

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2018 – 033

By: Mayor Perciak and All Members of Council

**AN ORDINANCE AUTHORIZING THE MAYOR AND LAW DIRECTOR, ON BEHALF OF THE CITY OF STRONGSVILLE, TO ENTER INTO A SPECIAL COUNSEL AGREEMENT WITH CLIMACO, WILCOX, PECA & GAROFOLI CO., L.P.A. AND NAPOLI SHKOLNIK, PLLC FOR PROFESSIONAL LEGAL SERVICES RELATED TO OPIOID LITIGATION, AND DECLARING AN EMERGENCY.**

WHEREAS, similar to many cities across the country, the City of Strongsville has experienced an exponential rise in drug overdoses directly related to the opioid epidemic; and

WHEREAS, the City of Strongsville has expended and continues to expend significant financial resources to respond to the impact of opioid drug use through the activities of its law enforcement, emergency services and prosecutorial services; and

WHEREAS, therefore, the Administration and Council believe that it is now in the best interest of the City to enter into a Special Counsel Agreement, Contract/Retainer Agreement, in substantially the form attached hereto as Exhibit A, with Climaco, Wilcox, Peca & Garofoli Co., L.P.A. and Napoli Shkolnik, PLLC for the provision of professional legal services to the City of Strongsville with respect to opioid litigation; and

WHEREAS, said attorneys will represent the City of Strongsville's interests in its claim or claims for economic losses arising out of the alleged fraudulent and negligent marketing and distribution of various prescription drugs known as opioids, and the resulting adverse consequences to the City and its residents; and

WHEREAS, such representation will be undertaken on a contingent basis with respect to attorneys' fees.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

**Section 1.** That the Mayor and Law Director be and are hereby authorized and directed to enter into a Special Counsel Agreement, Contract/Retainer Agreement with **CLIMACO, WILCOX, PECA & GAROFOLI CO., L.P.A. and NAPOLI SHKOLNIK, PLLC**, in the form attached hereto as Exhibit A, and made a part hereof, for the provision of professional legal services to the City of Strongsville with respect to opioid litigation, with such services being provided on a contingent basis.

**Section 2.** That any funds expended for the purposes of such legal services shall be paid from the General Fund.

**Section 3.** That 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 any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that the retention of such special legal services is immediately necessary to participate in significant opioid litigation, in order to protect the legal and financial interests of the City. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

[Signature]  
President of Council

Approved: [Signature]  
Mayor

Date Passed: March 19, 2018

Date Approved: 3-19-18

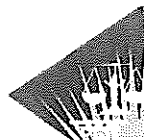
	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Kosek	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roff	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Schonhut	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Short	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Attest: [Signature]  
Clerk of Council

ORD. No. 2018-033 Amended: \_\_\_\_\_  
 1st Rdg. 03-05-18 Ref: COW  
 2nd Rdg. 03-19-18 Ref: \_\_\_\_\_  
 3rd Rdg. Suspended Ref: \_\_\_\_\_

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Pub Hrg. \_\_\_\_\_ Ref: \_\_\_\_\_  
 Adopted: 03-19-18 Defeated: \_\_\_\_\_



CLIMACO, WILCOX, PECA & GAROFOLI CO., L.P.A.  
NAPOLI SHKOLNIK, PLLC  
SPECIAL COUNSEL AGREEMENT  
CONTRACT/RETAINER AGREEMENT  
OPIOID LITIGATION

This Agreement ("Agreement") is made this 19th day of March 2018 between the following: The City of Strongsville, Ohio (hereinafter "Strongsville" or "Client") and CLIMACO, WILCOX, PECA & GAROFOLI CO., L.P.A. and NAPOLI SHKOLNIK, PLLC (hereinafter "Attorneys" or "Counsel"). In consideration of the mutual promises herein contained, the parties herein agree as follows:

**I. PURPOSE OF REPRESENTATION**

Client agrees to retain Attorneys to represent Client in Client's claim or claims for economic losses arising out of the alleged fraudulent and negligent marketing and distribution of prescription drugs including Hydrocodone, Oxycodone, Oxymorphone, Methadone and others ("Opioids").

Client authorizes and empowers Attorneys to take any and all reasonable steps deemed advisable by Attorneys to investigate and handle the Claim, including, but not limited to, hiring investigators, expert witnesses and other attorneys, reviewing documents and other data, and conducting medical surveillance; work with Strongsville personnel to determine the costs that Strongsville has incurred as a result of the over-prescription of opioids; determine the viable causes of action available to Strongsville; and determine which if any manufacturers and distributors should be targeted in a lawsuit, approached in order to attempt to negotiate a settlement and/or in bringing an action against any manufacturer, distributor or any other liable entity or its insurers for economic losses arising from the manufacture and distribution of Opioids. After such identification, and only as authorized by the Client, Attorneys will, on behalf of the Client, bring a lawsuit against those parties identified by Attorneys and agreed to by Client.

In order for Attorneys to represent the Client in any other legal matter, a separate Contract/Retainer Agreement must be entered into between Attorneys and the Client. The Client understands that without such a separate Contract/Retainer Agreement, Attorneys will not represent the Client in any matter other than the Claim as defined herein.

Client understands that this case may be a part of a large number of cases of the same nature, which may be handled as an aggregate, class, or multiple groups for trial preparation and settlement negotiations and Client hereby authorizes Attorney to enter into any aggregate, class or multiple settlements. Client understands that the total amount of such settlements will be confidential in that any such aggregate or multiple settlements may involve settlements of other clients' cases.

## II. ATTORNEYS' FEE

There is no fee for this representation or any payment made to Counsel for any work performed, costs incurred or disbursements made by Counsel unless a monetary recovery acceptable to Strongsville is obtained by Counsel in favor of Strongsville, whether by suit, settlement, or otherwise. Counsel shall advance all costs associated with prosecuting the litigation. In consideration of Attorneys' services rendered and to be rendered as set out above, Strongsville agrees that the maximum contingent attorneys' fees for this representation shall be as follows:

1. 10% of pre-complaint recovery;
2. 20% of recovery after the completion of briefing on motions to dismiss;
3. 25% of recovery after the completion of briefing on for summary judgment;
4. 33% of recovery after the final pretrial; and
5. 40% of recovery after commencement of trial.

Client understands that the Client is giving up at this time to the Attorneys the amount stated above, and that such percentage is of the total recovery or settlement, minus any amount that is designated as attorneys' fees. While the percentage shall not be taken against any recovery designated as attorneys' fees, it will be taken before any costs, expenses, or disbursements are deducted. The Client understands and agrees that all costs, expenses, and disbursements are paid and shall be reimbursed out of the Client's portion of the recovery, and not out of the Attorneys' portion.

No monies shall be paid to Attorneys for any work performed, costs incurred or disbursements made by Attorneys in the event no monetary recovery to Strongsville has been obtained by Attorneys. In the event of a loss at trial due to an adverse jury verdict or dismissal of the lawsuit by the court, no monies shall be paid to Attorneys for any work performed, costs incurred or disbursements made by Attorneys.

This Agreement, unless nullified, represents the entire agreement between us as further governed by Ohio's Code of Professional Responsibility.

The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract of as required by law. In the event that such a request for disclosure is made, Strongsville shall make reasonable efforts to notify Counsel of such request prior to disclosure of the Information so that the Counsel may take such action as it deems appropriate.

## III. NO GUARANTEE OF RESULTS

It is understood and agreed that Attorneys cannot warrant or guarantee the outcome of the case, and Attorneys have not represented to the Client that the Client will recover any damages, compensation or other funds so desired with respect to the Claim. The Client has also been informed that obtaining a judgment does not guarantee that the opposing parties

will be capable or willing to satisfy the judgment.

#### **IV. COURT COSTS AND EXPENSES**

Attorneys shall advance any or all of the court costs and expenses that appear to the Attorneys to be reasonably necessary for the investigation, preparation, trial, and/or settlement of this matter. Client agrees that all costs and expenses advanced or incurred by the Attorneys and or its assignee shall be deducted from the Client's portion of recovery with respect to the Claim. The Attorneys' contingency fee shall be computed on the total recovery, minus any portion designated as attorneys' fees, without deduction for costs, expenses, or disbursements.

Attorneys shall provide Strongsville with a monthly statement of all costs and expenses incurred in this matter.

The terms "court costs" and "expenses" include, without limitation, filing fees, court costs, expert fees (regarding, without limitation, evaluation, reports and/or testimony), consultant fees, court reporter fees, record service fees, photocopying, preparation of exhibits and photographs, investigative fees and expenses, court-mandated expenditures, specialized outside counsel fees and expenses (*i.e.*, probate, taxation, bankruptcy), any expenses of a structured settlement, medical records, subpoenas, as well as any other incidental expenses, including travel and mileage expenses; and all other reasonable and necessary costs and expenses which the Attorneys, in their professional judgment, determine to be reasonably needed for the prosecution and/or settlement of the Claim.

In the event it is necessary for the Attorneys to advance costs, such advancements will be taken out of any settlement or trial award of the Claim obtained on the Client's behalf.

Client acknowledges and agrees that Attorney may borrow funds from a lender to pay the costs and expenses referred to above, and that in addition to costs and expenses, Client agrees that reasonable interest charges and related expenses not to exceed prime plus 2% which Attorney actually incurs in connection with such borrowings, will also be deducted prior to calculation of Attorney fees.

#### **V. COOPERATION OF CLIENT**

Client agrees to cooperate with Attorneys at all times. Client further agrees to appear, on reasonable notice, for all depositions and court appearances, and shall comply with all reasonable requests of Attorneys in connection with the preparation and presentation of the aforesaid Claim and causes of action of the Client. If Client refuses to cooperate, Attorneys shall have the right to terminate this Agreement. In the event of such termination, neither party shall have any further rights against the other, except that in the event of a recovery by Strongsville against the defendants subsequent to the termination, Attorneys shall have rights in the nature of quantum meruit to recover fees, costs, and expenses reasonably allocable to its work prior to termination. However, in no event will this amount exceed the sum that Strongsville recovers from the defendants.

#### **VI. WITHDRAWAL OR TERMINATION OF ATTORNEYS**

Client and Attorneys agree that if, during the course of investigating, preparing, handling or prosecuting the Claim Attorneys make a good faith determination that further action is untenable or a successful conclusion is not possible, Attorneys shall have the right to withdraw from representing Client in the Claim, by so notifying the Client in writing explaining the reasons for withdrawal, and by making available to Client its materials without charge for Attorneys' services or any expense incurred in the investigation and handling of the Claim. In the event that the Attorneys withdraw as described in this paragraph, the attorneys shall have no right to collect their costs, attorneys' fees, or received any payment from Strongsville, regardless of whether Strongsville later receives a recovery from the defendants.

Client shall have the sole and exclusive right to accept or reject any offers for settlement of the Claim. However, Client shall have an obligation to weigh fully the opinions and recommendations of Attorneys and shall not unreasonably withhold consent to a settlement proposal which in the judgment of Attorneys is a fair and reasonable basis for the disposition of the Claim.

Client can terminate Attorneys' representation under this Agreement at any time by providing written notice to Attorneys at 55 Public Square, Suite 1950, Cleveland, Ohio 44113. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' services under this Agreement, neither party shall have any further rights against the other, except that in the event of a recovery by Strongsville against the defendants subsequent to termination, Attorneys shall have rights in the nature of quantum meruit to recover fees, costs and expenses allocable for work prior to termination. However, in no instance shall Attorneys' claim exceed the dollar amount of the recovery that Strongsville obtains. In the event of termination for any reason, Attorneys shall immediately return to Strongsville all materials and documents of every kind and nature, including but not limited to Strongsville documents and electronic data, relating to this Agreement.

## **VII. ASSOCIATION OF OR ASSIGNMENT TO OTHER ATTORNEYS**

Client authorizes Attorneys to associate or employ additional counsel, as attorneys deem necessary or advisable, in the representation of the Claim. Further, Attorneys may assign this matter and this Agreement to other attorneys of their choice upon notice and consent of client. Any fees due such associated counsel will be paid only out of the Attorneys' fees provided in Section II of this Agreement.

Client understands that Attorneys may be sharing attorneys' fees and expenses with other lawyers or law firms as co-counsel, and Client consents to any such fee and expense sharing agreement upon notice to and written consent of the Client after full disclosure of the identity of each additional attorney and the fees and/or expense agreements. Client further understands that any such fee and expense sharing agreement reached between Attorneys and any other lawyers or law firms will NOT change in any manner the Attorneys' or Client's rights and obligations as detailed in this Agreement. Attorneys shall not have the power to enter into any agreement binding Strongsville or otherwise obligating Strongsville without the prior written approval of Strongsville.

## **VIII. GOVERNING LAW**

This Agreement shall be interpreted under the laws of the State of Ohio notwithstanding its conflict of law provisions, any dispute involving this Agreement must be brought in a court of competent jurisdiction in Strongsville, Ohio. This provision shall not limit or prevent the Attorneys from filing an action on Strongsville's behalf for Strongsville's claims involving the marketing and distribution of prescription drugs outside of Cuyahoga County, Ohio

## **IX. SEVERABILITY**

If any part of this Agreement shall for any reason be found unenforceable, the parties agree that all other provisions of this Agreement shall nevertheless remain valid and enforceable.

## **X. PRIOR AGREEMENTS SUPERSEDED**

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties with respect to its subject matter.

Client certifies and acknowledges that Client has had the opportunity to read this six (6) page Agreement, has been provided a copy of this Agreement, and has knowingly and voluntarily entered into this Agreement fully aware of its terms and conditions. Client further certifies and acknowledges that the decisions to pursue the Claim and to employ Attorneys are solely Client's independent decisions after carefully considering the matters.

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NAPOLI SHKOLNIK, PLLC

CLIMACO, WILCOX, PECA & GAROFOLI  
CO., L.P.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF STRONGSVILLE

By: Thomas P. Perciak  
Name: Thomas P. Perciak  
Title: Mayor  
Date: 3-19-18

APPROVED FOR LEGAL FORM:

By: Neal M. Jamison  
Name: Neal M. Jamison  
Title: Law Director