Town's website
- Mr. Murphy reminded residents that the Fairhaven Village Militia will be holding their fall encampment at Fort Phoenix this weekend and will be firing the five cannons at dusk on Saturday night. The event is sponsored by the Fairhaven Office of Tourism
- Both Selectmen thanked Town Hall custodian Frank Fostin for his many years of service and wished him well on his upcoming retirement

At 7:49 pm Mr. Espindola made a motion to adjourn. Mr. Murphy seconded. Vote was unanimous. (2-0)

Respectfully Submitted,

*Vicki L. Paquette*

Vicki Paquette  
Administrative Assistant  
(Approved 10/1/2018)

### **Documents appended:**

**A: Letter for 64 Fort Street**

**B: Town Administrator's agreement extension**

**C: National Opioid Agreement**

# Attachment A

September 11, 2018

Dear Mark Rees, Town Administrator and Fairhaven Board of Selectmen,

I am writing on behalf of my husband, Edward Cabral, to request a designated handicap parking spot in front of our house located at 64 Fort Street, Fairhaven.

He suffers from both physical and mental setbacks after a brain infection followed by multiple strokes last September. He is being treated at MGH for ongoing brain infection, neurological damage to brain and right side of body along with a life threatening/debilitated form of Vasculitis.

He was issued Handicap parking card that we use for local travel and are transported weekly to Mass General Hospital via a GATRA assigned wheelchair car for various doctor appointments.


A designed spot in front of the house would make it easier for the wheel chair company and safer when transferring via private transportation. Due to his limited mobility currently he only uses the front door. Vehicles from the local shipyard park have been lining Fort Street for extended stays of 7 -10 days at a time depending on length of fishing trips, making parking on the street impossible at times. Adjacent to our house is a private way, Paradise Drive, owned by our neighbors, not us. There are times that blocking this private way is our only means of safe access from our front door. When we need to block their driveway, this only heightens Ed anxiety issues, if a car is trying to get in and out, which puts us in an unsafe transfer situation.

Your prompt attention in this matter would be greatly appreciated. Please do not hesitate to contact me for any questions or concerns regarding this matter. If physician letters are required to support this request please advise.

Please note this letter was intended to be presented to the board at yesterday's meeting, however due to the sudden death of Ed's son we were making funeral arrangements and unable to get this to you in time for the meeting.

Thank you for your prompt attention and consideration in this matter would be greatly appreciated.

Sincerely,

  
Jane L. Cabral  
64 Fort Street  
Fairhaven, MA

# Attachment B

Third Amendment  
To  
Employment Agreement Between  
The Town of Fairhaven  
And  
Mark H. Rees  
Dated: September 24, 2018

**Section II, Term.**

Delete the first sentence in its entirety and replace with: "This agreement shall become effective January 1, 2019, and shall be in full force and effect until December 31, 2021."

**Section IV, Salary.**

**Section A.** (As amended by the 1<sup>st</sup> and 2<sup>nd</sup> Amendment)

Delete in its entirety and replace with: From January 1, 2019 to June 30, 2019 the Town Administrator's salary will \$80,371 (annualized \$160,742). Effective July 1, 2019 the Town Administrator's salary will be \$166,142 and also effective July 1, 2019 and the remaining term of this agreement, the Town Administrator's salary shall be increased in increments equal to that received by non-union employees of the Town, subject to an appropriation by an Annual or Special Town Meeting.

**Section VII, Health Insurance, Vacation, Holidays, Sick Leave, Funeral Leave Jury Duty and Disability Insurance.**

**Section B.**

Change "four (4) weeks paid vacation per contract year" to "five (5) weeks paid vacation per contract year."

**Section I.**

Delete in its entirety.

**Section IX, Expenses for Professional Development.**

**Section C.**

Change: "\$3,000 annually" to "\$4,000 annually"

**Section X, Dues and Subscriptions.**

Change: "\$1,000 annually" to "\$1,500 annually"

**Section XI, Expenses:**

**Section B.** (As amended by the 1<sup>st</sup> and 2<sup>nd</sup> Amendment)

Delete in its entirety.

IN WITNESS WHEREOF, The Town of Fairhaven, Massachusetts, has caused this addendum to be signed and executed in its behalf by its Board of Selectmen and duly attested by its Town Clerk, and the Town Administrator has signed and executed this addendum, both in duplicate.

TOWN OF FAIRHAVEN

TOWN ADMINISTRATOR

Acting by and through its  
Board of Selectmen

\_\_\_\_\_  
Daniel Freitas  
Chair, Board of Selectmen

\_\_\_\_\_  
Mark H. Rees

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Attest to Signature:

\_\_\_\_\_  
Carolyn Hurley, Town Clerk (Acting)

DATE: \_\_\_\_\_

## ENGAGEMENT TO REPRESENT (AGREEMENT)

RE: Town of Fairhaven, Massachusetts civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

**Town of Fairhaven, Massachusetts** (hereinafter “CLIENT” or “TOWN”), by and through its Board of Selectmen, hereby retains the law firm LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA (“Firm”) on a contingent fee basis, to pursue all civil remedies (“the Litigation”) against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing the TOWN including, but not limited to, filing a claim for public nuisance to abate, enjoin, recover and prevent the damages caused thereby.

**Peter J. Mougey** of the Firm shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with written consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the Litigation. CLIENT consents to the participation of the following firms (collectively referred to, herein, as “Attorneys”), if no conflicts exist, including but not limited to conflicts pursuant to the Massachusetts Ethics laws and the Massachusetts Rules of Professional Conduct:

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

SWEENEY MERRIGAN LAW, LLP  
268 Summer Street, LL  
Boston, Massachusetts

RODMAN, RODMAN & SANDMAN, P.C.  
442 Main Street, Suite 300  
Malden, Massachusetts

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP  
419 11th Street  
Huntington, West Virginia

BARON & BUDD, PC  
3102 Oak Lawn Avenue #1100  
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC  
500 Tracy Way  
Charleston, West Virginia

POWELL & MAJESTRO, PLLC  
405 Capitol Street, P-1200  
Charleston, West Virginia

MCHUGH FULLER LAW GROUP  
97 Elias Whiddon Road  
Hattiesburg, Mississippi

KP LAW, P.C.  
101 Arch Street, 12<sup>th</sup>  
Floor  
Boston, Massachusetts

No other firm or attorney shall participate in the Litigation on behalf of CLIENT without the prior written approval of the Town Administrator.

CLIENT is retaining the Firm and Attorneys collectively and not as individuals, and attorney services to be provided to CLIENT hereunder will not necessarily be performed by any particular attorney.

In consideration, CLIENT agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of CLIENT as an attorney fee whether the Litigation is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery in favor of CLIENT shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants the Firm an interest in a fee based on the gross recovery. If a court awards attorneys' fees, the Firm shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **CLIENT shall not pay to the Firm and Attorneys a fee of any kind or nature if there is no recovery in favor of CLIENT.**

The Firm and the Attorneys shall advance all necessary litigation expenses necessary to prosecute the Litigation. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery in favor of CLIENT after the contingent fee is calculated and shall be paid to the Firm and Attorneys. **CLIENT shall not be required to reimburse the Firm and Attorneys for litigation expenses of any kind or nature if there is no recovery in favor of CLIENT. If there is recovery in favor of CLIENT, the expenses charged shall be capped at 10% of the recovery. Such fees and expenses combined will not exceed 35% of the gross recovery in favor of CLIENT.**

CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly, the likelihood this retention will preclude other retention by the Firm, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers



performing the services and the fact that the fee is contingent upon a successful recovery in favor of CLIENT.

Attorneys shall have the right to represent other municipalities, governmental agencies or governmental subdivisions in other opioid related actions or similar litigation, and CLIENT consents to such multiple representation, subject to the requirements of the Massachusetts Rules of Professional Conduct relating to conflicts of interest, and the Massachusetts Conflict of Interest Law, M.G.L. c. 268A..

This litigation is intended to address a significant problem in the TOWN. The Litigation focuses on the wholesale distributors and manufacturers of opioids and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the Litigation are locked behind closed doors. The billion-dollar industry denies liability. The Litigation will be very expensive and the litigation expenses will be advanced by the Firm with reimbursement contingent upon a successful recovery in favor of CLIENT. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery in favor of CLIENT.

The Firm intends to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the Litigation is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors and manufacturers of opioids. Subject to the limitations set forth herein, CLIENT agrees to compensate the Firm, wholly contingent upon prevailing, by paying 25% of any settlement/resolution/judgment, in favor of CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 25% of the gross amount to Firm as compensation and then reimburse the reasonable litigation expenses, subject to the limits set forth in the fourth full paragraph on page 2 of this Agreement. If the remedy is in the form of equitable relief (e.g., abatement fund, injunctive relief), CLIENT agrees to pay 25% of the gross value of the equitable relief to the Firm as compensation and then reimburse the reasonable litigation expenses, subject to the limits set forth in the fourth full paragraph on page 2 of this Agreement. To the extent that the remedy includes both monetary damages and equitable relief, Client agrees to pay 25% of the gross amount of the monetary damages to the Firm and 25% of the gross value of the equitable relief to the Firm as compensation and then reimburse the reasonable litigation expenses subject to the limits set forth in the fourth full paragraph on page 2 of this Agreement

Notwithstanding any other provision of this Agreement, if the Litigation is resolved by judgment, and either no monetary damages are awarded to CLIENT, or both monetary damages and equitable recovery are awarded to CLIENT, legal fees and expenses, while based upon the total recovery in favor of CLIENT, shall be paid to Firm only from the monetary damages. Any legal fees and expenses otherwise owed to Firm that are in excess of the monetary recovery shall be waived by Firm and CLIENT shall not be obligated to pay such excess.

If CLIENT elects to accept a settlement which includes an equitable recovery in favor of CLIENT, the attorneys' fee for such equitable recovery in favor of CLIENT will be 25% of the gross value of such equitable recovery. If the settlement includes no monetary damages, or if the monetary damages are not sufficient to pay 25% of the gross value of both such monetary damages and such equitable recovery, plus the reasonable litigation expenses subject to the limits set forth in the fourth full paragraph on page 2 of this Agreement, CLIENT shall be responsible to pay the balance of the attorneys' fee and expenses for such equitable recovery out of CLIENT funds. The Client has the absolute right in its sole and unlimited discretion to reject any settlement proposal, including, but not limited to, a settlement proposal which would result in an obligation to pay attorneys' fees and expenses in excess of the monetary damages included in that proposal. No settlement proposal which would result in an obligation by the Client to pay attorneys' fees and expenses in excess of the monetary damages included in that proposal shall be entered into, and the Firm and Attorneys shall have no authority to bind the Client to any such settlement proposal, until the Client has fully and finally appropriated sufficient funds for the purpose of payment of its obligation to pay attorneys' fees and expenses.

The Firm shall not be paid nor receive reimbursement from public funds except to account for the value of any of the CLIENT'S equitable recovery by law. However, any recovery in favor of CLIENT by way of judgment arising from successful prosecution of the case, or any recovery in favor of CLIENT arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee unless required by law.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to the review and approval of that agreement by CLIENT. Any division of fees will be governed by the Massachusetts Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with CLIENT; (2) CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; and (3) the total fee is not clearly excessive.

The Firm and Attorneys will 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. CLIENT will be truthful and cooperative with the Firm and Attorneys, disclose to the Firm and Attorneys all facts relevant to the Litigation, keep the Firm and Attorneys reasonably informed of developments, and be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings, and trial as reasonably necessary. The Firm will be truthful and cooperative with CLIENT, disclose to CLIENT all facts relevant to the Litigation, keep CLIENT reasonably informed of developments, and be reasonably available to meet with CLIENT to discuss litigation strategy and provide updates on the status of the Litigation.

LEAD COUNSEL shall appoint a contact person to keep CLIENT reasonably informed about the status of the Litigation in a manner deemed appropriate by CLIENT. CLIENT at all times shall retain the authority to decide the disposition of the Litigation and personally oversee and maintain absolute control of the Litigation including but not limited to whether to settle the Litigation and on what terms.

CLIENT may discharge the Firm and Attorneys at any time by written notice effective when received by LEAD COUNSEL. Unless specifically agreed by the Firm and CLIENT, the Firm and Attorneys will provide no further services and advance no further costs on CLIENT's behalf with respect to the Litigation after receipt of the notice. If the Firm is CLIENT's attorney of record in any proceeding, Firm will execute and file a Notice of Withdrawal in that proceeding, subject to prior review and approval by CLIENT of the Notice of Withdrawal. Subject to the provisions of the following sentence, upon such discharge, Client will not be responsible for the payment of any legal fees or expenses incurred. If Firm and Attorneys are discharged and, if and only if the CLIENT obtains a future recovery in favor of CLIENT in the Litigation, the Firm and Attorneys may be entitled to fees from that recovery, subject to the limitations set forth herein and depending on the value of Firm and Attorneys services to CLIENT up to the time of discharge.

Upon conclusion of the Litigation, LEAD COUNSEL shall provide CLIENT with a written statement (the closing statement) stating the outcome of the Litigation and, if there is a recovery in favor of CLIENT, showing the remittance to the CLIENT and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, the method of calculation of the gross value of any equitable relief whether such equitable relief solely benefits CLIENT or benefits CLIENT and one (1) or more municipalities, any costs and expenses deducted from the judgment or settlement involved, and, if applicable, the actual division of the attorneys' fees with a lawyer not in the same firm. Any dispute regarding the closing statement shall be submitted by the parties to mediation and final and binding arbitration before the American Arbitration Association, unless the parties mutually agree otherwise in writing. Upon final resolution of the dispute the closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

At the conclusion or termination of services under this Agreement, the Firm and Attorneys will release promptly to CLIENT all of CLIENT's papers and property. "CLIENT's paper and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to CLIENT's representation, whether CLIENT has paid for them or not.

Nothing in this Agreement and nothing in the Firm and Attorneys' closing statement to CLIENT may be construed as a promise or guarantee about the outcome of the Litigation. The Firm and Attorneys make no such promises or guarantees. The Firm and Attorneys' comments about the outcome of the Litigation are expressions of opinion only and the Firm and Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

The relationship to CLIENT of the Firm and Attorneys, and any associate counsel or paralegal provided through them, 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 of this paragraph. The fees and costs paid to the Firm and Attorneys hereunder shall be deemed revenues of their law office practice and not as a remuneration for individual employment apart from the business of that law office.

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 will be binding on the parties. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

If any provision of this Agreement is held in whole or in part by final judgment or order of a court of competent jurisdiction, to be unenforceable, void, or voidable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, regardless of choice of law principles, and the parties hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**Town of Fairhaven, Massachusetts**

By:

\_\_\_\_\_  
Mark Rees, Town Administrator

Accepted:

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

By \_\_\_\_\_  
Peter J. Mougey  
*Lead Counsel*

Date

Accepted:

SWEENEY MERRIGAN LAW, LLP  
268 Summer Street, LL  
Boston, Massachusetts

By \_\_\_\_\_

Peter M. Merrigan  
*Massachusetts Counsel*

Date

Accepted:

RODMAN, RODMAN & SANDMAN, P.C.  
442 Main Street, Suite 300  
Malden, Massachusetts

By \_\_\_\_\_  
Richard M. Sandman  
*Massachusetts Counsel*

Date

Accepted:

KP LAW, P.C.  
101 Arch Street  
Boston, Massachusetts

By \_\_\_\_\_  
Mark R. Reich  
*Massachusetts Coordinating Counsel*

Date